

2013 CLD 68

Sindh

Before Sajjad Ali Shah, J

Badaruddin F. Vellani for Petitioners. Shokat Hayat Alizai, Deputy Director SECP present in person.

Date of hearing: 21st March, 2012.

ORDER

Petition accepted.

COMPANIES ORDINANCE 1984 AND ICI PAKISTAN LIMITED and another: In the matter of Judicial Miscellaneous Application No. 46 of 2011, decided on 17th May, 2012.

(a) Companies Ordinance (XLVII of 1984)--Section 284 & 287---Scheme of arrangements between two companies--Powers of High Court to sanction such scheme---Scope---High Court would apply its judicial mind to such scheme and consider as to whether same would be in interest of company as a whole and would deserve its sanction.

(b) Companies (Court) Rules, 1997-----66--Rule 66 of Companies (Court) Rules, 1997-- Object stated. The purpose behind Rule 66 of the Companies (Court) Rules, 1997 appears to safeguard the interest of creditors and shareholders and prevent the management from reducing share capital of the company stealthily under the garb of Scheme of Arrangements or to obviate chances for the management to get through the reduction of share capital CLD 2013] Companies Ordinance 1984 & ICI Pakistan 69 Limited: In the matter of (Sajjad Ali Shah, J) without proper notice or knowledge of the creditors/ shareholders, but in the cases where. proper procedure prescribed by the Ordinance and the Rules has been undertaken and members and creditors are well informed as required by the Rules, a special resolution for reduction of the share capital is accorded by the creditors and employees, to refuse the sanctioning of the Scheme of Arrangements containing reduction of share capital by directing the Company to first go through the Whole gamut of procedure prescribed for reduction of share capital independently would be uncalled for.

Messrs Hunza Central Asian Textile and Woolen Mills Ltd., Rawalpindi PLD 1976 Lah. 850: Novopan India Limited (1997) 88 Company cases 596 and Areva T and D India Limited (2007), 138 Company Case, 834 (Calcutta) ref.

SAJJAD ALI SHAH, J.--Through instant petition the petitioners ICI Pakistan Limited and Akzo Nobel Pakistan Limited jointly seek sanction of this Court for a scheme of arrangement between both the companies and their members (hereinafter referred to as "petitioners Nos. 1 and 2 respectively) in terms of section 284 read with section 287 of the Companies Ordinance, 1984 for reconstruction of the petitioner No.1 by separating its Paints Undertaking inclusive of all assets, rights, liabilities and obligations pertaining thereto and vesting the same in the petitioner No.2 against the issue of shares by the petitioner No.2 to the shareholders of the petitioner No.1 and the consequent reduction in the issued and paid up share capital of the petitioner No.1 as provided in the scheme of arrangement.

It is asserted that the petitioner No.1 is a company limited by shares, registered at Karachi as Public Company and its shares are traded on the Karachi, Lahore and the Islamabad Stock Exchanges, and presently is engaged in the field of Polyester Staple Fibre, Soda Ash, Life Sciences,

Pharmaceuticals, Animal Health and Seeds, General Chemicals, Paints etc. whereas, the petitioner No.2 is a newly formed Public Company which has not yet commenced its business. however its shares are also intended to be traded on the Stock Exchanges. It has been proposed in the present scheme of arrangement to separate from the petitioner No.1 and to transfer and vest in the petitioner No.2 the Paint Undertaking inclusive of the Paints Business and all assets, rights, liabilities and obligations pertaining thereto and the consequent reduction in the issued and paid up share capital of the petitioner No.1 and to issue the shares of petitioner No.2 to the shareholder of the petitioner No. 1.

To justify the separation it is asserted that Paint business of the petitioner No.1 is heavily promoted consumer product which require a very different approach as other activities of the petitioner No.1 involve the production and sale of industrial products which are intermediate materials used by the other industrial business in the manufacture of their products. For those business, branding is generally less important than it is for the Paints Business and the customers, are other industrial businesses and not consumers. It is claimed that the petitioner No.1 being an indirect subsidiary of Akzo Nobel N.V. one of the largest paints and coatings company in the world it is not able to support the development of any of the non-paints businesses of the petitioner No.1 because it has no involvement in those business areas. It is asserted that Akzo Noble N.V. is however, in an excellent position to support the Paints Business and help it to fully develop all market opportunities for paints and coatings in Pakistan. It was therefore, resolved that it would be in the best interests of all the businesses that the Paints Business be separated into a different company which will enable Akzo Nobel N.V. to find a more appropriate 1 owner of its majority shareholding in the petitioner No.1 after the reconstruction is completed, who will be able to support the development and' growth ambitions of the successful management team of the petitioner No.1. Akzo Nobel N.V. will then be able to concentrate on expanding and growing the Paints Business within the petitioner No.2. The Boards of Directors of the petitioner No.1 and of the petitioner No.2 believe that the transfer of the Paints Undertaking and vesting the same into' petitioner No. 2 would allow the petitioner No.1 to pursue opportunities to grow, prosper and to further improve performance and earnings of both the petitioners Nos. 1 and 2.

The principal objects of the Scheme of Arrangements provides for:--

- (i) the separation of its Paints Undertaking inclusive of the Paints Business and all assets, rights, liabilities and obligations of ICI Pakistan pertaining thereto;
- (ii) the transfer to and vesting in Akzo Nobel Pakistan of the Paints Undertaking against the issue of Paints Shares to the Qualifying Shareholders; and
- (iii) the reduction in the issued and paid up share capital of ICI Pakistan.

The authorized share capital of the petitioner No.1 is Rs. 15,000,000,000 divided into 1,500,000,000 ordinary shares of Rs.10 each, out of which 138,802,300 ordinary shares are issued and fully paid up. Likewise, the authorized share capital of the petitioner No.2 is Rs.1,000,000,000 divided into 100,000,000 ordinary shares of Rs.10 each, out of which only 17 ordinary shares are issued and fully paid up by the employees of petitioner No.1, the petitioner No.2 never conducted any business. It is envisaged in the scheme that as a consequence of vesting Paints Undertaking, in the petitioner No.2, it shall issue to the defined qualifying shareholders at par 46,443,250 ordinary shares in a manner that in respect of every 100 shares held by such qualifying shareholders, 33.46 share of the petitioner No.2 be allotted. The scheme further provides that as a consequence of separation Paints Undertaking from the petitioner

No.1 the issued share capital of the petitioner No.1 will need to be reduced to provide reduction corresponding to the issued and paid up capital of petitioner No.2 and, thereafter. Issued share capital of the petitioner- No.1 shall comprise of 92,359,050"ordinary shares of Rs.10 each, which shall be allocated to the shareholders of the. petitioner No.1. The scheme of reconstruction of the petitioner No.1 further provides to secure the interest of the creditors of the Paints Business which shall stand transferred to the petitioner No. 2 with corresponding security over the assets by the Paints Undertaking and further written no objection and consent of the scheme and the reconstruction have been obtained from the creditors representing 97% debt in value.

The scheme has been adopted by the petitioner No.1 in its 303rd meeting of Board of Directors held on 24-08-2011 and by the petitioner No.2 in its 2nd meeting of the Board of Directors held on 16-09-2011, the certified copies of the Resolutions have been filed along with the petition. Upon filing the instant petition an application under section 284(I) of the Companies Ordinance, 1984 was filed for necessary directions as contemplated under Rules 953 and 954 of the Sindh Chief Court Rules (Original Side) and Rule 56 of the Companies (Court) Rules 1997 for seeking permission to call separate meetings of the Members of both the petitioners for the purposes of considering and if thought fit adopt and agreeing to the scheme of arrangements. The petition as well as applications were duly advertised in various newspapers and since no objection was received this Court allowed the application and consequently petitioners in compliance of the order convened the meeting of the Members of the petitioner No.1 on 8-2-2012; In the said meeting two Resolutions were passed, the first one for approving and adopting the scheme of arrangement as required under section 284 of the Companies Ordinance and the second for approving the reduction in paid up capital of petitioner No.1. The Members of the petitioner No.1 approved and adopted the scheme of arrangement by overwhelming majority of the shareholders who represented 99.998% in value of the shares either in person or by proxy and likewise adopted the second Resolution approving the reduction in the paid up capital of petitioner No. 1 under section 96 of the Companies Ordinance by shareholders representing 99.616% in value of the shares.

The petitioners therefore seek following prayers:--

- (a) an order under section 284(2) of the Companies Ordinance, 1984 sanctioning the Scheme as set forth in "Annexure A" hereto so as to make the Scheme binding V on the petitioner No.1 and its members and on the petitioner No. 2 and its members; -
- (b) the following orders under section 287 of the Companies Ordinance so as to take effect at the same time as the order sanctioning the Scheme takes effect in accordance with section 284(3) of the Companies Ordinance, namely: -
 - (i) an order under section 287(1)(a) of the Companies Ordinance 1984 transferring to and vesting in the petitioner No. 2 the Paints Undertaking of the petitioner No. 1 as more particularly described in paragraph 1 of the Scheme as set forth in "Annexure A" hereto, all as subsisting immediately preceding the Completion Date (as defined in the Scheme).
 - (ii) an order under section 287(I)(b) of the Companies Ordinance directing the petitioner No.2 to issue at par 46,443,250 ordinary shares of Rs.10 each credited as

fully paid up of the aggregate nominal value of Rs,464,432,500 and to allot the said shares to the Qualifying Shareholders (as defined in the Scheme) as at the Record Date (as defined in the Scheme) in proportion to the respective shareholdings in the petitioner No.1., such that in respect of every Existing Shares (as defined in the Scheme) held by each Qualifying Shareholder (as defined in the Scheme) there shall be allotted 33.46 shares of Rs.10 each credited as fully paid up on the petitioner No. 2; and directing that the determination of the Qualifying Shareholders (as defined in the Scheme) and their respective entitlements to the shares in the petitioner No. 2, the treatment of fractional entitlements and allotment of such shares and in the case of physical shares, delivery of shares certificates by the, petitioner No. 2 and in the case of shares held in book entry form through the Central Depository System, the credit to the respective accounts/subaccounts of the Qualifying Shareholders (as defined in the Scheme) with book entries relating to the corresponding number of shares of the petitioner No.2 to which such Qualifying Shareholder (as defined in the Scheme) is entitled, shall be in accordance with the provisions of paragraphs 6, 8, and 11 of the Scheme.

- (iii) an order under section 287(1)(c) of the Companies Ordinance directing that all suits, appeals, arbitrations, governmental investigations and 4 other legal proceedings instituted by or against the petitioner No.1 pertaining to the Paints Business pending immediately before the Completion Date (as defined in the Scheme) shall be treated as suits, appeals and legal proceedings by or against the petitioner No.2 and may be continued prosecuted and enforced by or against the petitioner No.2 accordingly.
- (iv) an order under section 287(1)(f) read with section 101 of the Companies Ordinance confirming the reduction of the issued and paid up share capital of the petitioner No.1 from 138,802,300 ordinary shares of aggregate nominal value of Rs. 1,388,023,000 to 92,359,050 ordinary shares of the aggregate nominal value of Rs. 923,590,500 by the cancellation of the remaining 46,443,250 shares being the aggregate of capital which is unrepresented by available assets due to the transfer to and vesting in the petitioner No.2 of the Paints Undertaking and also directing that notwithstanding the reduction aforesaid in the issued and paid up share capital of the petitioner No. 1, the use of the words "and reduced" in relation to the name of the petitioner No.1 shall be dispensed with.
- (v) an order under section 287(1)(f) of the Companies Ordinance directing that the issued and paid up share capital of the petitioner No.1 as reduced to 92,359,050 ordinary shares of Rs.10 each credited as fully paid up and having an aggregate nominal value of Rs.923,590,500 shall be allocated to the Qualifying Shareholders (as defined in the Scheme) as at the Record Date (as defined in the Scheme) and directing that such allocation shall be made on the following terms, namely, in respect of every 100 Existing Shares (as defined in the Scheme) held by such shareholder in the petitioner No.1 there shall be allocated for retention by such shareholder, 66.54 shares of Rs.10 of the petitioner No.1 (in the reduced capital of the petitioner No.1), and further directing that the determination of the Qualifying Shareholders (as defined in the Scheme) of retained shares in the petitioner No.1 and their respective entitlements to such ordinary shares of the petitioner No.1, the treatment of fractional entitlements and the allocation of such shares and in the case of physical shares. the delivery of share certificates of the petitioner No.1

and in the case of shares held in book entry form through the Central Depository System, the credit to the respective accounts/sub-accounts of the Qualifying Shareholders (as defined in the Scheme) with book entries relating to the corresponding number of Retained Shares (as defined in the Scheme) to which such Qualifying Shareholder (as defined in the Scheme) is entitled, shall be in accordance with the provisions of paragraphs 7, 8 and 11 of the Scheme.

- (vi) for the purposes of the orders of clauses (ii), (iv) and (v) an order under section "287(1)(f) of the Companies Ordinance directing that the Register of Members of the petitioner No.1 shall be closed for a period of 7 days ending on (and inclusive of) the Record Date (as defined in the Scheme) for determining the identities and entitlements of the Qualifying Shareholders (as defined in the Scheme), and that notice of such closure shall be published not less than 14 days prior to the date of such closure in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having circulation in the Provinces of Sindh and Punjab and at Islamabad.
- (vii) an order under section 287(1)(f) of the Companies Ordinance directing that the share certificates issued by the petitioner No.1 as at the Record Date (as defined in the Scheme) in respect of the Existing Shares (as defined in the Scheme) shall stand cancelled.
- (viii) an order under section 287(1)(f) of the Companies Ordinance directing that in the case of book entry securities (as defined in the Central Depositories Act 1997) and for the purposes of that act and of the Central Depository Company of Pakistan Limited Regulations, the orders of clauses (ii), (iv), (v), (vi) and (vii) shall be effected by book entry in the central depository register.
- (ix) an order under section 287(1)(f) of the Companies Ordinance directing that as regards debts and liabilities of the petitioner No. 1 transferred to and vested in the petitioner No.2 in respect of which the creditors concerned were provided a security interest over assets not comprised in the Paints Undertaking and as such subsisting over assets being retained by the petitioner No.1, the securities thus held by such creditors shall on and from the Completion Date (as defined in the Scheme) stand released by such creditors to the extent and for the purposes of those debts and liabilities and shall be substituted by securities of a similar nature which the petitioner No.2 shall provide over the assets of the petitioner No. 2.
- (x) an order under section 287(1)(f) of the Companies Ordinance directing that as regards debts and liabilities of the petitioner No.1 retained by the petitioner No.1 in respect of which the creditors concerned were provided a security interest over assets not comprised in the Paints Undertaking and as such subsisting over assets being transferred to and vested in the petitioner No.2, the securities thus held by such creditors shall on and from the Completion Date (as defined in the Scheme) stand released by such creditors to the extent and for the purposes of those debts and liabilities and shall be substituted by securities of a similar nature which the petitioner No.1 shall provide over the assets of the petitioner No.1.
- (xi) an order under section 287(1)(f) of the Companies Ordinance directing that as soon as possible after the Completion Date (as defined in the Scheme) the proportionate amounts relating to the Paints Employees (as defined in the

Scheme) in the management staff gratuity fund and management staff pension fund of the petitioner No.1 and the amounts standing to the credit of the Paints Employees (as defined in the Scheme) in the management staff provident fund, non management staff provident fund and management staff defined contribution superannuation fund of the petitioner No.1 and the provisions relating to the Paints Employees (as defined in the Scheme) of the post-retirement medical scheme and the non-management staff gratuity scheme of the petitioner No.1, be determined in the manner provided in, and be transferred and vested in similar funds and schemes set up by the petitioner No.2 in accordance with the provisions of paragraphs 20, 21 and 22 of the Scheme, as applicable.

- (c) such further or other order or orders as may deem just and proper to this honourable Court.

Notices of the applications as well as main petition were duly published in various newspapers throughout the country including Sindh Government gazette as well as gazette of Pakistan and pasted on the courts notice board but no objection has been received from any corner except one filed on behalf of SECP.

Mr. Shokat Hayat Alizai, Deputy Director, SECP has given his no objection so far as the scheme of arrangement is concerned but has objected to reduction of share capital in the instant petition. The stance of SECP is that the reduction of share capital is to be sought through independent proceeding, and to support such contention reliance has been placed on a judgment from Lahore High Court in the

case of Messrs Hunza Central Asian Textile and Woolen Mills Ltd., Rawalpindi, PLD I 976 Lahore, 850. In response, Mr. Badaruddin F. Vellani contends that all statutory prerequisites which are to be undertaken by the company for reduction of its share capital have been complied with and therefore it would be totally uncalled for and duplication of the proceedings in case the company is directed to initiate separate proceeding for reduction of share capital. Learned counsel while placing reliance on clause of subsection (1) of section 287 of the Companies Ordinance, 1984 contends that the court while permitting reconstruction of the company has the power to consider and permit such incidental. consequential and supplementary reliefs as are necessary to secure the reconstruction effectively and the reduction of share capital being incidental to the scheme of reconstruction can be allowed in the instant proceeding in case, company meets the pre-requisites as contained in section 96 of the Companies Ordinance, 1984. In support of his contention he has placed reliance on the judgment of the Lahore High Court as referred to above as well as two judgments from Indian jurisdiction, first from Andhra Pradesh High Court in the case of Novopan India Limited (1997) 88 company cases 596 and second from Calcutta High Court in the case of Areva T and D India Limited (2007), 138 Company Case, 834 (Calcutta).

I have heard the parties and perused the record.

The division of a company into two or more has been envisaged under section 287 of the Companies Ordinance, 1984 and while sanctioning such scheme of arrangement the court has to apply its judicial mind to consider as to whether such scheme of arrangement is in the interest of the company as a whole and deserve the sanction of the court. Perusal of the record reflect that in consequent to Order dated 20-12-2011 the petitioners have called separate meetings of their members for considering, approving and adopting the scheme of arrangement. The meetings of member of petitioner No.1 was held on 08-02-2012, wherein two separate resolutions were passed, first as required under section 284(2) of the Companies ' Ordinance, 1984 for approving and adopting the scheme of arrangement and the second under section 96 of the Companies

Ordinance, 1984 for approving the reduction in paid up capital of petitioner No.1. The scheme of arrangement was approved and adopted by the members of the petitioner No.1 representing 99.998% in value of the shares held by the petitioner No.1. Whereas, the second resolution under section 96 of the Companies Ordinance, 1984 approving the reduction in paid up capital of the petitioner No.1 was approved by the members representing 99.616% in value of the shares. Likewise, separate meetings of the members of the petitioner No.2 was called on 09-02-2012 after fulfilling all legal pre-requisites and in the said meeting 100% members of the petitioner No.2 voted in favour of Resolution approving and adopting the scheme of arrangement. The petitioners further as required under section 284 of the Companies Ordinance 1984 have placed on record all material facts relating to the company including latest financial position by way of latest available audited accounts of the petitioner No.1 for 12 months ending on 31-12-2010 and un-audited accounts for the half year ending on 30-06-2011. The petitioners further have placed on record separate balance sheet of the paint undertaking as on 30-06-2011 which under the scheme are to be transferred to and vested in the petitioner No.2. The petitioners further have disclosed that no investigation proceedings whatsoever are pending against the company. The creditors of the petitioner No.1 representing 97% debt in value have given their consent and no objection in writing for adopting the scheme of arrangement and reconstruction. It further appears that the rights of the shareholders and the employees of the companies have been duly protected in the scheme of arrangement as the shareholders of the petitioner No.1 in consequent to the reduction in value of the shares are to be compensated by issuance of shares of respondent No. 2. There appears to be no legal or factual impediment in sanctioning the scheme of arrangement as the petitioner has fulfilled all prerequisites as required under the Ordinance 1984 and further no one has effected appearance to object even the SECP has given its consent for sanctioning the scheme of arrangement. In the circumstances, I am convinced that the scheme of arrangement as a whole is in the interest of petitioners and therefore sanction the same as proposed.

Coming to the question of reduction in share capital of petitioner No.1 and the objection of the SECP on the premises that for reduction of share capital altogether independent proceedings in terms of Rule 66 of the Companies (Court) Rules, 1997 are to be instituted. The reduction of share capital is envisaged under section 96 of the Companies Ordinance, 1984 which empowers a company limited by shares, if so authorized by its articles to reduce its share capital through Special Resolution of course subject to confirmation by the Court, whereas, Rule 66 of the Companies (Court) Rules, 1997 provides that where a proposed compromise or arrangement involves reduction of capital of the company, the procedure prescribed by the Ordinance and the rules relating thereto shall be complied with before the compromise or arrangement so far it relates to reduction of capital is sanctioned. There is no dispute regarding adoption of proper procedure by the petitioners as prescribed by the Ordinance as the petitioners in consequent to Order dated 29-11-2011 had published notices in daily "Dawn", daily "Jang", daily "Business Recorder", daily "The Nation" Lahore and daily "News" intimating reduction of share capital and thereafter in consequent to Order dated 20-12-2011 Resolution in writing was passed and circulated to convene the meeting of the members of the petitioner No.1 and in the said meeting Special Resolution to approve and authorize the reduction in paid up capital of the petitioner No.1 was considered and the members representing 99.616% in value of the share approved the same. The creditors and employees have also consented to proposed reduction. Even the Deputy Director representing SECP had very frankly conceded that the petitioner had fulfilled all pre-requisites as required under section 96 of the Companies Ordinance, 1984 and The Companies (Court) Rules. 1997.

As to the case-law cited at bar, in the case of Messrs Hunza Central Asian Textile and Woolen Mills Ltd., referred to by Mr. Shaukat Hayat Alizai, Deputy Director SECP, there were three Directors of a Private Limited Company out of which one of the Directors during his lifetime was excluded from

the management of the company and the Managing Director without his knowledge increased the share capital by preparing fake resolution and without offering the right shares to the share holders in the proportion as required under the law, on the contrary allotted major portion of the shares to himself. After the death of the Director who was excluded from the management his legal-heirs acquired his shares by inheritance and ultimately filed a winding-up petition. Under this backdrop, the company wanted to reduce its share capital by paying-off the minority share holders who had filed the Winding-up petition. The court under those circumstances, while rejecting the reduction in share capital observed as follows:--

“Applying these principles to the present case it will be seen that the aim and object of the petition is merely to strangle all opposition to the management of the Company. It is a device to strengthen the control of the present management over the affairs of the Company by curbing any opposition to it. Generally the opposition to the management comes from a minority and if a precedent is created by allowing reduction of capital by excluding such opponents, it will amount to providing a handle to the majority to indulge in misdeeds without any apprehension or danger of accountability or exposure in a Court of law. The proposal to say the least is actuated by bad faith and is arbitrary.”

On the other hand, in the case of Novopan India Limited, referred to by Mr. Badaruddin F. Vellani, the respondents objected to the scheme of arrangement on the ground that

“the proposed scheme envisaged re-organization of share capital, including reduction and increase of share capital, which could not be done without going through the whole gamut of the procedure prescribed for the same and as it was an inseparable part of the scheme, it would be futile to sanction the remainder of the scheme in its mutilated form.”

The court while sanctioning the scheme of amalgamation as unanimously approved by the share holders of the transferor and transferee company, including capital restructuring by Way of reduction and consolidation of share capital of the transferee company observed as follows:--

“Under point (xx) of the Gujarat High Court’s decision considered above, it is further observed that if the company has power to reduce its share capital as provided in its articles of association it is implicit therein that it can reduce both the ordinary share capital as well as the preference share capital unless specific provision to the contrary is made. Under point (xxv), it is observed that the essential requirement of section 393(1)[a] was that the creditors and members who were to assemble in the meeting should have advance information of the proposed scheme of compromise and arrangement and its effect on their interest as members and creditors. If the whole of the proposed scheme was annexed to the notice, anyone having a bare perusal of the scheme would be able to find out what was intended to be done by the scheme of compromise and arrangement and what would be its effect on his interest as creditor or member of the company. In the case before us these requirements have been specifically complied with. and in that view of the matter. therefore, the decision of the Gujarat High Court in Maneckchowk and Ahmedabad Manufacturing Co. Ltd.’s case [1970] 40 Comp Cas 819 renders positive assistance to the case of the petitioners rather than invalidating the scheme on any account.

In the case of Areva T and D India Limited, referred to by Mr. Vellani, the Court observed as follows:

“Though it is accepted that the provisions in the Act relating to divers approvals need to be complied with but as to whether they have been complied with, need to be tested only at the one window at which approval of the scheme is sought. There is good reason for recognition of such

single window clearance. It is the court sanctioning the scheme that has to sanction every bit of it and a part of it may involve alteration of the memorandum of association of one or more of the companies involved or the reduction of share capital of one or more of the applicants. The statutory pre-requisites of alteration of memorandum and of reduction of share capital must necessarily be complied with for the scheme to be made fit for sanction. It would be unnecessary for two sets of proceedings to be instituted for approval of the same scheme being facilitated as the court that may approve the scheme can also conveniently enquire as to whether the other provisions, whether for alteration of memorandum or reduction of capital or any other matter, have been complied with.”

The purpose behind Rule 66 of the Companies (Court) Rules, 1997 appears to safeguard the interest of creditors and shareholders and to prevent the management from reducing share capital of the company stealthily under the garb of Scheme of Arrangements or to obviate chances for the management to get through the reduction of share capital without proper notice or knowledge of the creditors/shareholders, but in the cases where proper procedure prescribed by the Ordinance and the rules has been undertaken members and creditors are well informed as required by the rules, a special resolution for reduction of the share capital is separately approved by the shareholders and consent for reduction of share capital is accorded by the creditors and employees, to refuse the sanctioning of the Scheme of Arrangements containing reduction of share capital by directing the company to first go through the whole gamut of procedure prescribed for reduction of share capital independently would be uncalled for. In the instant case consent of the creditors has been obtained and a special resolution proposing reduction of share capital by the members representing 99.616% in value of the share has been approved it further does not appear to be mala fide or to deprive a particular class of shareholders of their lights but across the board, therefore, in my opinion, there appears to be no reason for disallowing the sanctioning of the Scheme of Arrangements as proposed including reduction of share capital, even otherwise, it is not really a case of reduction in share capital but of the bifurcation, in both assets and liabilities to go with the division.

For the above reasons, this petition is allowed as prayed.