MYSORE HIGH COURT

Canara Bank Ltd

Vs

State (Mysore)

Company Petn. No. 1 of 1972, c/w. C.A. 205 of 1971

(E.S. Venkataramiah, J.)

25.02.1972

JUDGMENT

E.S. Venkataramiah, J.

1. This is a petition filed under Sections 392 and 394 of the Companies Act 1956, by Canara Bank Limited (hereinafter referred to as the Company) praying for the sanction of this Court to a special resolution passed by the Company providing for amalgamation of the Company with M/s. Larsen Toubro Limited. The company had made earlier an application under Section 391 of the Companies Act requesting the Court to issue directions for the purpose of holding a meeting of the members of the Company to consider and approve the scheme providing for amalgamation. That on 1-10-1971 the said application was granted, a meeting of the members of the company was accordingly held on 15-11-1971 and the report of the Chairman has been duly filed into Court. Thereafter the above petition was filed on 3-1-1972. The above matter was duly published in three news papers namely, Deccan Herald. Indian Express and Nav Bharath. Sri M. Papanna, the Central Government Pleader, took notice on behalf of the Central Government on 28-1-1972. He was asked to file any representation which the Central Government might make with regard to the above petition by 18-2-1972. The Central Government has filed through its Regional Director, Company Law Board, Madras, its representation.

2. Sri S.G. Sundaraswamy for the company, Sri T.V. Govindaraja Iyengar, for M/s. Larsen and Toubro Ltd., and Sri B. Ramachandra Rao, for the Central Government, appeared when the case was heard today. The above petition was opposed by the Central Government. Two objections which were urged on behalf of the Central Government were, (i) the petition could not be granted by the Court unless the scheme for merger or amalgamation in question had been approved by the Central Government under Section 23 (1) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act), and (ii) that the amalgamation in question without the approval or sanction of the Central Government would be violative of Section 21 of the Act.

3. In support of the first submission reliance was placed by Sri Ramachandra Rao on Section 23 (1) of the Act which reads as follows :-

"23. Merger, Amalgamation and Take Over :

(1) Notwithstanding anything contained in any other law for the time being in force,-
(a) no scheme of merger or amalgamation of an undertaking to which this Part applies with any other undertaking
(b) no scheme of merger or amalgamation of two or more undertaking which would have the effect of bringing into existence an undertaking to which clause (a) or clause (b) of Section 20 would apply, shall be sanctioned by any Court or be recognized for any purpose or be given effect to unless the scheme for such merger or amalgamation has been approved by the Central Government under this Act."

It was contended that in the instant case, there was a merger or amalgamation of one undertaking to which Part 'A' of Chapter III of the Act applied with another undertaking, and, therefore, the Court should not sanction the scheme in the absence of the approval of the Central Government. On behalf of the Company it was argued that Section 23 (1) would not be applicable to this case since the amalgamation or merger was not of an undertaking to which Part "A" of Chapter III of the Act applied with any other undertaking as defined under the Act. Section 20 of the Act refers to the undertaking to which Part 'A' of Chapter III applies. The said Section 20 reads thus :-

"20. Undertaking to which this part applies :

This part shall apply to

(a) an undertaking if the total value of -
(i) its own assets, or
(ii) its own assets together with the assets of its inter-connected undertakings is not less than twenty crores of rupees.
(b) a dominant undertaking -
(i) where it is a single undertaking the value of its assets, or
(ii) where it consists of more than one undertaking, the sum-total of the value of the assets of all the inter-connected undertakings constituting the dominant undertaking, is not less than one crore of rupees."

The expression 'undertaking' is defined by Section 2 (v) of the Act as follows :-

" 'undertaking' means an undertaking which is engaged in the production supply, distribution or control of goods of any description or the provision of service of any kind."
and the expression 'dominant undertaking' is defined by Section 2 (d) as follows :-
" 'Dominant undertaking' means an undertaking which either by itself or along with inter-connected undertakings, -
(i) produces, supplies, distributes or otherwise controls not less than one-third of the total goods of any description that are produced, supplied or distributed in India or any substantial part thereof.
Provided that for the purposes of this clause the goods produced by an undertaking which, does not employ ....."

A perusal of the clauses in the Act defining the expressions 'undertaking' and 'dominant undertaking' would show that in order to be either an undertaking or a dominant undertaking, an undertaking must be one which is engaged in the production supply or distribution or control of goods of any description or provisions of service of any kind or one which either by itself or along with interconnected undertaking produces, supplies, distributes or otherwise controls not less than one third of the total goods of any description that are produced, supplied or distributed in India or any substantial part thereof. The Company was carrying on the business of banking until its entire banking business was taken over by the Central Government under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 8 of 1969 i.e. 19-7-1969. It is not disputed that the Company has not been carrying on any business at all from 19-7-1969. In Company Petition No. 7 of 1971, the company applied to the Court for confirmation of a special resolution passed by the Company for amending the object clause of its Memorandum of Association permitting it to amalgamate itself with another company carrying on business other than banking business also. This Court confirmed the said resolution and the order passed in that petition was confirmed, subject to a slight modification in Original Side Appeal No. 2 of 1971 by this Court on 4-2-1972. The Company is, therefore, authorized to amalgamate itself with M/s. Larsen and Toubro Ltd. or any other company. In the instant case, the resolution of the Company is to merge or amalgamate itself with M/s. Larsen and Toubro Limited. It is unnecessary for the purpose of this case to consider whether M/s. Larsen and Toubro Limited is an undertaking within the meaning of the Act or not. For the purpose of this case it is enough if a decision is given on the question whether the Company is an undertaking or not. When once it is not disputed that the Company is not carrying on any business or is not engaged in any trade or rendering any service, then it cannot come within the definition of the expression 'undertaking', under the Act. It cannot also be a 'dominant undertaking'. Hence neither Section 20 of the Act nor Section 23 (1) of the Act would be applicable to the Company, Section 23 (1) deals with the amalgamation or merger of an undertaking to which Part 'A' of Chapter III applies with any other undertaking as defined by the Act. It does not apply to amalgamation or merger of an undertaking which is not an 'undertaking' as defined in the Act with an undertaking which falls within the definition of that expression in the Act. The dictionary meaning of the undertaking may be wider than the definition of that expression under the Act. But for purposes of deciding whether Section 23 (1) is applicable to the Company, we have got to apply the definition given in the Act unless it is otherwise repugnant to the context. No reason is given on behalf of the Central Government to apply the ordinary dictionary meaning to that expression in this case. The decision on this question has, therefore, to rest on the definition given in the Act. Viewed in that way, it is very difficult to accede to the contention urged on behalf of the Central Government that Section 23 (1) would be applicable to this case.

4. It was next contended that even granting that Section 23 (1) was not applicable, the scheme of merger or amalgamation in respect of which sanction is sought offended Section 21 of the Act since the Central Government had not given its approval to the said scheme. It was argued that Section 21 which provided for expansion of an undertaking would be applicable to M/s. Larsen and Toubro Limited and that M/s. Larsen and Toubro Limited could be permitted to merge or amalgamate with the Company only with the previous approval of the Central Government. It may be mentioned here that M/s. Larsen and Toubro limited is not the applicant before this Court.

5. Be that as it may, it appears to me that Section 21 is inapplicable to this case. Section 21 deals with the expansion of an undertaking by the issue of fresh capital or by the installation of new machinery or other equipment or in any other manner. The words 'in any other manner' have to be read ejusdem generis with the preceding words, namely, "issue of fresh capital" and "installation of new machinery or other equipment" appearing in Section 21. Even though the activities of a company when it either merges or amalgamates itself with another Company, may expand, it cannot be said that there is an expansion of an undertaking as contemplated under Section 21 of the Act. Under Section 21 specific cases of expansion are dealt with and those cases do not include a case of merger or amalgamation. The only cases of expansion where the previous approval of the Central Government would be necessary under Section 21 are those mentioned in that section and it is not correct to bring within its scope amalgamation or merger or any other kind of expansion. The Act is one which imposes restriction on the activities of a company. Therefore, the provisions of the Act must be given a strict construction, I, therefore, reject the contention that there is going to be transgression of Section 21 of the Act in this case if the petition is granted.

6. Similar contentions were urged before the High Court of Bombay in *Union of India v. Tata Engineering and Locomotive Co. Ltd*[1]*.,* and the High Court of Bombay negatived them. That was a case in which the High Court of Bombay was concerned with a scheme for amalgamation of Central Bank of India Limited which was in a position similar to the position of the Company in this case with Tata Engineering and Locomotive Co. Ltd. That Court took the view that neither Section 23 (1) nor Section 21 of the Act was an impediment for sanctioning the resolution approving the amalgamation of Central Bank of India Ltd. with Tata Engineering and Locomotive Co. Ltd. There is no other contention urged on behalf of the Central Government. There is no other opposition by any other persons to the above petition. I do not find that there is any ground to refuse to sanction the scheme. All the necessary procedure has been followed by the Company. I am satisfied that the proposed scheme of amalgamation is a reasonable one and it is in the best interests of the Company and all concerned. I, therefore, accord sanction to the scheme of amalgamation which has been unanimously approved by the members of the Company at the meeting. It is open to the Company to apply for further direction, if and when necessary.

Petition allowed.

[1]42 Com Cas 72 : AIR 1972 Bom 301