
(2002) 10 BOM CK 0059

In the Bombay High Court

Case No : Company Petition No"s. 337 and 338 of 2002 in Company Application No"s. 116 and 117 of 2002

Alstom Power Boilers Ltd.

APPELLANT

Vs

State Bank of India and Another and Mrs. Darshana Kenia
and Others

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Companies Act, 1956 — Section 391, 392, 393, 394

Citation : (2003) 4 BomCR 202 : (2002) 112 CompCas 674 : (2003) 2 CompLJ 210 : (2003) 42 SCL 197

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Aspi Chinoy and Sanjay Buch, instructed by Crawford Bayley and Co., C.J. Joy and D.A. Dube, instructed by T.C. Kaushik for Regional Director, Department of Company Affairs, Rishabh Shah, instructed by Prem Ranga, for Employees Union in C.P. No. 337 of 2002, S.R. Kom, official liquidator, for the Appellant; Virag V. Tulzapurkar and C.S. Kapadia, instructed by M. Druva and Co. for the respondents in C.P. No. 337 of 2002, Janak Dwaradas and Milind Vasudeo, instructed by Gagrath and Co. for the respondents in C.P. No. 338 of 2002, for the Respondent

Judgement

R.J. Kochar, J.—The petitioners, the transferor companies, have prayed for sanction of the scheme of arrangement for amalgamation of the petitioners with the transferee company, the APIL, under Sections 391 to 394 of the Companies Act, 1956, with effect from March 31, 2001. The APIL the transferee company, has also sought sanction of the said scheme in Company Petition No. 338 of 2002.

2. In the present petition the scheme envisages the merger of (a) Alstom Transport Ltd. ; (b) Alstom Systems Ltd. ; (c) Alstom Power Boilers and in Company Petition No. 338 of 2002 the scheme envisages the merger of Alstom Power India Ltd.

3. Pursuant to the prescribed notices, the Regional Director by his affidavit dated

August 7, 2002 has stated that the scheme is not prejudicial to the interest of the creditors and shareholders. Similarly, the official liquidator has also u/s 394(1) of the Companies Act, 1956, conveyed his no objection to the scheme and has categorically made a statement that the affairs of the company were not conducted in a manner prejudicial to the interest of their members and general public.

4. Pursuant to the orders and directions of the Delhi High Court, a meeting was held by Alstom Systems Ltd. to consider the scheme by the shareholders/members and the members of the said company voted for the scheme.

5. Pursuant to the public notices, one Mrs. Darshana Kenia holding five shares in the transferee company APIL and her father Shri Damji Ghalla holding 353 shares and her husband Mr. Prafulkumar Kenia holding 100 shares have opposed the scheme by filing an affidavit before this court. They, however, did not attend the meeting of the shareholders personally or by proxy. Mr. P.R. Kenia appears to have acquired 100 shares of APIL after the date of the meeting. The State Bank of India which is a shareholder in the APIL and it is a secured creditor of APBL have opposed the scheme by filing their affidavits, though the SBI also did not attend the shareholders meeting of APIL or cast vote personally or by proxy. The SBI, however, attended the meeting of the secured creditors of the APBL and voted for the scheme.

6. The IDBI, being equity shareholder of the APIL attended the meeting of the APIL shareholders but did not vote. The IDBI is neither a shareholder nor a creditor of the APBL. The IDBI, however have opposed the scheme by filing their affidavit in the present proceedings. The Government of India, which is also an equity shareholder of the APBL did not attend the meeting nor did it vote by the proxy. The Government of India which is a preferential shareholder did not attend or vote by proxy. It has also not appeared before this court to oppose the scheme. As far as the other voting pattern is concerned, it is as under :

(i) 22 shareholders/Corp. Reps, holding 2,53,94,990 equity shares attended out of which vote of one shareholder holding 654 shares was declared invalid. All voted in favour of the scheme. Out of 22 members attending 17 belonged to the Alstom group. While the remaining five members voting were not from the Alstom group.

(ii) At the meeting of the preferential shareholders holding 373,00,000 shares attended and voted for the scheme. They belonged to the Alstom group. The scheme was approved by 100 per cent, of the preferential shareholders.

(iii) At the meeting of the secured creditors of value Rs. 9.04 crores voted. All the creditors present including the SBI voted for the scheme which was approved by 100 per cent.

(iv) At the meeting of the unsecured creditors of APBL, 86 unsecured creditors of value Rs. 30.79 crores attended. 85 unsecured creditors of value Rs. 30.74

crores voted for the scheme. One unsecured creditor of value Rs. 4.48 lakhs voted against. The scheme was approved by 99.85 per cent, of unsecured creditors in value and 98.84 per cent, in number from those present. The voting pattern of APIL, the transferee company is as under :

(a) 196 shareholders/Corp. Reps holding 236,00,785 equity shares attended. 189 shareholders holding 235,99,924 shares voted for the scheme. Two equity shareholders holding 501 shares voted against. Five equity shareholders holding 360 shares cast invalid votes.

(b) Out of 196 members who attended only two belonged to the Alstom group while 194 were other members.

(c) Neither the SBI as a shareholder attended or voted by proxy nor the IDBI as an equity shareholder voted against the scheme though they attended the meeting.

(d) The scheme was approved by 98.95 per cent, in number and 99.99 per cent, in value.

(e) 115 unsecured creditors of value Rs. 38.35 crores attended. 114 unsecured creditors of value Rs. 38.32 crores voted for the scheme. One vote of unsecured creditor of value Rs. 312,040 was declared invalid. There was no vote cast against the scheme.

7. Shri Aspi Chinoy, learned senior counsel has given the salient features of the scheme and other relevant particulars which are as under :

Under the scheme the name of APIL is to be changed to "Alstom Projects India Ltd." As per the scheme holders of :

(i) Every 85 equity shares of Rs. 10 in Alstom Transport Ltd. will get 50 new equity shares in Alstom Projects India Ltd.

(ii) Every 85 equity shares of Rs. 10 in Alstom Systems Ltd. will get 78 new equity shares in Alstom Projects India Ltd.

(iii) Every 85 equity shares of Rs. 10 in Alstom Power Boilers Ltd. will get 2.2 new equity shares in Alstom Projects India Ltd.

(iv) Every 85 preference shares of Rs. 100 in Alstom Power Boilers Ltd. will get 22 new equity shares in Alstom Projects India Ltd.

8. The swap ratio is based on a valuation of the shares of the said four companies as on March 31, 2001, by M/s. A. F. Ferguson and Co., a reputed firm of chartered accountants who have utilised methodologies including "discounted cash flow methodology", "capitalised maintainable earnings methodology" and "market value methodology" to the extent considered appropriate by them. The report states that it has relied on audited financial statements along with the companies statutory auditors report thereon, unaudited management accounts and projected financial information : i.e., estimates of future financial

performance. The report is annexed as exhibit I to the affidavit of the petitioners Mrs. Naina Desai, dated June 28, 2002. The scheme regarding, (i) Alstom Transport Ltd., (ii) Alstom Systems Ltd. both of which are registered in Delhi, has already been approved by the Delhi High Court. Alstom Transport is wholly owned by the Alstom group. The facts regarding Alstom Power Boilers Ltd. (APBL) :

(i) APBL was incorporated as ACC Vickers Babcock. In 1982 its name was changed to ACC Babcock Ltd. APBL was closed for 20 months during 1986-1988.

(ii) Subsequently through the BIFR it was brought under the supervision/control of the Ministry of Power, Government of India and was reopened in 1988. Under the BIFR Scheme for rehabilitation, the Government brought in an interest free loan of Rs. 26 crores and the FIs/SBI advanced a term loan of Rs. 13 crores which was guaranteed by the Government.

(iii) However, the scheme failed essentially as the Government of India did not fulfil its commitment to procure orders for power boilers as envisaged in the scheme. This led to APBL making substantial cash losses and there was no likelihood of it being able to repay the loans or carry on business. As on March 31, 1994, its accumulated losses were Rs. 109 crores and its cash losses for that year were Rs. 107 crores. At that juncture survival of the company and recovery of the Bank/FIs dues from APBL was clearly in jeopardy.

(iv) In the circumstances, in the BIFR proceedings efforts were made to find a promoter who would infuse fresh equity, pay off the loans due to the FIs/SBI and revive the company. After considering the offers made, the BIFR invited the ABB group to take management control, repay the principal sums due to the FIs/SBI and provide funds for the operations of APBL. In 1995 the ABB group acquired the management and control of APBL under a BIFR scheme/order dated May 30, 1995. As per the scheme of 1995 :

ABB group was required to induct Rs. 60 crores--Rs. 24 crores as equity; Rs. 28 crores as preference share capital and Rs. 8 crores as loans. ABB would have 76 per cent, equity capital.

The ABB group were to pay off the principal sums due to the FIs/SBI approximately Rs. 45 crores (Rs. 30 crores to SBI and Rs. 15 crores to FIs.)

The FIs/SBI waived their overdue interest: approximately Rs. 20 crores which was guaranteed by the Government of India.

Government's existing loan of Rs. 26 crores was converted to Rs. 4.6 crores equity shares and the balance Rs. 21.4 crores was converted to 10 per cent, cumulative preference shares redeemable in 2005.

The Government's guarantee for the outstanding loans was to be released. The Government agreed to transfer dividend on the preference shares to the extent of 7.5 per cent, to the FIs/SBI and further agreed to assign the redemption

proceeds of the Rs. 21.4 crores preference shares to the extent of Rs. 19.51 crores to FIs/SBI against their waived interest.

(v) ABB group brought in the requisite amount of Rs. 60 crores and paid off the principal sums due to the FIs/SBI in accordance with the installments stipulated in the scheme. Accordingly under the scheme the FIs/SBI received back their entire principal sum due and the Government was released from its obligations under its guarantees.

(vi) Due to the infusion of funds and its improved performance APBL's net worth turned positive i.e., it was no longer a sick company under the SICA. By an order dated February 7, 1997, the BIFR recorded that as APBL was no longer a sick industrial company it "no longer requires to be dealt with by the Board. The case is therefore closed. The special director last appointed by us stands discharged". Copies of the order were forwarded by the BIFR, inter alia, to the SBI, IDBI, and the Government of India. Having regard to the said order neither the BIFR nor the operating agency have thereafter (i.e., after 1997) in any manner dealt with APBL.

(vii) 1997-2002 : APBL suffered mounting losses due to the depressed power sector, cancellation of existing orders and the policy for giving preference to public sector undertakings. Till 1999 the losses had mounted to Rs. 249 crores. To cope with this situation, the promoters/Alstom group have, to date, brought in an additional Rs. 345 crores in the form of additional preference share capital. Accordingly of the total preference share capital of Rs. 394.4 crores, the Government of India holds Rs. 21.4 crores and the Alstom group holds Rs. 373 crores. In the absence of profits no dividend has to date been declared or paid by APBL on any of the preference shares.

(viii) In January, 2000 (vide its letter dated January 7, 2000) the Alstom group/APBL requested the Government to take back APBL, but there was no response.

(ix) Even after such infusion of funds APBL's losses kept increasing--by March, 2001, APBL's capital base was Rs. 426 crores against a net worth of only Rs. 24 crores i.e., more than 90 per cent, of its capital base has been eroded. This erosion in value/capital base is reflected in the swap ratio for shareholders of APBL.

(x) If the merger/arrangement does not go through APBL has a very bleak future. There appears to be no prospect of it recouping its accumulated losses, or of ever being in a position to redeem its preference shares. In fact such a scheme of merger with a healthy company APBL would be faced with a real prospect of liquidation.

9. Facts Re.: APIL : APIL was incorporated in 1992 and with effect from September 5, 2000, its name was changed to Alstom Power India Ltd. APIL is engaged in the design, engineering, manufacturing, procurement, supply and commissioning, servicing and renovating and modernisation of power plants for

utility and industrial users.

10. Facts Re. : Alstom Transport Ltd. : ATL set up in 1997, is engaged in the designing, manufacturing, supplying and supporting large scale transportation systems including traction, signalling and train control. Alstom Transport had been making losses but has now turned profitable by virtue of having secured and executed orders for the Delhi Metro.

11. Facts Re. : Alstom Systems Ltd. : ASL is engaged in the business of transmission systems and energy management and markets. ASL has always been a profit-making company.

12. Shri Tulzapurkar, learned counsel appearing for the SBI, IDBI, and the creditors has strongly opposed the proposed scheme of amalgamation on the grounds that :

(a) The scheme does not meet the statutory requirements under the Companies Act and is also contrary to the sanctioned scheme of the BIFR under the SICA and that it is not bona fide scheme and the same is violative of public policy. Shri Tulzapurkar accused the petitioners of suppressing the fact of the BIFR scheme which according to him, is still in force and has not become non est. Learned counsel submitted that as the scheme has not been abrogated and is still in force, the petitioner-company is bound to comply with its obligations thereunder and if the petitioner-company desired to have any modification in the scheme, it should approach the BIFR and not seek to substitute the said scheme by another scheme to be sanctioned by this court under the Companies Act. Shri Tulzapurkar further submitted that the order passed by the BIFR on February 7, 1997, which is relied upon by the petitioners cannot be interpreted to the effect that the earlier scheme had become non est and that it was not in force. According to the said order, the BIFR had only observed that the company's net worth had become positive and that it had ceased to be a sick industrial company and that it did not require to be dealt with and supervised by the Board. Shri Tulzapurkar further submitted that the company had ceased to be sick not because of its own efforts but because of the sacrifice made by the SBI, IDBI and Government of India by waiving huge amounts of interest payable by the company over the loans granted by the IDBI and the SBI and giving up of the guarantee by the Government of India. Shri Tulzapurkar further submitted that since the company got benefits under the BIFR scheme it must also discharge its obligations under the scheme, which on sanction has the force of law and is binding on company. The company, therefore, must discharge its obligations to pay dividend on the redeemed preference shares issued to Government of India under the said scheme. Learned counsel further submitted that the financial implications of the proposed scheme on the opponents would be drastic. The petitioner having taken benefits under the BIFR scheme was trying to evade its obligations under the sanctioned scheme of the BIFR and, therefore, the economic interest of the opponents as the public financial institutions and the banks would be jeopardised if the proposed scheme which is in violation of the provisions of the SICA and

contrary to the public policy is sanctioned. Shri Tulzapurkar while elaborating the illegality in the scheme, submitted that the petitioners did not convene the meeting of separate classes of the shareholders, members, secured and unsecured creditors, who were distinctly and adversely affected. According to learned counsel, a separate meeting of the preferential shareholders, viz., the SBI and the IDBI ought to have been convened as a separate and distinct class. Shri Tulzapurkar pointed out that since the opponents had not received the dividend, they became creditors under the law and, therefore, a separate meeting of this class ought to have been convened by the petitioners for approval of the proposed scheme. He pointed out that the petitioner-company had, under the BIFR scheme, allotted to the Government of India 21,40,000 10 per cent, cumulative preference shares of Rs. 100 each on August 3, 1995. Out of these the redemption proceeds of the preference shares of the value of Rs. 14.18 crores were assigned in favour of the SEBI and value of Rs. 5.33 crores in favour of the IDBI aggregating to Rs. 19.61 crores. The dividend on these shares was also partly assigned to them. Since the company has not paid any dividend to the opponents/ there is an outstanding liability and pending payment by the company which is also liable to pay future preference shares dividend to the Government of India and to the opponents. Shri Tulzapurkar submitted that the different preference shareholders formed a separate class and their meeting ought to have been separately convened for seeking approval of the scheme. Shri Tulzapurkar pointed out that there were distinct classes of preference shareholders, viz.,

A. The Government of India, which was allotted cumulative preference shares with assigning of redemption proceeds and dividend in favour of the opponents under the scheme sanctioned by the BIFR.

B. The promoters who contributed to the preference share capital of the company under the BIFR scheme.

C. Subsequent allottees of other preference shares issued by the company decide the BIFR scheme.

13. According to learned counsel, the interest of all the three categories was different and they were adversely affected in the scheme and, therefore, their meeting ought to have been separately convened. Shri Tulzapurkar submitted that as this was not done, the proposed scheme runs counter to the law and, therefore, should not be sanctioned.

14. Shri Tulzapurkar also pointed out that since no dividends were paid by the company to the opponents they had become creditors of the company and, therefore as creditors also they should have been separately called for the meeting. According to Shri Tulzapurkar, the petitioner-company did not properly categorise the different classes of shareholders on the basis of different interests which differently affect the minds and their judgments and, therefore, they ought to have been divided into different classes. They did not form or constitute one

single class as was erroneously and unlawfully done by the petitioners in convening the meeting. Learned counsel further submitted that even the Government of India which was allotted cumulative preference shares, with assignment of redemption proceeds and dividend in favour of the opponents under the scheme sanctioned by BIFR form a distinct class to have been separately convened in the meeting. Learned counsel further submitted that the promoters of preference share capital of the company and the subsequent allottees of the other preference shares issued by the company form different classes to be entitled to consider separately on the basis of their interests while considering the proposed scheme of amalgamation. Shri Tulzapurkar also submitted that as the preference shareholders having not received dividend for two years, the Government of India became a distinct class u/s 87(2)(b) of the Companies Act and as such the Government of India was entitled to vote on all matters affecting the company. The Government of India was entitled to voting rights even at the meeting of the equity shareholders of the company as preference shareholder to whom dividend had not been paid for over two years as contemplated u/s 87(2)(a) and (b) of the Act. According to learned counsel, there was no commonality of interest of the other equity shareholders and the Government of India whose state of facts/ rights are distinct and different but the petitioner-company having not given notice to Government of India to attend meeting of a separate class of cumulative preference shareholders whose dividend remained unpaid for a period of not less than two years but who were entitled to vote in the scheme in that capacity as well. The failure to consider and classify the Government of India on the aforesaid basis attracts illegality under Sections 391 to 394 of the Act. Shri Tulzapurkar further submitted that having not received dividend for two years on the preference shares, the Government of India also became an unsecured creditor and, therefore, they form another class of unsecured creditors different from the trade creditors or other unsecured creditors of the company. The company ought to have treated the Government of India as a distinct class of unsecured creditors in that respect. According to learned counsel, the petitioner-company has committed an illegality by treating the Government of India on par with the other unsecured creditors.

15. Shri Tulzapurkar further submitted that this court has no jurisdiction to consider the scheme of amalgamation when the scheme framed by the BIFR is in force. According to learned counsel, the petitioner-company ought to have approached the BIFR for modification of the scheme. Under the proposed scheme of amalgamation Shri Tulzapurkar points out that the opponents stand to lose funded interest and outstandings recoverable from the petitioners, guarantees of Government of India in favour of opponents securing the outstandings under the BIFR scheme, cumulative preference dividend of Rs. 11 crores accumulated till date in their favour and shown as liability by the petitioner, which were of 7.5 per cent, dividend in future till 2,005 and redemption proceeds of Rs. 18.61 crores receivable on August 3, 2005. Shri Tulzapurkar submitted that under the amalgamation scheme the opponents are to get nothing at all and they end up

losing everything even that which was secured to them under the BIFR scheme. He, therefore, emphatically submitted that the entire scheme is totally unfair, not bona fide and is grossly violative of the SICA. Shri Tulzapurkar accused the petitioner-company of evading its obligations under the sanctioned scheme of BIFR after having taken the benefit thereof. Shri Tulzapurkar summarised that the economic interest of the opponents as public financial institutions/banks would be jeopardised if the proposed scheme which is in violation of the provisions of the SICA and the Companies Act and is contrary to public interest is sanctioned and hence it should not be sanctioned. Shri Tulzapurkar also submitted that the decision of the Calcutta High Court in the case of Zuari Chemicals v. ICICI delivered on August 8, 1995, in Matter No. 362 of 1995 is not applicable. The BIFR scheme still is in force qua the petitioner-company and, therefore, it cannot wriggle out of the scheme having enjoyed the benefits of that scheme. He further submitted that the petitioner-company has ceased to be a sick industrial company because of the sacrifices made by the opponents and not on its own efforts. Shri Tulzapurkar concluded that in both the schemes, the opponents alone are the losers and, therefore, the amalgamation scheme should not be sanctioned by this court.

16. There are three other opponents who have been already described by me at the outset hereinbefore. They are the individual equity shareholders. Opponent No. 1 is the wife of opponent No. 3 and she holds five equity shares of the petitioner-company. Opponent No. 2 is the father of opponent No. 1 holding 353 shares of APIL and opponent No. 3 holds 100 equity shares of APIL which appear to have been acquired by him in April, 2002. It is the allegation of these equity shareholders that the merger is only for the benefit of the parent company Alstom group, the majority shareholder. The parent company controls the transferor company as well as the transferee company.

17. The net worth of the transferor companies and the transferee companies and its impact on the share exchange ratio (swap ratio) is not fair. For every 85 equity shares of face value Rs. 10, 2.2 shares of the merged company while for 85 preferential shares of face value Rs. 100, 22 shares of the merged company is the swap ratio which according to these opponents is totally unfair. Shri Dwarkadas, the learned senior counsel appearing for these opponents has shown various calculations to establish how this swap ratio is totally unfair. Briefly, he has set out the effect of the scheme by totalling up the net worth of the transferor company and the transferee company, i.e., APIL. The net worth of the transferor is said to be Rs. 35.36 crores while the market value of the shares of the APIL is computed as Rs. 102.36 crores. Shri Dwarkadas has pointed out that the net worth of APIL is four times the net worth of the transferor company and, therefore, the exchange ratio is not at all proper. Shri Dwarkadas further submitted that the scheme is totally prejudicial to the minority shareholders of the company and the shareholders of the transferee company will not receive dividend on their shares, at least for three to four years, although, according to learned counsel the company is likely to make profit for the year ended March

31, 2002, to the tune of Rs. 25 crores. On account of carried forward losses of the transferor companies to the transferee company no dividend would be declared by the merged company. The opponents have further submitted that the resolution passed at the meeting of the shareholders of the transferor companies and transferee company is not for the benefit of the minority shareholders of the transferee company. Shri Dwarkadas seriously alleged that the appellant-company was having a brute majority and was, therefore, successful in having the resolution passed in their own private interest and not in the interest of the other shareholders of the APIL. Shri Dwarkadas has raised objection in respect of the valuation conducted by M/s. A. F. Ferguson and by KPMG. According to him, the valuation ought to have been conducted by the current auditors of the APIL who were in the best position to assess the valuation of the APIL. Learned counsel reiterated his objection that the swap ratio cannot be regarded as fair or equitable or for the benefit of the minority shareholders. Shri Dwarkadas finally submitted that the opponents were threatened and were tried to be pressurised to withdraw the opposition to the scheme. A very serious allegation is made by learned counsel that in fact opponent No. 3 was even offered an illegal gratification of Rs. 7.50 lakhs for this purpose. In effect and the net result of the scheme is total loss for the minority shareholders of the APIL. I may mention here that in the written submissions on behalf of the opponents, very minute and detail calculations are given which I have not referred to in this judgment. Learned counsel for their respective parties have relied upon the following judgments in support of their contentions : Shri A. Chinoy :

(i) Miheer H. Mafatlal v. Mafatlal Industries Ltd. [1996] 87 Com Cas 792

(ii) Piramal Spinning and Weaving Mills Ltd., In re [1980] 50 Com Cas 514

(iii) Coimbatore Cotton Mills Ltd. and Lakshmi Mills Co, Ltd., In re [1980] 50 Com Cas 623;

(iv) Lalchand Surana v. Hyderabad Vanaspathy Ltd. [1990] 68 Com Cas 415.

Shri Tulzapurkar :

(i) Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., ;

(ii) Seksaria Cotton Mills Ltd. Vs. A.E. Naik and Others, ;

(iii) Bedrock Ltd. (In the matter of Scheme of Compromise/Arrangement between the Creditors of Bedrock Ltd. and Bedrock Ltd.), . ;

(iv) Company Petition No. 451 of 2001, dated September 7, 2001 (unreported the Bombay High Court) ;

(v) Wipro Finance Ltd. Vs. Suman Motels Limited, .

Shri Dwarkadas :

(i) Bank of Baroda Ltd. Vs. Mahindra Ugine Steel Co. Ltd., .

18. The parameters of the jurisdiction of the company court under Sections 391 to 394 are well established. The limitations put on this jurisdiction can be equated with the jurisdiction of the judicial review under Articles 226 and 227 of the Constitution of India. It is not an appellate jurisdiction. The application u/s 391 for sanction of the scheme of amalgamation cannot be treated as an appeal. The scheme is to be examined by the company court within the limited scope of supervisory jurisdiction. I need not set out the parameters of supervisory jurisdiction of a court of law conferred with the power of superintendence by any statute. The Supreme Court has once again reiterated the scope and limitations of the company court while dealing with the applications for sanction of the scheme of amalgamation under Sections 391 to 394 in the case of *Miheer H. Mafatlal* [1996] 87 Comp Cas 792. The Supreme Court has summarised the principles as under (pages 818 to 820):

"Sen J. speaking for himself and Venkatachaliah C.),, also toed the line indicated by Sahai J., about the jurisdiction of the company court while sanctioning the scheme and made the following pertinent observations in paragraph 84 at page 528 of the report (at page 65 of 83 Comp Cas) :

"An argument was also made that as a result of the amalgamation, a large share of the market will be captured by HLL. But there is nothing unlawful or illegal about this. The court will decline to sanction a scheme of merger, if any tax fraud or any other illegality is involved. But that is not the case here. A company may, on its own, grow to capture a large share of the market. But unless it is shown that there is some illegality or fraud involved in the scheme, the court cannot decline to sanction a scheme of amalgamation. It has to be borne in mind that this proposal of amalgamation arose out of a sharp decline in the business of TOMCO. Dr. Dhavan has argued that TOMCO is not yet a sick company. That may be right, but TOMCO at this rate will become a sick company, unless something can be done to improve its performance. In the last two years, it has sold its investments and other properties. If this proposal of amalgamation is not sanctioned, the consequence for TOMCO may be very serious. The shareholders, the employees, the creditors will all suffer. The argument that the company has large assets is really meaningless. Very many cotton mills and jute mills in India have become sick and are on the verge of liquidation, even though they have large assets. The scheme has been sanctioned almost unanimously by the shareholders, debenture holders ,secured creditors, unsecured creditors and preference shareholders of both the companies. There must exist very strong reasons for withholding sanction to such a scheme. Withholding of sanction may turn out to be disastrous for 60,000 shareholders of TOMCO and also a large number of its employees".

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 meetings as contemplated by Section 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 Section 391(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 and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.

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

(5) That all the requisite material contemplated by the proviso to Sub-section (2) of Section 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 be satisfied 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 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 could 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."

19. My learned Brother Dr. Chandrachud J. in the case of ION Exchange (India) Ltd., ION Exchange (India) Limited, has very rightly cited the observations of the learned single judge of the Gujarat High Court in In Re: Sidhpur Mills Co. Ltd., . The learned judge indeed has very succinctly described the jurisdiction of the company court as under (page 126) :

"... it is not for the court to scrutinise the scheme in the manner of "a carping critic, a hair-splitting expert, a meticulous accountant or a fastidious counsel" for the effort is not to emphasise the loopholes, technical mistakes and the accounting errors. The perspective has to be that of the ordinary shareholder exercising his discretion in a reasonable and businesslike manner. Fundamentally, the point to be emphasised is that the discretion as to whether to sanction the scheme for amalgamation is one which the court has the jurisdiction to exercise. This cannot be concluded on the supposed consideration that the scheme has the support of a large majority of shareholders. Majorities are not necessarily comprised individuals each of whom critiques the provision of the scheme with a measure of expertise. Lethargy is not unknown to collective bodies of shareholders and creditors. In these circumstances, the court has to be alive to the duty which Sections 391, 392 and 394 cast upon it, before, the court grants the seal of its approval upon the proposed amalgamation." (emphasis is given by me)

20. It is very pertinent and significant to note that none of the opponents attended the meeting convened by the company to place before the general body of the shareholders the view points which are being very vehemently canvassed before this court by both learned counsel appearing for the opponents. If they were so keen and serious about the objections to the scheme of amalgamation it was their fundamental duty and also responsibility to have attended the meetings convened for the purpose of approval of the scheme by the shareholders and creditors. The whole purpose of giving notice under the law is that the shareholders and the creditors attend the meeting and point out the difficulties or lacunae in the scheme and try to convince the management as well as the members in the meeting to not to approve the scheme. The failure of the opponents in doing so is a serious one. As is observed in the case of Miheer H. Mafatlal [1996] 87 Comp Cas 792 as a shareholder did not attend the meeting and did not vote against the scheme. The Supreme Court has criticised the appellants as under (page 829) :

"If he was feeling that the scheme was unfair to him or was not going to protect his interest as shareholder in the respondent-company, nothing prevented him from remaining present and voicing his grievance before the general body of the equity shareholders and to apprise them of the alleged pernicious effects of the scheme. It is, therefore, too late in the day for him to contend that the scheme was unfair to him . . ."

21. In our case neither the financial institutions which are opponents of the scheme before this court nor the solitary Kenia family opposing the scheme very

vehemently, through learned counsel have cared or bothered to remain present in the meetings. The financial institutions ought to have considered their duty to have voiced their objections by attending the meeting. It is only legal ingenuity of learned counsel to have very vociferously canvassed that the financial institutions ought to have been separately called in a separate meeting as they fell in a separate and distinct class as assigned preferential shareholders and unpaid dividend holders. If the management of the financial institutions were so conscious of such hair-splitting of the matter, they ought to have written to the conveners of the meeting that they formed a distinct and separate class and that the meeting of such separate class should be convened separately. It is too late in the day to make submissions before the company court that they ought to have been separately called at a separate meeting as they formed a separate and distinct class. As soon as they received the notice, they ought to have written to the conveners of the meeting that they did not form part of the class of the shareholders or the creditors whose meetings were convened. In any case, they ought to have placed their objections in writing no sooner they came to know about the meetings for approval of the scheme of amalgamation.

22. Apart from the fact that the financial institutions which are objecting to the sanction of the scheme had not placed on record of the company their objections in respect of their being a separate and distinct class even before this court no such specific pleading is taken in the affidavit filed by them. They have not substantiated how they formed a distinct and separate class. It is not possible for me to accept the submissions of Shri Tulzapurkar that they form a distinct and separate class and that since their meeting was not called separately and that the petitioners have violated the provisions of Section 391 of the Act. The law only contemplates reasonable and proper classification of the members and the creditors of the company. The well accepted classification for convening the meetings has been properly followed by the petitioners and the transferee company. The meetings of the equity and preference shareholders, secured and unsecured creditors were properly convened. The opponents cannot classify themselves to fall in any other category other than the aforesaid categories. If they did so, they ought to have communicated to the petitioners that they were a distinct class and that they did not fall in any of the four aforesaid categories. I fail to understand in what way the aforesaid financial institutions did not fall in any of the categories. The Government of India which was the preferential shareholders had assigned those shares to the financial institutions and, therefore, these institutions had stepped into the shoes of the Government of India as preferential shareholders. There was nothing separate or distinct in them. The class does not mean molecule of sub-sections. The classification has to be on the basis of the broad interest of classes. The equity shareholders certainly fall in a separate and distinct class as they are entitled to get benefit of dividends as and when the company declares the same. The preference shareholders are entitled to get dividend in preference to the equity shareholders when the dividend is declared by the company. Similarly, the class of creditors as

secured and unsecured creditors has been properly carved out and meetings of all the four classes have been properly convened by the petitioners and also by the transferee company. I do not find any violation of law as contended by the financial institutions. If we accept the contention of Shri Tulzapurkar in respect of the classification of the parties, it would be an endless affair as everyone would pose himself to be a separate and distinct class by himself. This is not what is contemplated by the class in Section 391 of the Act. There is no other illegality which is pointed out by Shri Tulzapurkar appearing for the financial institutions as the opponents in the scheme.

23. In any case, both these institutions ought to have been more than anxious to safeguard their own interests by attending the meetings after receipt of the notices even without prejudice to their rights and contentions that they ought to have been separately and distinctly convened in a separate and distinct meeting. Having committed gross negligence in their duty to safeguard their own financial interests, hair-splitting and technical contentions are tried to be raised by them before this court. This is nothing but an afterthought act of loophole or fault finding.

24. Let us now examine the pattern of the meetings and the voting which took place in the meetings properly convened by the petitioners pursuant to the directions of this court :

(i) The equity shareholders unanimously voted in favour of the scheme.

(ii) 22 shareholders/Corp. Reps, holding 253,94,990 equity shares attended the meeting.

(iii) It is significant to note that the Government of India as equity shareholder of APBL did not attend or vote by proxy. It is, therefore, crystal clear that the scheme was approved by 100 per cent, in number and value of the equity shareholders present and voting.

(iv) In the meeting of the preferential shareholders, members holding 373,00,000 shares attended and all voted for the scheme. The scheme was approved by 100 per cent, of the preferential shareholders present.

(v) It is further pertinent and significant to note that the Government of India as preferential shareholders did not attend or vote by proxy. In the meeting of the secured creditors six secured creditors of value Rs. 9.04 crores voted. All the creditors present including the S. B. I voted for the scheme. The scheme was, therefore, approved by 100 per cent, of secured creditors present.

25. If the SBI had any objection against the scheme, it ought to have raised such objections even in the meeting. The objections to the scheme did not and could not vary or did not depend on the class of the meeting. If the SBI was opposed to the scheme in principle, it could have very well raised such objections even as secured creditors. It, however, voted for the scheme without any objection. It, therefore, cannot be heard from the SBI before this court that though as secured

creditors they had no objection to the scheme, as allottee of the preferential shareholders by the Government of India, they have certain objections. Objectively speaking any valid objection to the scheme could have been raised regardless of the composition of the meeting as the scheme presented for approval was the same and it did not vary or change according to the meetings of the members.

26. In the meeting of the unsecured creditors of APBL, 86 unsecured creditors of the value of Rs. 30.79 crores attended. 85 unsecured creditors of value Rs. 30.74 crores voted for the scheme. One secured creditor of value Rs. 4.48 lakhs voted against the scheme. The scheme was thus approved by 99.85 per cent, of unsecured creditors in value and 98.84 per cent, in number from those present.

27. To conclude, the scheme was opposed by one unsecured creditor of value Rs. 4.48 lakhs. Barring one such opposition, the scheme was approved by one and all from all the classes. One person cannot dictate his baseless commercial wisdom on the 99 per cent, voters. If the majority cannot be allowed to coerce the minority, even the molecule or microscopic minority can never be allowed to stall the scheme approved by almost 100 per cent, members. To do so, would be to mock at the vast majority who overwhelmingly are in favour of the scheme. Even minority cannot tyrannise the majority.

28. Let us now see the voting pattern and the commercial wisdom of the transferee company, i.e., APIL. It was submitted by Shri Dwarkadas that the transferors had nothing to lose but to gain from the scheme and, therefore, the scheme was approved by all amongst the transferor companies as it was in their own interest. Shri Dwarkadas vehemently contended that the scheme was totally tilted in favour of the transferor companies and was against the interest of the transferee company, i.e. APIL.

29. The voting pattern, however, does not support the contention of Shri Dwarkadas who represents three shareholders :

(i) Pursuant to the directions of the court, the APIL convened meetings of the equity shareholders and unsecured creditors.

(ii) 196 shareholders/Corp. Reps, holding 236,00,785 equity shares attended.

(iii) 189 shareholders holding 235,99,924 shares voted for the scheme.

(iv) Two equity shareholders holding 501 shares voted against.

(v) Five equity shareholders holding 360 shares cast invalid votes.

(vi) The scheme was approved by 98.95 per cent, in number and 99.99 per cent, in value.

(vii) Most significant factor is that the SBI which is a shareholder of APIL did not attend or vote by proxy.

(viii) The IDBI which is an equity shareholder attended but did not vote. Both of

them are vociferously objecting to the scheme in the court. Both of them did not think it proper to open their mouth in the meetings at the appropriate forum. That was the moment of action for both of them. Belated willows are of no value in this court. Out of 115 unsecured creditors of value Rs. 38.35 crores attended, 114 unsecured creditors of value Rs. 38.32 crores voted for the scheme. There was no vote against the scheme while the vote of one unsecured creditor of value Rs. 312,040 was declared invalid.

30. From the above voting pattern, it becomes crystal clear that the members and the creditors of the APIL have also favoured the scheme. Opinion of the APIL acquires greater significance as their members and the creditors have higher stakes and still they have approved the scheme. According to me, higher weightage has to be given to the opinion of the APIL members and the creditors, as even if they stand to get less or lose more as contended by Shri Dwarkadas, they have approved the scheme in their own commercial wisdom. We, therefore, have to bear in mind that not only the transferor companies but also the transferee company both have their interest in the scheme of amalgamation and both have unanimity to approve the scheme of amalgamation as they would stand to gain in the long run. The unification of the functions of all the companies would certainly save the production cost and the operational cost. Duplication of the process work can be avoided and common overhead expenses can be reduced substantially. The members of both the companies have taken into account and consideration all these factors of the long run working of the companies after amalgamation.

31. I do not find any merit in the other submission of learned counsel that the petitioners ought to have approached the BIFR for modification of its earlier scheme and that this court has no jurisdiction to modify the BIFR scheme or to substitute any other scheme. There is no question of the petitioners approaching the BIFR as the scheme for their rehabilitation was implemented successfully as the sickness span of the petitioners was over and they ceased to be a sick industrial company. The present scheme is for amalgamation of the several entities in the common interest of all so that after the sickness period they can be made financially viable to avoid future sickness. The present scheme has to be sanctioned by the company court and not by the BIFR.

32. Now, dealing with the objections of the other individual shareholders, at the outset it must be stated that all the three shareholders are of APIL and they are Mr. and Mrs. Kenia and the father of Mrs. Kenia. The father and daughter hold 5 and 353 shares respectively in the APIL, while Mr. Kenia, acquired 100 shares only after the date of the meeting. Father and daughter did not attend the meeting of the shareholders and did not cast their vote even by proxy. It is in fact Mr. P.R. Kenia alone who is vehemently opposing the scheme before this court.

33. It is further pertinent to note that the SBI which is a shareholder in APIL and a secured creditor of APBL did not bother or care to attend the meeting of the

shareholders of the APIL or did not cast their vote by proxy against the scheme. The SBI, however, attended the meeting of the secured creditors of the APBL and voted in favour of the scheme.

34. The IDBI which is not a shareholder nor a creditor of the APBL but is an equity shareholder of APIL. The IDBI attended the meeting of APIL shareholders but did not vote either way. The IDBI did not oppose or object to the scheme in the said meeting. This is very important and crucial aspect to be borne in mind, while considering the objections of Shri Dwarkadas, learned counsel for Mr. P.R. Kenia. The objections of Shri Dwarkadas can be summarised as under :

A. The merger is only for the benefit of the parent company of the Alstom group the majority shareholder :

B. The net worth of the transferor and transferee companies and its impact on the share exchange ratio (swap ratio).

C. The effect of the scheme is adverse on APIL shareholders.

D. Benefits/advantage of the merger only to parent company.

E. The scheme is prejudicial to the minority shareholders of the transferee company.

F. The resolutions passed at the meetings of the shareholders of the transferor and transferee companies are not for the benefit of the minority shareholders of the transferee company.

G. Valuation for the purpose of determining swap ratio is not done properly.

H. Swap ratio cannot be regarded as fair or equitable or for the benefit of the minority shareholders.

35. From the undisputed voting pattern which I have noted hereinabove, there is absolutely no substance in the contention of Shri Dwarkadas that there was no real participation by the ordinary/independent shareholders in the meeting called by APBL and APIL and ASL. The overwhelming majority of the APIL have favoured the scheme. The father and the daughter (Kenia) did not attend the meeting to oppose the scheme. Even Mr. P.R. Kenia could not and did not attend the meeting as he was not a shareholder of the APIL at that particular point of time but curiously enough, he purchased the shares of the APIL after the meeting in which the scheme was approved. If Shri Kenia had studied the scheme which was placed before the shareholders and if he was satisfied that the scheme was against the interest of the shareholders of the APIL, I fail to understand any good reason for him to have purchased 100 shares of the APIL. It appears that he has been set up for the purpose of opposing the scheme in the court by someone who is interested in topsy-turvy of or thwart the smooth sailing of the scheme. According to me, Shri P.R. Kenia lacks bona fides.

36. In fact Shri Dwarkadas on behalf of Shri P.R. Kenia wants me to enter into

the account books and the profit and loss account and the balance-sheet of the companies, transferor and transferee. He in fact expects me to carry out the auditing of the accounts as a meticulous accountant or auditor which certainly is not the function of this court. Shri Dwarkadas has shown me various figures of the assets and liabilities of the transferor companies and also the transferee company, trying to establish how the scheme is against the interest of APIL shareholders, even if 99.99 per cent, shareholders in value have adopted and approved the scheme. There is no allegation of fraud or mala fides against the valuation done by the reputed chartered accountants M/s. A. F. Ferguson and Company. The swap ratio has been arrived at by the said company. The swap ratio has been approved and accepted by the shareholders of the APIL. The said auditors have set out in detail how they have arrived at the said swap ratio on the basis of the audited financial statements of the company. They have not only considered the net worth of the companies but they have also considered other relevant factors. The Supreme Court has in the case of Miheer H. Mafatlal [1996] 87 Comp Cas 792 has observed on pages 835 to 840 as under :

"So far as this contention is concerned it has to be kept in view that before formulating the proposed scheme of compromise and amalgamation an expert opinion was obtained by the respondent-company as well as the transferor company, namely, MFL on whose board of directors, the appellant himself was a member

It must at once be stated that valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the field of accountancy. Pennington in his Principles of Company Law mentions four factors which had to be kept in mind in the valuation of shares :

"(1) Capital cover,

(2) Yield,

(3) Earning capacity, and

(4) Marketability.

For arriving at the fair value of share, three well known methods are applied :

(1) The manageable profit basis method (the earning per share method)

(2) The net worth method or break up value method, and

(3) The market value method . . ."

It has to be kept in view that the appellant never bothered to personally remain present in the meeting of equity shareholders for pointing out the unfairness of this exchange ratio to his brother equity shareholders who were likely to be affected by the very same ratio as the appellant. His interest at least to that extent was entirely common and parallel to that of other equity shareholders. But he had no time to remain personally present. He sent his proxy only to

record his dissent vote which was in the microscopic minority of 5 per cent, as compared to the 95 per cent, majority vote. Not only that, even before the court he did not submit any contrary expert opinion regarding the valuation of shares of the transferor and transferee companies for supporting his ipse dixit that the correct ratio would be 6 : 1 ...

It has also to be kept in view that which exchange ratio is better is in the realm of commercial decision of well informed equity shareholders. It is not for the court to sit in appeal over this value judgment of equity shareholders who are supposed to be men of the world and reasonable persons who know their own benefit and interest underlying any proposed scheme. With open eyes they have okayed this ratio and the entire scheme . . .

As stated earlier it was a sort of a package duly considering all imponderables and implicit factors which the shareholders had to keep in view for deciding whether to approve the scheme of amalgamation or not. The exchange ratio was only one of the items. They thought it fit in their commercial wisdom to accept the scheme as a whole along with the exchange ratio presumably in expectation of better profits in years to come when the amalgamated companies would operate and when there would be, according to the shareholders, better prospects of earning greater dividends . . .

The appellant was representing only 5 per cent, dissenting shareholders and his objection was almost a voice in the wilderness, which did not appeal to the majority of his brother shareholders . . .

It was for the enquiry shareholders who acted bona fide in the interest of their class as a whole to accept even a less favourable ratio considering other benefits that may offset such less favourable ratio once an amalgamation goes through. We wholly concur with this view. In this connection we may also refer to a decision of Maugham J. in *Hoare and Co., In re* [1933] All ER 105 wherein it was laid down that where statutory majority had accepted the offer the onus must rest on the applicants to satisfy the court that the price offered is unfair. In this connection the following pertinent observations were made by the learned judge . . .

"The other conclusion I draw is this that the court ought to regard the scheme as a fair one inasmuch as it seems to me impossible to suppose that the court, in the absence of any strong grounds, is to be entitled to set up its own view of the fairness of the scheme in opposition to so very large a majority of shareholders who are concerned. Accordingly, without expressing a final opinion on the matter because there may be special circumstances in special cases, I am unable to see that I have any right to order otherwise in such a case as I have before me, unless it is affirmatively established that notwithstanding the views of a very large majority of shareholders, the scheme is unfair."

We may also refer to a decision of the Madras High Court in *Kamala Sugar Mills Ltd., In re* [1984] 55 Comp Cas 308 dealing with an identical objection about the

exchange ratio adopted in the scheme of compromise and arrangement. The court observed as under (headnote) :

"Once the exchange ratio of the shares of the transferee company to be allotted to the shareholders of the transferor company has been worked out by a recognised firm of chartered accountants who are experts in the field of valuation and if no mistake can be pointed out in the said valuation, it is not for the court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies or to say that the shareholders in their collective wisdom should not have accepted the said exchange ratio on the ground that it will be detrimental to their interest".

No grievance, therefore, can be made by the appellant at the stage of company petition proceedings for demonstrating the ratio to be ex facie unfair and unacceptable as the appellant would like to have it ...

But as a package deal when the scheme as a whole is examined and found to be advantageous to the economic and commercial interest of shareholders as a class only one or two items simpliciter for deciding the exchange ratio cannot tilt the balance as so many factors and aspects would enter that exercise."

37. The main emphasis of learned counsel was on the computation of the net worth of the transferor and the transferee companies and thereby to show that the book value of the APIL would be reduced from Rs. 21.52 to Rs. 17.68 and that the shareholders will not get dividend. Here again, I am of the opinion that the company court need not enter into such controversy when the shareholders of the APIL have accepted the swap ratio arrived at by the auditors. Shri Chi-noy, however, pointed out the inaccuracy in the computation of Shri Dwarka-das. According to him the book value post-merger will be Rs. 20.70 and not Rs. 17.68. Shri Chinoy has also pointed out that APIL has up to date never paid any dividend. Shri Chinoy has also submitted that there was no carry forward loss of Rs. 350 crores which was allegedly taken over by the APIL. According to him, the said loss has been adjusted in computing the fair value/swap ratio.

38. The scheme is fair and just for all. Even otherwise it must be presumed that the scheme is fair and just as except a fraction of the concerned, all have consciously voted for the scheme and have accepted it to be in their larger interest.

39. Further, I do not find any unfairness or unjustness in the scheme. The APIL shareholders have accepted the swap ratio and whatever was computed in the scheme. Commercial wisdom of the APIL shareholders cannot be subjected to appeal before this court. In my opinion, broadly the scheme by and large, is fair and just to both the parties and all the shareholders and the creditors and the same deserves to be sanctioned. There is hardly any valid dissent to the scheme which is approved almost unanimously, even by those from the APIL who stand to gain less immediately in short run.

40. As the last frantic and desperate attempt on the part of Shri Kenia, the sole opponent, Shri Dwarkadas, learned counsel files the further submissions after I finished the dictation of this judgment to try to further buttress his point of unfairness of the scheme on the basis of the latest balance-sheet of the APIL. These further submissions try to point out loopholes in the affairs of the company. It is not possible for me to scrutinise the balance-sheet and other details as the scheme evolved by the companies and approved by all except one Shri Kenia, has to be accepted as fair and just and in the interest of all. Shri Kenia alone cannot be allowed to tyrannise the whole overwhelming majority of even the APIL.

41. The scheme is, therefore, sanctioned. The affidavits of the official liquidator and the Regional Director stating their no objection to the scheme are taken on record. Company Petition No. 337 of 2002 is made absolute in terms of prayer clauses (a) to (p). Company Petition No. 338 of 2002 is made absolute in terms of prayer clauses (a) to (r).

42. Costs of Rs. 2,500 each to the Regional Director as well as to the Official Liquidator to be paid by the petitioners within four weeks.

43. All concerned to act on a copy of this order duly authenticated by the Company Registrar. Drawn up order and certified copy is expedited.

44. Learned counsel for both the opponents in both the petitions pray for stay of this order for four weeks. Since the scheme is sanctioned and approved by 99 per cent, majority, there is no merit in the prayer for stay. The prayer for stay is refused.