

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 223 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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ESSAR STEEL LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 223 of 2003  
MR SN SOPARKAR, SENIOR ADVOCATE WITH  
MRS SWATI SOPARKAR for Petitioner No. 1  
MR SANDEEP SINGHI FOR SINGHI & CO for Respondent No. 1  
MR MIHIR JOSHI, SENIOR ADVOCATE WITH  
MR RD DAVE for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 28/02/2005

ORAL JUDGEMENT

The petitioner, namely, Essar Steel Limited has filed this petition under Section 78 and 100 to 103 of the Companies Act, 1956 before this Court seeking following prayers :-

- (a) That the reduction of the share capital of the Petitioner by cancellation of part of equity share capital being 20,47,33,113 (Twenty Crore Forty Seven Lacs Thirty Three Thousand One Hundred and Thirteen) equity shares of the face value of Rs.10/- and fresh issuance of preference shares in lieu thereof as resolved by the special resolution of the Petitioner at its 27th Annual General Meeting held on July 19, 2003 be confirmed and passed by this Hon'ble Court;
- (b) That the proposed Minutes as set out in Para 14 hereinabove, be approved;
- (c) That the procedure laid down under Section 102 (2) and (3) of the Act, as regards the creditors be dispensed with, on such terms as the Hon'ble Court may deem fit;
- (d) That the Petitioner be dispensed with the use of the words "and reduced";

2. The capital of the petitioner Company as per the latest audited balance-sheet as on 31.03.2003, when the present petition was filed, are as follows :-

SHARE CAPITAL AS ON 31.03.2003

Authorised :

Rs.

150,00,00,000 Equity Shares of 1500,00,00,000  
Rs. 10/- each  
1,00,00,00,000 Redeemable Cumulative  
Preference shares of Rs.100/- each 100,00,00,000

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1600,00,00,000  
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33,42,12,890 Equity shares of  
Rs. 10/- each 334,21,28,900

Paid up :

33,42,12,890 Equity Shares  
of Rs. 10/- each 330,34,99,589

3. In Annual General Meeting held on 19.07.2003, the authorised capital was raised from Rs.1,600 Crores to Rs.5,000 Crores. The Company has consequently allotted 17,76,19,893 Equity Shares of Rs. 10 each fully paid up to Essar Investments Limited and as such status of Authorised, Issued and Paid capital as on 01.08.2003 was as follows :-

Authorised :-

Rs.	
460,00,00,000 Equity Shares of	
Rs. 10/- each	4600,00,00,000
30,00,00,000 0.01% Redeemable Cumulative	
Preference shares of Rs.10/- each	300,00,00,000
10,00,00,000 10% Redeemable Cumulative	
Preference shares of Rs.10/- each	100,00,00,000

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5000,00,00,000  
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Issued & Subscribed

51,18,32,783 Equity Shares of  
Rs. 10/- each 511,83,27,830

Paid Up :

51,18,32,783 Equity Shares of  
Rs. 10/- each 507,96,98,519

4. Shortly after its incorporation, the Company commenced its business and it is carrying it on since then.

5. Under Article 48 of the Articles of Association of the Company, it is provided that the Company in General Meeting may reduce its capital in any manner authorised by Section 100 of the Act. The Company, therefore, decided to reduce its share capital by exercising powers conferred on the Company under Article 48 of the Articles of Association and also in the manner

laid down under Section 100 of the Act. The circumstances which led to the Company to reduce its share capital are as under :-

5.1 The petitioner Company was established in 1976 and has its registered office and manufacturing facilities at Hazira, Dist. Surat and manufactures Hot Rolled Steel Coils. The petitioner Company has a capacity to produce 2.20 Million Tones of Hot Briquetted Iron and 2.40 Million Tones of Hot Rolled Coils per annum. The petitioner company has also set up down-stream facilities comprising of Hot Skin Pass Mill (having capacity of 1.20 Million Tones per annum) and slitting and shearing line (having capacity of 0.40 Million Tones per annum).

5.2 The petitioner Company has increased production capacities of the plant through indigenous developments. The production levels have been stabilised and the petitioner Company has been achieving reasonably high capacity utilisation consistently. The quality of petitioner Company's product is well established and the petitioner Company is country's largest exporter of Hot Rolled Steel Coils for the last five years.

5.3 The petitioner Company has obtained secured borrowings/credits from various banks and financial institutions to finance its business needs. The HRC Plant commenced commercial production in March, 1996 when the prices were ruling at nearly USD 450 per ton in the international market. IDBI, the lead Financial Institution to this Project, had appraised the project in 1995. A selling price of USD 446 per ton was considered at the time of this appraisal.

5.4 The fortunes of the Steel Industry worldwide were plagued by severely depressed prices after 1997-98 due to South East Asian Meltdown, dumping of steel by the CIS countries, an oversupply position and other adverse factors. The steel prices dipped to levels as low as USD 170 per ton, a price level at which most steel mills worldwide incurred substantial losses. Several mills, particularly in the US, filed for bankruptcy protection.

5.5 Reflecting this global trend, in India too the prices fell steeply. The Government of India brought down the customs duty on import of HR Coils from 50% in 1994 to 25% in 2001. Also, new capacities were created with Jindal Vijaynagar Steel Ltd. and Ispat Industries Ltd. setting up their steel plants, whereas there was no commensurate increase in demand. This created an

oversupply position and steep fall in prices in the domestic market as well. Consequently, the Indian steel industry's performance has been very poor.

5.6 The petitioner Company's profitability and cash flows, therefore, were much lower than the appraised levels, despite the fact that the petitioner Company implemented a series of cost reduction measures, to maintain the cost of production at competitive levels. The financial difficulties of the petitioner Company were further compounded by two additional factors with respect to its long term debt; firstly, the very low average debt maturity profile of only 3.5 years when the plant commenced commercial production in 1996 and secondly, the very high interest rates applicable on the debt; the interest levels were contracted during the high interest rate regime at rates averaging 18 to 19% p.a. on the Rupee debt. Hence, it could not fully meet its term debt commitments. The non-servicing of debt commitments during this period resulted in increase in the aggregate debt levels.

5.7 In view of the above, significant debt restructuring became necessary. The critical components of this being a substantial reduction of debt in order to reduce the overall debt profile of the petitioner Company apart from extension of the maturity of the debt and rationalisation of interest rates to the current prevailing market levels. The petitioner Company has, therefore, initiated series of measures to upgrade capacity, increase production and reduce costs of production.

5.8 Due to the failure of the petitioner Company to service its debt and due to the existing difficulties of the petitioner Company, the need was felt for rescheduling and restructuring the debt of the petitioner Company. The petitioner Company proactively sought debt restructuring in a comprehensive manner that would prevent it from seeking repeated roll-overs from the Existing Secured Lenders at different terms.

5.9 The petitioner Company appointed KPMG India Pvt. Ltd. to assist in formulating a Restructuring Plan in August 2001. A series of meetings were held between the petitioner Company, its advisors KPMG and the lenders from August 2001 to December 2001 culminating in the petitioner Company submitting a Reconstructing Proposal to its major lenders viz., IDBI, ICICI, IFCI and SEBI in January 2002. Subsequent to submitting the Restructuring proposal, the petitioner Company had several discussions

with its lenders.

5.10 In October 2002, the petitioner Company was referred to the Corporate Debt Restructuring ("CDR") Forum by IDBI, the lead financial institution of the petitioner Company. Reserve Bank of India had introduced the mechanism vide their Circular dated 23.08.2001 for restructuring the corporate debts of viable corporate entities affected by internal or external factors. All the major Indian Financial Institutions and Banks are the members of the CDR Forum.

5.11 Upon reference in October 2002, a CDR meeting was held and the CDR members appointed a Core Committee. The Core Committee comprised of IDBI, ICICI Bank, State Bank of India and Bank of India to evolve a Restructuring Package. A Restructuring Package as formulated by the Core Committee was approved in the CDR Forum Meeting held on January 21, 2003.

6. The salient features of restructuring package, as regards the Secured Term Lenders are as under :-

PART - A WITH REGARD TO THE SECURED TERM LENDERS  
AND WORKING CAPITAL LENDERS.

- (i) Waiver of Penal Interest and liquidated damages;
- (ii) Conversion of Compound Interest into Zero Coupon Bonds;
- (iii) Simple Interest Charged in excess of 14% p.a. in respect of Rupee Term Loans and Non Convertible Debentures with effect from 01.04.2001 till the Cut-off Date would be converted into 10% Cumulative Redeemable Preference Shares (CRPS) and Compound Interest charged, for the above period, in excess of document rate shall be waived;
- (iv) Conversion of Rupee term debt into Equity Share Capital
- (v) Conversion of 40% Rupee Term Debt into Foreign Currency Loan / Reduced Rate Rupee Term Loan (carrying interest rate at the rate of 18% p.a.)
- (vi) Balance Rupee Term Loan (carrying interest rate at the rate of 14% p.a.).

6.1 The Working Capital Lenders shall provide need

based working capital facility based on a current ratio of 1:1 as considered under the Restructuring Package. The working capital lenders shall also sanction Working Capital Term Loan ("WCTL") of Rs. 140 Crore (approximately for meeting the net working capital deficit of the Company) as per detail set out in the Restructuring Package.

#### PART B - WITH REGARD TO THE SHAREHOLDERS

6.2 For every ten equity shares of Rs. 10 each held by the equity shareholders, the petitioner shall cancel four (4) equity shares and in lieu of such cancellation create, issue and allot four (4) non-cumulative redeemable preference shares of Rs.10 each with a coupon of 0.01% redeemable in four (4) equal yearly installments starting from October 1, 2017 and the existing equity shareholders shall continue to hold the remaining six (6) equity shares held by them as equity shares of Rs. 10 each fully paid, without any alterations to the rights attached thereto.

7. By preferring this petition, the petitioner has sought the confirmation of this Court only to the part B above of the restructuring package. This portion of the restructuring package pertains to the Shareholders of the petitioner. Part A above of the restructuring package pertaining to the creditors of the petitioner is being taken up separately by the petitioner and is not the subject matter of this petition.

8. It is further stated that on confirmation of the reduction of share capital by this Court, 20,47,33,113 (Twenty Crore Forty Seven Lacs Thirty Three Thousand One Hundred Thirteen) equity shares of the face value of Rs.10/- each out of the total existing 51,18,32,783 (Fifty One Crore Eighteen Lacs Thirty Two Thousand Seven Hundred Eighty Three) equity shares of Rs.10/- each, will be cancelled by the Company and in lieu of such cancellation 20,47,33,113 0.01% Cumulative Redeemable Preference Shares of Rs.10/- each shall be issued on the terms stated in the petition.

9. It is further stated that the post restructuring of finance is based on the assumptions of the satisfactory implementation of the restructuring package, including cancellation of part of equity share capital and issue of preference shares in lieu thereof and conversion of a portion of the IFIs debt into equity share capital. Any change in the aforesaid assumption

would result in consequent change in the capital structure and the means of finance.

10. It is further stated that on annulment of forfeiture of any equity shares made due to non-payment of call moneys, the said equity shares would also be cancelled in the ratio of four equity shares of Rs.10 each out of every 10 equity shares of Rs.10 each held and in lieu of such cancellation, the petitioner will issue and allot preference shares as provided in the resolution passed on July 19, 2003 at the 27th Annual General Meeting and the remaining 6 equity shares shall be held by the shareholders as equity shares of Rs.10/- each without any alterations.

11. It is only technically that the capital of the petitioner will stand reduced. The implementation of the proposed resolution will not practically result in a reduction of capital inasmuch as on the cancellation of the equity shares, preference share capital of an amount equal to the equity share capital cancelled will be simultaneously created. Preference shares can be redeemed only out of profits of the Company (and an amount equal to the amount to be paid on redemption would be transferred to a capital redemption reserve account) or out of the proceeds of a fresh issue of shares made for the purpose of redemption. Effectively, at the time of redemption of the preference shares, if the redemption is by issue of fresh shares, the share capital of the petitioner shall be reinstated to the same level as it would be prior to the redemption of the preference shares or if the redemption is out of profits, there shall be transferred to the CRR account a sum equal to the amount of the preference shares redeemed. However, such cancellation of equity shares and issue of preference shares in lieu thereof, has been held to be a deemed reduction as the equity shares are cancelled. Under these circumstances, the present petition was filed under Sections 100 to 104 of the Act, for the approval and confirmation by this Court. The Creditors of the Company would not be affected by the cancellation of the equity shares as the share capital at all times is maintained. On the restructuring package being fully implemented, the creditors would gain substantially as further equity capital of Rs. 175 crore would be infused by conversion of a part of the debt into equity into the petitioner. Therefore effectively, the paid up share capital would be higher than the equity share capital of the Company prior to the reduction of equity share capital contemplated in the present petition.



12. It is further stated that the proposed cancellation of part of the equity share capital and issue of preference shares in lieu thereof does not involve either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital. The cancellation of part of equity share capital and issue of preference shares in lieu thereof, shall not in any way affect the repayment to any of the Creditors, as the redemption of preference shares are governed under Section 80 of the Companies Act, 1956. The interests of the Creditors is not affected in any manner whatsoever as the share capital is always maintained as set out earlier. Section 101 of the Act provides that the procedure under Section 101 (2) of the Act is to be followed only if there is diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital or in any other case if the Court directs. Since the interest of the Secured Creditors are not affected in any manner, the Creditors meeting was also required to be dispensed with as prayed for by the petitioner.

13. This entire restructuring package would assist the petitioner in meeting the difficult situation and to make operations profitable. The proposed restructuring of the petitioner including the proposed reduction of equity shares capital will strengthen the petitioner and is in the best interest of the petitioner, as also its shareholders and creditors. The petitioner has, therefore, prayed that the proposed cancellation of part of equity share capital and fresh issue of preference shares, in lieu thereof, as resolved by the shareholders of the petitioner at its 27th Annual General Meeting held on July 19, 2003 be confirmed by this Court.

14. This Court has passed an order on 10.09.2003 directing the petitioner to supply one copy of the present petition to learned advocate Mr. Sandeep Singhi appearing on behalf of Unit Trust of India (UTI), which is one of the Secured Creditors of the petitioner Company.

15. This Court has passed further order on 14.10.2003 observing that the Special Resolution for the reduction of share capital of the petitioner Company referred to in the petition has been duly passed. The Court has, therefore, ordered to issue notice in the prescribed form of the presentation of the petition and the same would be inserted in the public advertisement in 'Times Of India' - English Daily, Ahmedabad Edition and 'Gujarat Samachar' - Gujarati Daily, Surat Edition on or before 05.11.2003.

16. Pursuant to the said advertisement, UTI Asset Management Company Private Limited has filed its objections against the Scheme. However, UTI has subsequently withdrawn its objections.

17. Gujarat Industrial Investment Corporation i.e. GIIC has also filed its objections. Over and above certain specific objections raised by GIIC, they have also relied on the objections filed by UTI.

18. Mr. Mihir Joshi, learned Senior counsel appearing with Mr. R.D. Dave, learned advocate for the Objector i.e. GIIC has submitted that GIIC is a Govt. of Gujarat Enterprise of which 100% shares are held by Government of Gujarat. One of the main activities of GIIC was to act as catalyst in promoting industrialization of the State by way of equity investment. For this project, GIIC has promoted the company viz., Steel Corporation of Gujarat Ltd. in July, 1987. The Company had obtained necessary license from the Government of India for the project and finally it was decided to transfer the project along with the company to Essar Group and thus the formation of the Company M/s. Essar Gujarat Limited was made which is now known as Essar Steel Limited. He has further submitted that as per the MOU signed by GIIC with M/s. Essar Investment Limited (EIL in short), GIIC had the option to purchase the equity shares from EIL, within 12 months after commencement of production by M/s. Essar Gujarat Limited. After exercising the option of purchasing 2986875 equity shares from EIL in July 1995, at the price of Rs.19.14 Crores, GIIC's holding became 3026200 shares with total investment of Rs.19,29,77,819/- i.e. Rs. 63.77 per share. GIIC has not participated in the management of the petitioner. The day to day management of the petitioner Company was handled by Shri Ruia and others of the main promoter group. The said group, subsequently diversified into other fields like Petroleum Refinery (Essar Oil), Power Generation (Essar Power), Shipping (Essar Shipping), Telecommunication (Cellular Services), Oil Exploration, etc. Thus, this kind of over diversification resulted into financial problems by the petitioner Company. As on 30.09.2002, against shareholders fund of Rs.2080.88 Crores, the carried forward loss was Rs.2249.09 Crores i.e. higher than the shareholders fund. Mr. Joshi has, therefore, submitted that GIIC strongly objects to sanction of the Scheme and granting of any relief to the petitioner for the following reasons :-

- (a) GIIC is holding 3026200 equity shares of Rs.10/each of the petitioner Company with an average cost of Rs.63.77 per share (investment made in July 1995). If the proposal is sanctioned by this Court, 1210480 equity shares of Rs.10/- each would stand cancelled. Therefore, GIIC will have to write off its 40% investment, i.e. Rs.7.72 Crores in Books of Accounts out of Rs.19.30 Crores. GIIC will be left with 1815720 Equity Shares after the cancellation. Looking to the market price of the petitioner, GIIC will have to suffer huge financial loss. Till this date, GIIC has not received any return by way of dividend from the petitioner Company.
- (b) As per the proposal, the petitioner Company would allot 1210480 preference shares of Rs.10/- each at a coupon rate of 0.01% redeemable in four quarterly installments, commencing from 01.10.2017 against the cancellation of equal number of equity shares. Thus, its monetary value considering Net Present Value (NPA basis) is practically Nil. This would result into heavy financial loss to GIIC.
- (c) GIIC is a Government Enterprise and the investment made is of a public money. Therefore, any loss on investment as proposed for sanction, would be a great blow on working of GIIC since GIIC was passing through financial crisis due to heavy loss.
- (d) The Scheme provides preferential treatment to the lenders in as much as the fact that the Scheme provides for 10% cumulative redeemable preference shares to be issued to the Financial Institutions and Banks. However, different treatment is proposed to be given to shareholders by allotting 0.01% cumulative redeemable preference shares against the cancellation of equity shares of Rs.10/- each, whose market price today is Rs.25/per share. Therefore, GIIC has strong objection against such arrangement proposed in the Scheme.
- (e) The Unsecured loan of Rs.238 Crores of M/s. Essar Investment Limited and associate companies is proposed to be converted into equity shares at Rs.11.26 per share. Otherwise, this investment would have remained as unsecured and as per the

normal practice adopted by the Financial Institutions, it would not allow any interest on this investment as well as would not allow repayment of this amount till entire repayment of Financial Institutions i.e. upto the year 2018 or so is made. The proposal involves preferential treatment to the promoter Company and associates since it allows this amount to be converted into equity share capital @ Rs.11.26 per share against the present market price of Rs.25/- per share. Any appreciation in the market price in future would give higher benefit in that proportion. Further, the proposed route would enable them to have an early exit route with appreciation than their investment of Rs.238 Crores, even if considering the cancellation of 40% equity capital, i.e. the present market value of the allotted shares would be Rs.317 Crores, which is even higher than the total investment of Rs.238 Crores as unsecured loan. This is in addition to the amount which otherwise would be available to them as redemption of preference share in the year 2017. This would also give undue advantage to promoters in increasing their present shareholding percentage in the Company.

(f) Mr. Joshi has further submitted that the proposed reduction results into variation of shareholders' rights and it is in violation of the Provisions contained in Section 106 & 107 of the Act. He has further submitted that Provisions prescribed in Section 192A of the Act has not been followed. It relates to passing of resolution by postal ballot. The Central Government, vide Notification No. GSR 337 (F) dated 10.05.2001 has framed Rules for postal ballot, in exercise of its powers conferred by Section 192A read with Clauses (a) and (b) of Sub-section (1) of Section 642 of the Companies Act, 1956. Rule 4 deals with list of businesses in which the resolutions may be passed through postal ballot. Clause (j) of Rule 4 deals with variation in the rights attached with Class of shares or debentures or other securities as specified under Section 106.

19. Mr. S.N. Soparkar, learned Senior Counsel appearing with Mrs. Swati Soparkar, learned advocate for the petitioner Company has submitted that the objections raised by GIIC do not have any substance. He has further

submitted that the affidavit of objections is very vague, frivolous, malafide, illegal and dishonest in law as well as on facts and being governed by ulterior motive. The present petition is filed by the petitioner Company for reduction of share capital under Section 100 of the Act. Under the Provisions of the Act as well as the rules framed thereunder, guiding the procedure for the said reduction of capital, if the Articles of Association provides for such reduction of capital, a Special Resolution is required to be passed at the Annual General Meeting and the same was accordingly passed at the AGM dated 19.07.2003. Despite the objections raised by some of the objectors, the Resolution was duly approved by the requisite statutory majority. The said meeting was the Annual General Meeting and not a meeting convened as per the directions of the Court for approval of the Scheme under Section 391. The present proceedings taken out by the petitioner company are separate from and proceedings taken out for the restructuring of its debts. The scheme of compromise which was proposed by the Company earlier and subsequently withdrawn has no relevance so far as the present petition is concerned.

20. Mr. Soparkar has further submitted that under the present proceeding for reduction of capital, the rights of the creditors are not affected at all. The Provisions of Sections 101 (2) and 101 (3) are very clear on this issue. Since the proposed reduction does not involve either diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, it is not necessary to file the procedure prescribed under Section 101 (2). The rights of the unsecured creditors are not at all affected by the proposed conversion of part of Equity Shares to preference share capital. The unsecured creditors shall always have a preference over the preference shareholders for their claims. The meeting of the Creditors is not required to be convened under the Provisions of the Act for the reduction of capital.

21. Mr. Soparkar has further submitted that the petitioner has not concealed any material fact from the shareholders of the Company. The shareholders are not necessary party for the approval of the scheme of compromise with the Creditors of the Company and for the same reason, the objection raised to the debt restructuring package, by the objector is not relevant for the purpose of passing special resolution for reduction of capital. The details of the entire restructuring scheme were provided in the explanatory statement sent to all the shareholders along with the

notice for 27th AGM. The special resolutions were passed at the meeting after due deliberation and discussion by the shareholders present at the meeting. No material fact was concealed from the shareholders of the petitioner Company.

22. Mr. Soparkar has further submitted that the present petition is filed for consideration of the limited issue of sanction of the proposed reduction of capital only and not for consideration of the entire Scheme which was the subject matter of Company Petition No. 176 of 2003 and it was ultimately withdrawn by the petitioner. The contentions raised by the Objector are absolutely irrelevant for the purpose of considering the proposed reduction of capital. The unsecured loan of Rs.200 Crores has been converted into equity and shares were allotted at a premium of Rs.1.26 per share in accordance with the formula under SEBI guidelines of preferential issue. Therefore, increase in equity has taken place for Rs.177 Crores. Further the shares are locked in and cannot be sold in the market. He has, therefore, denied that the material information was intentionally or unintentionally concealed either from the Equity Shareholders of the Company or from this Court.

23. Mr. Soparkar has further submitted that whether the shares are to be forfeited or not is the matter of consideration for the Board of Directors of the Company. In the present case, it was decided not to forfeit such shares because they are held by small investors. The total number of such partly paid-up shares is less than 1% of the total number of shares of the company and hence the allotment of partly paid preference shares in no way affects the rights of shareholders or creditors. The proposal of allotting the partly paid up preference shares against the partly paid up Equity shares is already considered by the Equity shareholders of the Company at the aforesaid meeting of 19.07.2003. The commercial wisdom exercised by the majority of shareholders collectively cannot be challenged by an individual shareholder. Except the statement that the scheme is not in the interest of the company and its shareholders, no material is placed on record by the objector to support its contention. It is apparently baseless and cannot be considered for deciding the maintainability of the petition.

24. Mr. Soparkar has further submitted that there is no substance in the contention that the Company proposed to allot the Preference Shareholders without voting

rights causing any violation of Section 87 of the Companies Act, 1956. In fact, out of abundant caution the special resolution proposed was specifically modified for compliance of the provisions of Section 87 of the Act and the copy of the modified resolution forms part of the petition itself.

25. Mr. Soparkar has further submitted that the petitioner's proposal for reduction of capital is in no way unjust, unfair and against the public interest. The present proceedings are completely governed by the Provisions of the Act and the relevant rules framed thereunder and all the procedural requirements have been strictly followed. This Court should, therefore, approve the proposal and grant its sanction to the proposed reduction.

26. After having heard learned advocates appearing for the respective parties and after having considered their submissions, the Court is of the view that despite the objections raised by GIIC, the Scheme of reduction of the share capital of the petitioner, by cancellation of part of equity share capital deserves to be confirmed. It is an admitted position that the special resolution was passed by the requisite majority of the shareholders at the 27th AG Meeting held on 19.07.2003. The Objector GIIC did not attend the said meeting. Initially, UTI Asset Management Company Private Limited has raised the objections. However, the said objections were subsequently withdrawn. As far as the objections raised by the GIIC is concerned, the Court does not find much substance in these objections. By virtue of such reduction of equity share capital, the objector GIIC or any other shareholder in this regard, will suffer heavy loss as contended before this Court. Part B of the Scheme specifically deals with the Shareholders and it is clearly stated that for every ten equity shares of Rs. 10 each held by the equity shareholders, the petitioner shall cancel four (4) equity shares and in lieu of such cancellation create, issue and allot four (4) non-cumulative redeemable preference shares of Rs.10 each with a coupon of 0.01% redeemable in four (4) equal yearly installments starting from October 1, 2017 and the existing equity shareholders shall continue to hold the remaining six (6) equity shares held by them as equity shares of Rs.10 each fully paid, without any alterations to the rights attached thereto. It is, therefore, not correct to state that by virtue of such reduction of equity share capital, the Equity Shareholders including the Objector GIIC will suffer very heavy loss.

27. Even otherwise, the Hon'ble Supreme Court in the case of MIHEER H. MAFATLAL V/S. MAFATLAL INDUSTRIES LIMITED, 87 COMPANY CASES 792 has observed in the context of Scheme of Amalgamation that once the broad parameters about the requirements of 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 Hon'ble Supreme Court has further observed that the bonafides of the majority acting as a group have to be examined, vis.a.vis., the Scheme in question and not the bonafides of the person whose personal interest might be different from the interests of the voters as a class. The bonafides of a person can only be relevant if it can be established with reasonable certainty that he represents the majority or is the controller of the majority. These observations are equally applicable to the facts of the present case. First of all, the objector GIIC has not remained present at the meeting nor it represents the majority of the Equity Shareholders. The objection raised by GIIC on this count is, therefore, not sustainable and hence, it is rejected.

28. As far as the variation of the rights of the Equity Shareholders and violation of the Provisions of Section 106 & 107 of the Companies Act, 1956 are concerned, the Court is of the view that there is no variation of rights as such and there is no violation of the Provisions contained in Section 106 and 107 of the Act. As a matter of fact, these provisions have no application to the facts of the present case. The variation referred to in Section 106 is variation to the prejudice of any class of Shareholders, and not any variation adding to or enhancing rights of any class. It is only where a variation involves the curtailment of the rights of any class or classes of shareholders, the consent or sanction of such class or classes will be necessary. The section relates to variation and abrogation of rights attached to Shares and has no application to cancellation of shares or a reduction of capital. Similarly, increasing the capital of a Company does not amount to varying class rights. The question arose before the Bombay High Court in the case of SPINDEL FABRIK SUESSEN V/S. SUESSEN TEXTILE BEARING LIMITED, (1989) 2 CORPT. LA. 202 (BOMBAY) wherein the promise of a Company to its foreign collaborator that he would be entitled to 26% of the Company's equity was held to be



not breached when the Company resolved in accordance with its articles and in compliance with Section 81(1A) to capitalise the interest due to the Financial Institutions in respect of their loans and to issue them in lieu thereof equity shares in the Company. The Bombay High Court refused to stay the implementation of the issue. Twenty-six percent of the equity held by a shareholder does not make him a class by itself unless he has some special rights attached to his holding. Here in the present case, as per the Restructuring Package approved by CDR Empowered Group, unsecured Loans of Rs. 200 Crores from the promoters would be converted into Equity (before the write down of equity capital) and would be subject to write down by 40%. The Equity Share Capital existing / proposed to be converted by the promoters, would be written down by 40% by allotment of .01% cumulative redeemable preference shares. Likewise, the Company is under an obligation to allot Equity Shares at par to Financial Institutions / Banks by way of conversion of a part of assistance to the extent of Rs.175 Crores. Thus, this simultaneous exercise of increasing the Equity Share Capital as a result of the Restructuring Package approved by CDR Empowered Group and the reduction of Equity Share Capital, in no way, can be considered as the variation of the rights by the Equity Shareholders including the Objector GIIC.

29. Taking overall view of the matter and considering the proposed Scheme of reduction in a larger prospective, the Court is satisfied that there is no reason not to confirm the proposed action of the petitioner to reduce its Share Capital. The said proposal is likely to improve the financial resources of the Company and to increase the share of profit available for expansion and growth. The said proposal does not involve diminution of any liability in respect of unpaid capital or the payment to any Shareholder of any paid-up share capital. Accordingly, the Resolution dated 19.07.2003 is hereby confirmed.

30. The form of the Minute proposed to be registered under Sec.103(1)(b) is as follows :-

MINUTE UNDER SEC. 103 (1)

(a) "The issued, subscribed and paid up equity capital of Essar Steel Ltd. was by virtue of a Special Resolution of the Company and by virtue of the sanction granted by the High Court of Gujarat on the day of 28th February, 2005, reduced from Rs.507,96,98,519 (Rupees Five

Hundred Seven Crores Ninety Six Lacs Ninety Eight Thousand Five Hundred Nineteen only) divided into 51,18,32,783 Equity Shares of Rs.10/- each into Rs. 304,78,19,111 (Rupees Three Hundred Four Crores Seventy Eight Lacs Nineteen Thousand One Hundred Eleven Only) divided into 30,70,99,670 equity shares of Rs.10/- each.

31. The procedure laid down under Section 102 (2) and (3) of the Act, as regards the Creditors is hereby dispensed with. The petitioner is also permitted to dispense with the use of the words "and reduced".

32. The petitioner is directed to publish the notice of confirmation of reduction of capital and approving of the minutes in the "Indian Express" English Daily Vadodara Edition and "Gujarat Mitra" Gujarati Daily Surat Edition within 14 days of the registration of the order with the Registrar of Companies.

33. The petition is accordingly disposed of with no order as to costs.

Sd/-

[K.A. PUJ, J.]

#Savariya#

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