20.22. Before parting with the order it is necessary to clarify that the respondent-husband can be permitted to clear up the arrears of interim maintenance awarded by this Court calculating his liability after adjusting the amount already paid by him under the orders of maintenance passed in the suit filed under Sec. 18 of the Hindu Adoption and Maintenance Act, to avoid inconvenience and hardship. It is, therefore, ordered that respondent-husband shall clear up the amount of arrears within six months from the date of order and shall pay the cost of divorce proceeding within one month from today, otherwise the petitioner-wife is entitled to initiate recovery proceeding by filing formal execution petition and she can also pray for stay of the suit filed by the respondent-husband under Sec. 13 of the Hindu Marriage Act or any other appropriate action for which she may be legitimately entitled to.

(SBS) *Order accordingly.*

* * *

COMPANY PETITION

Before the Hon'ble Mr. Justice Jayant Patel

RELIANCE PETROLEUM LTD., *IN RE.**

Companies Act, 1956 (1 of 1956) — Secs. 391 & 393 — Sanction to scheme of amalgamation — Scheme approved by requisite majority of equity shareholders and unanimously by secured and unsecured creditors — Scheme found to be fair and not against public interest — The Court rejecting objections by minority shareholder that 'swap ratio' of shares is not fair and sanctioning scheme — Scope for scrutiny and interference by the Court reiterated — Further, Company can successfully resist disclosure of material taken into account by experts for arriving at 'swap ratio' if disclosure is not in shareholders' interest — Further, prosecution/ inquiry for irregularities against any Director of transferor Company not terminated or defeated by sanction.

કંપની અધિનિયમ, ૧૯૫૬ — કલમ ૩૯૧ અને ૩૯૩ — સંયોજનની યોજના મંજૂર કરવા બાબત — ઈક્વિટી શેરહોલ્ડરોની જરૂરી બહુમતી દ્વારા યોજના મંજૂર કરવામાં આવેલી અને સલામત અને અસલામત લેણદારો દ્વારા સર્વસંમતિથી તે મંજૂર કરવામાં આવેલ — યોજના યોગ્ય જણાયેલી હતી અને જાહેર હિતની વિરુદ્ધ હતી નહિ — કોર્ટે લઘુમતી શેરહોલ્ડરો દ્વારા ઉઠાવવામાં આવેલ વાંધો નામંજૂર કરેલો કે શેરોનું અદલબદલનું પ્રમાણ યોગ્ય નથી અને યોજના મંજૂર કરવાનું યોગ્ય નથી — કોર્ટ દ્વારા દખલગીરી અને ચકાસણીના અવકાશ પર ભાર મૂકવામાં આવ્યો — વધુમાં કંપની સફળતાપૂર્વક જો પ્રગટ કરવાનું શેરહોલ્ડરના હિતમાં ન હોય તો અદલબદલના પ્રમાણ પર આવવા માટે નિષ્ણાત દ્વારા ધ્યાનમાં લેવામાં આવેલ સામગ્રી પ્રગટ કરવા માટે સફળતાપૂર્વક વિરોધ કરી શકે — વધુમાં તબદિલી કરનાર કંપનીના કોઈ ડાયરેક્ટર વિરુદ્ધ અનિયમિતતાઓ માટે ફોજદારી ફરિયાદ/તપાસ મંજૂરીના કારણે નિષ્ફળ જશે નહિ કે તેનો અંત આવશે નહિ.

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*Decided on 22/29-7-2009. Company Petition No. 81 of 2009 in Company Application No. 65 of 2009.

G.R. 396

Statutory requirement for consideration of the Scheme by the equity shareholders, secured creditors (Class-1), secured creditors (Class-2) and unsecured creditors has been followed and the Scheme has been approved by the requisite majority of the shareholders at the meeting and unanimously approved by the secured creditors of Class-I and Class-2 and unsecured creditors of the Company. (Para 8)

The role of the Court is to consider the fairness in the Scheme and also to oversee the operation of the Scheme as to whether it controverts any statutory provisions or not etc., but such role is not as that of a Court of appeal sitting over the commercial wisdom of the shareholders of the Company, which the requisite majority has already taken a decision to accept the Scheme or otherwise. (Para 17)

The petitioning-Company for the reasons may resist the disclosure of such information and if the Court finds that disclosure may adversely affect the other shareholders of the Company, such disclosure may be prevented or the material shown to the Court for the purpose of examination may not be parted with to the objectors. (Para 17)

It is hardly required to be stated that this Court cannot be called upon to exercise the power as if the experts in the field of accounting or assessment of the value of shares. It is not that in all the cases whenever Scheme of amalgamation is moved for sanction every time it must be supported by the expert's opinion. Generally, it is the commercial wisdom of the requisite shareholders to be considered while considering the aspects for grant of sanction. (Para 21)

In the present case, the expert's opinion and the reports are produced, based on the same, the Scheme is approved by the Board and further approved by the requisite majority of the shareholders and others. Therefore, in absence of any other opinion of any expert produced by any of the objector and in view of the facts and circumstances mentioned hereinabove, it appears that the objections as sought to be canvassed that the Scheme is unfair by the suggested ratio of 1:16, cannot be accepted. (Para 21)

If the prosecutions are filed for any mismanagement or for any breach of law against the Managing Director or Directors of the Company concerned, they would not stand as wiped out nor they would not be defeated even if the sanction is granted by this Court to the Scheme of amalgamation. Further, if money of any sister concern of R.I.L. is used by any Director, including the Managing Director of R.I.L., may be for purchase of the shares of R.P.L., or otherwise, the same would also not be covered up or be shielded by the sanction granted by this Court to the Scheme of amalgamation. (Para 28)

In any case, as observed earlier, granting of the sanction by this Court is not to be termed as foreclosing or termination of any prosecution or foreclosing or termination of any inquiry, if otherwise permissible in law against the concerned persons. (Para 30)

Cases Relied on :

(1) *Miheer H. Mafatlal v. Mafatlal Industries Ltd.*, 1997 (1) SCC 579

K. S. Nanavati, S. N. Soparkar, S. N. Shelat & *Mihir Thakore* (All Sr. Advocates) with *Nandish Chudgar,* for Nanavati Associates, for the Petitioner.

Harin P. Raval, Addl. Solicitor General, *Vishwas K. Shah, Shalin Mehta,* with *Hemang M. Shah,* for the Respondent.

JAYANT PATEL, J. The present petition is preferred by the petitioning; transferor Company - M/s. Reliance Petroleum Limited (hereinafter referred to as 'R.P.L.' for the sake of convenience), seeking sanction to the Scheme of amalgamation with transferee Company - M/s. Reliance Industries Limited (hereinafter referred to as 'R.I.L.' for the sake of convenience).

2. It appears that after the Scheme was accepted by the Board of Directors of the petitioning Company, application was moved to this Court for convening the meetings of the shareholders of the Company. This Court (Coram : K. M. Thaker, J.), *vide* order dated 5-3-2009 in Company Application No. 65 of 2009 had directed for convening of the meetings of the shareholders, secured creditors (Class-1), Secured Creditors (Class-2) and all unsecured creditors. The meetings, pursuant thereto, has been held and the Chairman of the meetings has filed the report. As per the said report of the Chairman, following position has emerged at the meetings of the equity shareholders :

> "10. (i) 4,700 equity shareholders holding in aggregate 338,71,45,604 equity shares, constituting 99.745% in number and representing 99.9999% in holding of the equity shares, present in person or by proxy and voting at the meeting, voted in favour of the Scheme.
>
> (ii) 12 equity shareholders holding in aggregate 4.588 equity shares constituting 0.255% in number and representing 0.0001% in holding of the equity shares, present in person or by proxy and voting at the meeting, voted against the Scheme, and
>
> (iii) votes of 339 equity shareholders present in person or by proxy holding 1,55,94,583 votes were declared invalid.
>
> 11. The joint report of the scrutineers appointed for the above-mentioned meeting is annexed hereto and marked as Annexure 'A'. A Compact Disk (C.D.) containing a list of equity shareholders with their names, addresses and number of shares held, who attended and voted '*for*' and '*against*' and those whose votes were declared invalid was given by the scrutineers to me with their report, which I am presenting separately to the Hon'ble High Court."

3. Ultimately, it is reported that the Scheme of amalgamation was approved by the majority in number of the equity shareholders representing more than 3/4th of the shareholders present and voting either in person or by proxy at the meeting.

4. So far as the meeting of the secured creditors (Class-1) are concerned, the following position had emerged :

"10. (i) 5 secured creditors (Class 1) having outstanding value of Rs. 1,950 crore and constituting 100% in number representing 100% in value, present in person or by proxy and voting at the meeting, voted in favour of the Scheme.

(ii) No secured creditors (Class 1) of the applicant Company, present in person or by proxy and voting at the meeting, voted against the Scheme.

(iii) No vote was declared invalid."

5. It is reported that at the said meeting, the secured creditors (Class-1) have unanimously approved the Scheme of amalgamation, present and voting either by person or by proxy at the meeting.

6. In response to the meeting of the secured creditors (Class-2), report is also filed by the Chairman at the meeting and the following position emerged :

"(i) 45 secured creditors (Class-2) of the applicant-Company, having outstanding value of Rs. 8377 crore and constituting 100% in number representing 100% in value of the secured creditors (Class-2), present in person or by proxy and voting at the meeting, voted in favour of the Scheme.

(ii) No secured creditors (Class-2) of the applicant-Company, present in person or by proxy and voting at the meeting, voted against the Scheme.

(iii) No vote was declared invalid."

It is reported accordingly that the Scheme of amalgamation was approved unanimously by the Secured Creditors (Class-2), present and voting either in person or by proxy at the meeting.

7. At the meeting of the unsecured creditors, following position emerged :

"(i) 648 unsecured creditors having outstanding value of Rs. 8488.33 crore and constituting 100% in number representing 100% in value, present in person or by proxy and voting at the meeting, voted in favour of the Scheme.

(ii) No unsecured creditors of the applicant Company, present in person or by proxy and voting at the meeting, voted against the Scheme.

(iii) The votes of 83 unsecured creditors having outstanding value of Rs. 27.95 crore were declared invalid."

It is accordingly reported by the Chairman that the Scheme of amalgamation was approved unanimously by unsecured creditors present and voting either in person or by proxy at the meeting.

8. The affidavit in support of the aforesaid reports has been filed by the Chairman at the meeting together with the report for the proceedings of the meetings. The aforesaid shows that the statutory requirement for consideration of the Scheme by the equity shareholders, secured creditors (Class-1), secured creditors (Class-2) and unsecured creditors has been

followed and the Scheme has been approved by the requisite majority of the shareholders at the meeting and unanimously approved by the secured creditors of Class-1 and Class-2 and unsecured creditors of the Company. Thereafter, the present petition before this Court for seeking sanction.

9. This Court (Coram : K. A. Puj, J.), on 17-4-2009 had passed the order for admission and notice was issued to the Regional Director, Western Region, and also to the Official Liquidator with a direction to engage a chartered accountant at the cost of the petitioning Company and to submit the report. The publication was also ordered to be made in *Financial Express, Ahmedabad Edition, Indian Express* and *Noubat,* Jamnagar Edition and *Gujarat Samachar* and *Sandesh* of Ahmedabad Edition. The publication in the *Official Gazette* was dispensed with.

10. The Official Liquidator has filed the report dated 21-5-2009 with the report of the Chartered Accountant, Malay J. Dalal dated 7-5-2009, wherein it has been concluded as under :

> "On the basis of our comments in above Paras and according to the explanations given to us and books of accounts produced before us, we report that the acts and transactions of Reliance Petroleum Limited were conducted within the objects mentioned in the Memorandum of Association of Company and that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or the public interest."

11. In response to the notice issued to the Regional Director, Mr. R. K. Dalmia, Dy. Registrar of Companies has filed the affidavit based on the opinion received by the office of the Registrar of Companies from the Regional Director dated 10-6-2009. The said communication is also produced together with the said affidavit, relevant of which is as under :

> "It is seen from R.O.C.(A.)'s report dated 2-6-2009 that various complaints from several parties on the present Scheme of amalgamation have been received and the explanation of the transferor company have been obtained on each of the allegations. After examining the explanation of the transferor Company, the R.O.C. deemed the replies to be satisfactory. His report has been reviewed by this Directorate and on perusal of the information and explanation contained therein, it contours with the same."

It is also directed to bring it to the notice of this Court accordingly. The gist of the affidavit is that the Central Government on its own has no objection to the Scheme of amalgamation, nor any objection is specifically spoken or written on behalf of the Central Government by the Regional Director. However, it further appears that certain complaints were received by the Registrar of Companies from several parties in response to the present Scheme of amalgamation. As the complaints were received by the Registrar of Companies, it appears that the Registrar of Companies did call for the

explanation of the transferor Company that the allegations made in the complaint.

12. The Registrar of Companies has found that the explanation of the transferor Company as satisfactory and has not found further case to resist the petition on behalf of the Central Government in the present proceedings, nor a further investigation based on such complaint. It further appears that thereafter a report has been forwarded to the Regional Director for review and the Regional Director has concurred with the view of the Registrar of Companies.

(As the Court time is over, S. O. to 29-7-2009 at 2 p.m., in the second sitting for further dictation of orders.)

13. The aforesaid takes me to examine the fairness of the Scheme of amalgamation, the scope of judicial review and the maintainability of the objections raised by the objectors to the Scheme of amalgamation.

14. It may be recorded that at the first instances, when the petition for seeking sanction to the Scheme of amalgamation was presented before this Court, report of *Ernst & Young* and *Morgan and Stanley* for recommendation of equity share exchange ratio to the proposed Scheme of merger-amalgamation dated 2-3-2009 was produced. Together with the same, fairness report of City Group Global Markets India Pvt. Ltd., dated 3-2-2009 was produced. During the course of the hearing, the objection was raised by the objectors (who shall be referred to hereinafter separately) contending, *inter alia*, that none of the reports speaks for any arithmetic calculations or the facts and figures considered by the so-called experts in recommending swap ratio/exchange ratio between the shareholders of R.I.L.-R.P.L. It was, therefore, submitted that the opinion is without considering the relevant and germane materials, and therefore, such report of experts may not be relied upon by this Court.

15. This Court had *prima facie* found that the facts and figures on the basis of which the exchange ratio is suggested are not incorporated by the experts in the opinion, therefore, to consider the aspects as to whether the experts, who have given opinion had considered the facts and figures to arrive at the opinion of exchange ratio of 1:16 or not, this Court had called upon the petitioner to show material, if any, considered by the experts. In response thereto, the petitioner had supplied the net working-out figures considered by *Ernst & Young*, one of the experts, whose opinion is pressed in service and produced in the petition comprising of 22 pages in a sealed covered. Together with the said papers, an affidavit was filed for treating the said documents as confidential and the prayer was made that the same may not be parted with or disclosed to the objectors, since the share market of both

the Companies are sensitive and it may adversely affect the interest of all the shareholders, if such is disclosed.

16. The learned Counsel for the objectors, Mr. Shah and Mr. Mehta, and Mr. Maradia as party-in-person, did submit that such papers should be made available to the objectors also, so that they can reply to the said aspects and may assist the Court in finding out as to whether such exercise is properly undertaken or not.

17. It also deserves to be recorded that in a Scheme, which comes up for sanction of this Court, it is true that a shareholder, may be in minority, or any member of the public, who is to be adversely affected by the Scheme may file objections, but considerations of such objections or the role of such objectors is unlike adversary litigation to be considered by the Court while adjudicating the rights of private parties. The Company in a matter of scheme of amalgamation, though may be working through the persons, who may be in management or having majority of the shareholding, but when the petition is presented and moved before this Court, such is to be treated as petition by the Company and whether moved by majority or there is dissentment by a fraction of shareholders would not assume much importance, more particularly when the statute expressly requires approval of the Scheme by majority in numbers representing 3/4th for the value. Therefore, when the statute requires approval of the Scheme by majority representing 3/4th in value, there may be dissentment of the minority representing value less than 1/4th or the remaining group or any individual person, but at that stage, even if such objection exists, Court while exercising power for sanctioning the Scheme is not required to decide the *inter se* rights of *majority vs. minority* or the rights of any individual shareholders as against requisite statutory majority group. The role of the Court is to consider the fairness in the Scheme and also to oversee the operation of the Scheme as to whether it controverts any statutory provisions or not etc., but such role is not as that of a Court of appeal sitting over the commercial wisdom of the shareholders of the Company, which the requisite majority has already taken a decision to accept the scheme or otherwise. Therefore, had it been a case where the Court is called upon to adjudicate the personal rights of two groups or two individual persons, which may be termed as adversary litigation, both the sides may be entitled to have complete record of the proceedings. Such is not the scope of judicial scrutiny in a matter to be considered for granting sanction to the Scheme of amalgamation. However, thereby, it cannot be said that this Court is prevented from examining the record, if it finds proper, considering the facts and circumstances of the case. If upon the record produced by the petitioning Company, if the Court finds that a further scrutiny is required to examine the fairness of the Scheme, may be with or without report of the experts, such exercise can always

be undertaken for valid reasons. Therefore, it appears to this Court that examination of the Scheme by the Court on its own is one part and consideration of objection by objectors in a Scheme of amalgamation is another part. There is no adversary litigation prevailing in such matters between the Company on the one hand and the objectors on the other as sought to be canvassed on behalf of the objectors. Therefore, the petitioning Company for the reasons may resist the disclosure of such information and if the Court finds that disclosure may adversely affect the other shareholders of the Company, such disclosure may be prevented or the material shown to the Court for the purpose of examination may not be parted with to the objectors, who otherwise are expected to act in the best interest of the petitioning Company. Since, the record as tendered is examined by the Court for which the reference shall be made hereinafter, it appears that considering the grounds raised in the affidavit, on behalf of the petitioning Company, the disclosure of such information is not required when the said aspect is already considered by the Court as stated hereinafter.

18. There is already a reference of three methods taken into consideration by the experts in the opinion. They are :

(i) Market Price Method.

(ii) Comparable Companies Multiples' Method.

(iii) Net Asset Value Method.

19. The material produced goes to show that if the market prices method is applied taking the basis of average prices of three methods of both the Companies in the respective Stock Exchange, the ratio would come to 1:15 between R.I.L. and R.P.L. In the second method of comparative Companies multiples' method, if the figures are considered, the ratio would come to 1:15 for R.I.L. and R.P.L. If the third the Net Asset Value method is considered based on the figures, it would come to 1:26 for R.I.L. and R.P.L. It further appears that the experts have given less weightage to N.A.V. method and has given more weightage to market price method and comparative Companies multiples' method. To be specific, 40% weightage has been given to market price method and 40% weightage has been given to comparative Companies multiples' method and 20% weightage has been given to net assets value method. Therefore, keeping in view the aforesaid weightage the experts have arrived at the average and then the ratio of 1:16 for R.I.L. and R.P.L. If the net assets value method is to be accepted as it is, the ratio as observed earlier is to be 1:26 and the shareholders of R.P.L. would be adversely affected namely that for 26 shares of R.P.L., one share in R.I.L. would be available. Whereas in the other methods, the ratio of 1:15, which is just nearby the suggested ratio of 1:16. Therefore, it appears that giving less weightage to the net assets value method by experts

has resulted into benefits to the shareholders of R.P.L. The aforesaid may have the bearing for considering of the objections by the objectors, who are shareholders of R.P.L.

20. It may also be recorded that the figures as mentioned in the papers submitted to this Court having compilation of 22 pages are supported by the other statements for arriving at such figures and they are tallying with the compilation of 22 pages in which the ratio is worked out by applying different methods. As against only one simple method of N.A.V., if additional market price method and comparative companies multiples' method are also considered and ultimately is to result into benefit to the shareholders of the petitioning company, it can hardly be said that the scheme would be unfair to the shareholders of the petitioner Company and the obvious reason is that if N.A.V. is to be considered, for 26 shares of R.P.L. in the Scheme only one share of R.I.L. may be available. As against the same, by incorporation of market price method and comparative Companies multiples' method, against 16 shares of R.P.L., the shareholders of R.P.L. are to receive one share of R.I.L., which is rather beneficial to the shareholders of R.P.L.

21. The aforesaid is only a general view of the calculations and the methods applied by the experts for suggesting the swap ratio, which is a part of the Scheme in the present petition. As against the same, there is no material whatsoever produced by any of the objectors by production of another expert opinion or expert report showing that had all the three methods been applied, the exchange ratio would have been different, nor any material produced to show that the facts and figures as per the market price method or comparative companies multiples' method or net asset value method would be different, and consequently, this Court may not accept the exchange ratio as suggested in the Scheme. It is hardly required to be stated that this Court cannot be called upon to exercise the power as if the experts in the field of accounting or assessment of the value of shares. It is not that in all the cases whenever Scheme of amalgamation is moved for sanction every time it must be supported by the expert's opinion. Generally, it is the commercial wisdom of the requisite shareholders to be considered while considering the aspects for grant of sanction. But thereby it does not mean that the Court cannot further scrutinize the said aspect. In a given case, if the Court finds, the Court may insist for the report of the expert on the said aspects. In the present case, the expert's opinion and the reports are produced, based on the same, the scheme is approved by the Board and further approved by the requisite majority of the shareholders and others. Therefore, in absence of any other opinion of any expert produced by any of the objector and in view of the facts and circumstances mentioned hereinabove, it appears that the objections as sought to be canvassed that the Scheme is unfair by the suggested ratio of 1:16, cannot be accepted.

22. At this stage and before the other objections are considered as sought to be canvassed by the objectors, it would be profitable to refer to the decision of Apex Court in the case of *Miheer H. Mafatlal v. Mafatlal Industries Ltd.,* reported in 1997 (1) SCC 579 for considering the scope of judicial scrutiny by the Company Court. The Apex Court, after considering various decisions, has made observations for broad cantours of the jurisdiction of the Company Court, which reads as under :

"In view of the aforesaid settled legal, position therefore, the scope and ambit of the jurisdiction of the Company Court has clearly got earmarked. The following broad contours of such jurisdiction have emerged :

1. The sanctioning Court has to see to it that all the requisite statutory procedure for supporting such a Scheme has been complied with and that the requisite meeting as contemplated by Sec. 391(1) (a) have been held.

2. That the Scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Sec. 391 sub-sec. (2).

3. That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the Scheme in question. That the majority decision of the concerned class of voters is just fair to the class as whole so as to legitimately bind even the dissenting members of that class.

4. That all the necessary material indicated by Sec. 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Sec. 391 sub-sec. (1).

5. That all the requisite material contemplated by the provision of sub-sec. (2) of Sec. 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a Scheme and the Court gets satisfied about the same.

6. That the proposed Scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to satisfy on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the Scheme and can judiciously X-ray the same.

7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors as the case may be, were acting *bona fide* and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.

8. That the Scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the Scheme is meant.

9. Once, the aforesaid broad parameters about the requirements of a Scheme for getting sanction of the Court are found to have been met, the

Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the Scheme even if in the view of the Court there would be a better Scheme for the Company and its members or creditors for whom the Scheme is framed. The Court cannot refuse to sanction such a Scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the Scheme rather than its supervisory jurisdiction. The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction."

23. Keeping in view the aforesaid principles laid down by the Apex Court, the objections are required to be considered. Mr. V. K. Shah, learned Counsel appearing for one Shri Shailesh Mehta, who is shareholder of the Company and Mr. Shalin Mehta, learned Counsel appearing for one Shri Rathi, who is also one of the shareholders of the Company mainly raised the contentions, as stated and referred to hereinafter. The first was for the deficiency in the valuation report. It was submitted that no facts and figures are considered by the valuer based on the balance-sheet of the Company and it is just by way of an opinion. It was submitted that if the facts and figures are not considered by the valuer and the expert, the consequence would be that there is no application of mind by the valuer and it is no valuer report in the eye of law. What could be the ideal valuation report and what is required to be incorporated in the valuation report was sought to be submitted by the learned Counsel and it was further submitted that since the basic data are lacking in the report, which is produced in the present proceedings, the valuation report may not be accepted by this Court and this Court may consider that the Scheme is proposed without there being any proper valuation report for the swap exchange ratio, and hence, the sanction may be declined.

24. As observed earlier production of expert opinion or report to every Scheme of amalgamation is not a *sine qua non,* nor can be enforced as a condition precedent to sanction for Scheme of amalgamation. If such report of expert is considered by the shareholders or the Court while considering the question of sanction has insisted for report of any expert are different aspects. Further, as observed and recorded earlier, it can hardly be said that the valuation report or the expert's opinion is not supported by the facts and figures. Further, as observed earlier none of the objectors has submitted any other expert opinion or other expert valuation report to contradict and show to this Court that the valuation would have been otherwise and other swap ratio would have been fair to the shareholders of the petitioning Company. Therefore, such objections deserve to be rejected.

25. The learned Counsel for the objectors as well as Mr. Maradia did submit that the latest financial statement of accounts is not produced by the petitioning Company, and therefore, there is non-compliance to the proviso of Sec. 391(2) of the Act and it was submitted that such would result into non-compliance to the statutory requirement. Therefore, this Court may decline the sanction.

26. Such objections also deserve to be rejected for two reasons; one is that the last balance-sheet on the basis of which the scheme was prepared and considered is already produced in the record of the present proceedings, and secondly, the attempt to contend that the balance-sheet as on 31-3-2009 is not produced, and therefore, there is non-compliance, would hardly be of any importance. Further, when the basis of the exchange ratio is produced namely : the balance-sheet prior to the appointed date, it can hardly be said that there is no compliance to the statutory requirement as sought to be canvassed. Hence, the said objection cannot be maintained.

27. It was next contended by Mr. Maradia, who is appearing as party-in-person as well as by the learned Counsel Mr. V. K. Shah and Mr. Mehta for the respective objectors that there are lot of mis-management in R.I.L. as well as R.P.L. It was also submitted that the prosecution has been filed against the Managing Director and other Directors of the Company by the respective authorities. It was also submitted that Shri Mukesh Ambani, who is holding command in R.I.L. by utilizing the funds of other sister Companies has purchased the assets of R.P.L. and the shares are purchased beyond his normal income as per the income-tax record, and therefore, if this Court now accords sanction to the Scheme of amalgamation, the consequence may arise of dissolution of R.P.L. As a result thereof, for all time to come, the prosecution as well as the mismanagement of the funds of other sister Companies would be wiped out, and therefore, this Court may decline the sanction.

28. The submission is based on the wrong premise inasmuch as if the prosecutions are filed for any mismanagement or for any breach of law against the Managing Director or Directors of the Company concerned, they would not stand as wiped out nor they would not be defeated even if the sanction is granted by this Court to the Scheme of amalgamation. Further, if money of any sister concern of R.I.L. is used by any Director, including the Managing Director of R.I.L., may be for purchase of the shares of R.P.L. or otherwise, the same would also not be covered up or be shielded by the sanction granted by this Court to the Scheme of amalgamation. None of the objectors has brought to the notice of this Court any specific provisions made in this Scheme for defeat of the prosecution or for covering-up such transaction. Therefore, the only observation deserves to be made is that any

prosecution or any mismanagement of the funds made by any of the Directors of the Company would not be defeated by the sanction granted by this Court to the present Scheme of amalgamation and suffice it to observe that law will take its own course if such proceedings are to be concluded in accordance with law. As observations have been made in the present order, and even otherwise also, the legal position is clear, the objection as sought to be canvassed, would not survive. Therefore, cannot be said as a valid ground for declining the sanction to the Scheme of amalgamation.

29. It was submitted by Mr. Maradia appearing as party-in-person, being one of the objectors, that the Central Government namely : R.O.C. as well as the Regional Director have not properly discharged their functions in not objecting the Scheme of amalgamation when a number of complaints were received by them. It was also submitted that even in the report of the O.L. there is no reference to any mismanagement, which is based on the report of the Chartered Accountant. Therefore, it was submitted that this Court may direct for holding of the inquiry by the competent authority against the alleged mismanagement and misutilization of the funds of sister Company by Managing Director of the Company, Shri Mukesh Ambani and others.

30. It appears that the scope of judicial scrutiny in the present petition is whether to accord the sanction to the Scheme of amalgamation or not. This Court is not exercising the power, sitting as a Company Court, as that of a petition under Art. 226 of the Constitution of India, where the scope for exercise of the jurisdiction is much wider than that of the Company Court under the Companies Act. Further, merely because the Central Government has found the explanation satisfactory and the report is made to this Court, it cannot be said that there is non-discharge of the statutory function by the Central Government. The role of the Central Government is undoubtedly to assist the Court in the event if there is any breach of the statutory provision and also on the other aspects, but merely because a particularly report is filed wherein the explanations are found satisfactory, it cannot be said that there is any shirking of the responsibility by the Central Government as sought to be canvassed. Further, in any case, as observed earlier, granting of the sanction by this Court is not to be termed as foreclosing or termination of any prosecution or foreclosing or termination of any inquiry, if otherwise permissible in law against the concerned persons. Therefore, when express observations are made, the contention as sought to be canvassed by Mr. Maradia can hardly be countenanced. So far as the O.L. is concerned, he has acted based on the report of the Chartered Accountant, who has opined that the affairs of the Company are not being conducted in the manner detrimental to the interest of the shareholders or the public interest, but thereby, it cannot be termed, nor can it be said that if any illegalities are committed, may be on the said aspects though it may

be or may not be a subject-matter of prosecution or inquiry before the competent authority, the same would be foreclosed or stand terminated even if the Scheme is sanctioned. Therefore, when actions, if any, on the basis of which the grievance is raised are saved, the objection as raised by Mr. Maradia would neither survive nor can be accepted.

31. The learned Counsel for the objectors did submit that irrespective of the fact that they have not filed objection within the stipulated time, they are entitled to raise the objections prior to the sanction granted by this Court. Therefore, their objections may not be thrown away on a mere ground that such were not filed in accordance with the Company Court rules or within the stipulated time limit as sought in the advertisement or otherwise. Whereas on behalf of the petitioning Company it was submitted that the objectors have not filed any objections well in time, and therefore, their objections are barred. It was also submitted that the objectors are holding too meagre shares as against the large number of other shareholders. It was submitted that there is no *bona fide* purpose at all on the part of the objectors in filing the present objections and the ultimate purpose is to stall the Scheme of amalgamation. It was, therefore, submitted that this Court may reject the objections outright.

32. Considering the above, it appears to the Court that the objections filed by the objectors may not be rejected on a mere ground that they are not filed well in time and the Court may take a lenient view of the matter on the aspects of time-limit in the event the Court finds that the objections in substance are sustainable. But in view of the reasons recorded hereinabove, as it is found by this Court that the objections do not deserve to be accepted on merits, I find that the other aspects would be irrelevant, and hence, no further observations or discussions.

33. It was also submitted by the learned Counsel for the petitioner that similar petition for sanctioning the very Scheme of amalgamation was preferred by Reliance Industries Limited - the transferee Company before the High Court of Bombay, since the registered office of the said Company is located within the jurisdiction of Bombay High Court being Company Petition No. 296 of 2009, and it has been submitted that the High Court of Bombay has granted sanction to the Scheme as per the order dated 29-6-2009.

34. Whereas on behalf of the objectors, Mr. Shah as well as Mr. Mehta, learned Counsel had contended that before the High Court of Bombay the petition was by R.I.L. and their fairness in the scheme was to be considered, keeping in view the interest of the shareholders of the R.I.L. and not the interest of the petitioner who are shareholders of R.P.L. It was also submitted that the High Court of Bombay had suspended the operation of the order

for four weeks, so as to enable the objectors to approach the higher forum, and therefore, the judgment of the Bombay High Court cannot be said to be operative.

35. Whereas Mr. Chudgar, learned Counsel for the petitioning Company further stated that the O.J. Appeal is heard and the judgment is reserved, but the said has not been extended by the Division Bench.

36. Be that as it may, the only factum deserves to be recorded is that the High Court of Bombay in case of transferee Company has accorded the sanction to the very Scheme of amalgamation, may be keeping in view the interest of the shareholders of transferee company, but the pertinent aspect is that the Scheme is common and the sanction has been granted. Even if the interest of the shareholders of transferor Company *i.e.* the petitioner herein is to be considered, in view of the observations made hereinabove, it cannot be said that the Scheme is unfair to the shareholders of the transferor Company, nor can it be said that the commercial decision taken by the shareholders in their commercial wisdom, deserves to be interfered with by declining the sanction at the instance of the objectors herein, more particularly when as observed earlier there is a compliance to statutory requirement for sanction to the Scheme.

37. In the result, the petition is allowed. The Scheme of amalgamation at Exh. G. is sanctioned, subject to the observations made hereinabove in the present order.

38. The cost of the Central Government is quantified at Rs. 5,000/-. It would be open to the petitioning Company to pay the cost of the Central Government to Mr. Harin P. Raval, learned Assistant Solicitor General then, now learned Additional Solicitor General, by 'Account Payee' cheque directly. The cost of the O.L. shall be of Rs. 1,500/- for preparation of the report and such cost shall also be paid by the petitioning Company to the O.L. by 'Account Payee' cheque.

39. It has been prayed by the learned Counsel for the objectors to stay the operation of the order for some time so as to enable them to approach before the higher forum. Such prayer is objected by the learned Counsel appearing for the petitioning Company.

40. Considering the facts and circumstances, the order shall remain suspended for a period of two weeks from today.

41. The papers tendered by the petitioning Company for supporting the valuer's report and expert's opinion be returned to the learned Counsel in a sealed envelope.

(HSS) *Petition allowed.*

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