



Moot Problem

**IN THE HIGH COURT OF MADRAS**

Re: In the matter of amalgamation of ZEBRA Logistics Limited with ARZU India Limited

**C.P. No. 1001 of 2009**

1. ARZU Industries Limited, incorporated in June 1994 in the State of Tamilnadu, is a leading Indian automobile manufacturer. In addition to a growing demand for its auto products in the domestic market, the company also has a thriving export business, which is largely facilitated by the strategic location of its factory in Tamilnadu and its proximity to the Ennore Port. ARZU India Limited is a listed company and its shares are traded on the Bombay Stock Exchange and the National Stock Exchange of India.
2. ZEBRA Logistics Limited is a closely held company incorporated in the State of Karnataka, engaged in the business of transportation and logistics services for a variety of products including vehicles. Since 2006, ZEBRA has been managing the entire logistics operations of ARZU involving transportation of vehicles to dealership outlets across India as well as organizing vehicle shipments destined for various global locations.
3. In September 2009, the Board of ARZU proposed the absorption of ZEBRA by ARZU, and the creation of a separate business division, which will handle logistics operations for the manufacturing division of the company and also cater to third-party service requests. The forward integration was intended to bring about greater operational synergy and a higher degree of control over logistics operations. The proposal was the outcome of internal deliberations as well as discussions with the management of ZEBRA. A resolution approving the decision to amalgamate was passed at the Board meeting held on 21.09.2009 and it was decided to appoint, M/s Bimore and Sehgal, chartered accountants, as the valuation experts for arriving at a suitable share exchange ratio.
4. The chartered accountants submitted their valuation report on 23.09.2009 and recommended a swap ratio of 3:7 i.e. 2 shares in ARZU for every 7 shares held in ZEBRA. Reports on the fairness of the said valuation were furnished by three different consultants - Barrencost India Private Limited, M/s Saxena & Reddy and M/s Kumar & Co. on 24.09.2009. The scheme of amalgamation was approved in the Board Meeting held on 25.09.2009. By letters dated October 1, 2009 and October 3, 2009, the Stock Exchanges conveyed their 'no-objection' to the proposed scheme.

5. On October 5, 2009, Company Application No: 1592 of 2009 was filed before the High Court of Madras, seeking directions to convene meetings of shareholders and creditors. Separate meetings were directed to be convened and accordingly, the said meetings were convened and held on November 10, 2009. At the meeting of the shareholders, 5943 shareholders holding equity shares of the value of Rs. 7,39,000,000/- attended either personally or through proxy and 79% voted in favour of the scheme of amalgamation. At the creditors' meeting, apart from the votes of 184 unsecured creditors, which were declared invalid, no creditor voted against the scheme and the scheme was approved unanimously.
6. On the basis of the approvals accorded by the shareholders and the creditors, the present Company Petition under Section 391/394 of the Companies Act, 1956, was moved before the High Court of Madras, on November 15, 2009 for sanction of the scheme of amalgamation. The petition was admitted; the notice of hearing was served on the Regional Director and the Registrar of Companies as well as published in specified newspapers.
7. In response to the published notice, objections were received from the following persons:
  - a. An objection from HUB National Bank Ltd. to the scheme of amalgamation questioning the correctness of the financial statements of the transferor company, alleging non-disclosure therein of the amount of guarantee issued by ZEBRA in favour of the Bank to secure a loan granted to M/s Tiwari & Verma, a partnership firm. According to the Bank, the issue of the guarantee (for an amount of Rs. 160 million) was a material fact affecting valuations and the swap ratio, and would have definitely influenced the decision of the shareholders and creditors. Hence, the scheme ought not to be sanctioned, without placing this essential fact before the shareholders and creditors of the transferee company.
  - b. A common objection from the 23 minority shareholders of ARZU holding in aggregate 9.73% of the share capital, stating that the decision to approve the scheme was an act of oppression by the majority on the minority shareholders. In their objection petition, they stated that the Memorandum of Association of ARZU did not contain a specific power to amalgamate with companies having dissimilar objects as that of ZEBRA. The relevant extract of the MOA is as below:

*“To amalgamate with any other company in the same industry, trade and commerce and having objects altogether or in part, similar to that of the company.”*

It was further contended that no specific details of the operational synergy that was expected to result from the amalgamation were furnished to the shareholders. The objecting shareholders also cited their apprehensions in entering a new line of business i.e. transportation services, involving substantial additional risk, particularly in view of the unstable economic scenario and fluctuating fuel prices. On the whole, it was sought to be demonstrated that the scheme involved additional risk-taking by the transferee company in an unrelated area of business, which could lead to a possible erosion of capital and hence, it was prejudicial to the interests of the company.

The minority shareholders also objected to the valuation report contending that the swap ratio was too high. In this context, the shareholders referred to a letter dated November 18, 2009 received from HUB National Bank Ltd., which spoke of certain undisclosed liabilities and consequent flawed valuation of the transferor company.

- c. Para 2.72 of the report of the Regional Director stated that the guarantee referred to above was given in contravention of Section 295 of the Companies Act, 1956 as one of the partners of M/s Tiwari & Verma, Mr. Prem Verma happened to be the son-in-law of Mr. Rasik Manchandas and Mrs. Lavanya Manchandas, both directors on the ZEBRA's 4-member Board. The guarantee issued by ZEBRA was therefore contrary to the provisions of Section 295(1)(b) of the Act. While the Regional Director did not object to the scheme per se, the affidavit stated that the fact of the contravention and the prosecutions that could be initiated against the persons responsible is a relevant fact that ought to be brought to the notice of the Court and the shareholders of both companies.
8. ZEBRA, which was impleaded as a necessary party to the instant company petition, filed its reply affidavit to objection (b) as follows:
- a. When the Board had authorized the issue of the guarantee to HUB on behalf of M/s Tiwari & Verma in the year 2008, the provisions of Section 295 were not complied with and requisite approval was not obtained from the Central Government. Such contravention was inadvertent and not conscious or deliberate on the part of the company or any of its officers.
  - b. Further, as a result of such non-compliance with Section 295, the entire transaction became illegal and void.
  - c. It was in the course of preparation and audit of the financial statements for the year 2008-09, that the said contravention was discovered and immediately, steps were taken to cancel the loan transaction. Accordingly, by letter dated August 16, 2009, it was

communicated to HUB that the loan transaction was invalid and ZEBRA could not assume any liability under the transaction, should the principal borrower commit any default. The said letter was duly received by HUB.

- d. Thus, when the loan transaction itself was discovered to be void, it could not have formed part of the financial statements and hence, there was no non-disclosure or misrepresentation of any kind in the financial statements based on which the scheme of amalgamation was drafted.
  - e. It was further contended that HUB had no locus standi to file the objection petition, in view of the fact that it was neither a creditor nor a member of either the transferor or the transferee company. What could at the most be a civil dispute has been brought before the company court in an act of sheer abuse of process and the said objection ought not be entertained on that ground itself.
9. ARZU filed its reply affidavit to objection (a) stating that the scheme has been determined by the majority to be in the best interests of the company as a whole and hence, ought to be sanctioned. Even assuming the power the amalgamate with ZEBRA was not contained in the MOA, Section 391, being a complete code, the Court could very well direct necessary amendments to the MOA.
10. The petition for sanction has come up before the Hon'ble High Court of Madras for hearing and you are required to substantiate arguments in favour of, and against, the scheme for amalgamation as the case may be.
11. The parties to this petition are as follows:
- |  |  |
|--|--|
| 1) ARZU India Limited                      | - Petitioner                                 |
| 2) ZEBRA Logistics Limited                 | - Respondent/ Impleaded as a necessary party |
| 3) Minority Shareholders of ARZU India Ltd | - Respondent/Objector                        |
| 4) HUB National Bank Ltd                   | - Respondent/Objector                        |
| 5) Regional Director                       | - Respondent                                 |
- 
-