

(2004) 04 BOM CK 0027

In the Bombay High Court

Case No : Company Application No. 343 of 2001 and Company Petition No. 271 of 1985

In Re: Echjay Industries (P.) Ltd.

Date of Decision : 16-04-2004

Acts Referred:

Companies Act, 1956 — Section 391, 392, 394(2)
Limitation Act, 1963 — Article 136, 137, 3

Citation : (2004) 54 SCL 43

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : N.G. Thakar and M.S. Doctor, for the Appellant; F.E. D'Vetre, for the Respondent

Judgement

A.M. Khanwilkar, J.—By this Application u/s 392 of the Companies Act, 1956, the applicants have prayed for the following reliefs :

"(a) This Hon'ble Court will be pleased to order and direct the Respondents jointly and severally to implement and to give effect to the Order dated 3rd September, 1986 in Company Petition No. 271 of 1985 and take all steps to transfer in the record of the Respondent No. 4 Society, Flat No. 9 on the 1st Floor alongwith the basement in "Echjay House" situate at 31A, M.L. Dahanukar Marg (Carmichael Road), Bombay-400 026 in the name of the applicants and to enter the name of the Applicants in the record of Respondent No. 4 Society as a member and the holder of 10 shares of the face value of Rs. 50 each, 10 shares bearing distinctive Nos. 51 to 60 (both inclusive) (Certificate No. 11) in the capital of Respondent No. 4 Society and which shares were mutated in the name of the Applicants by Respondent No. 3 pursuant to the Order of Deputy Registrar of the Co-operative Societies, "D" Ward, dated 7th August 2000 in appeal proceedings being Appeal No. 3 of 1999.

(b) that the Respondent No. 1 and Nos. 3 to 8 and each of them be restrained from in any manner removing or causing to be removed the name of the applicants as a member of Respondent No. 4 Society and/or as holder of the said

shares bearing distinctive Nos. 51 to 60 (both inclusive) (Certificate No. 11) in the capital of Respondent No. 4 Society and/or in any manner denying the right title and interest of the Applicants as the owner of the said Flat No, 9 on the 1st Floor and the basement in Echjay House, 31A, M.L. Dahanukar Marg, Bombay - 400 026 and/or in any manner denying the Applicants as a member of Respondent No. 4 Society.

(c) that the Respondent Nos. 1 and 3 to 8, their servants and agents be restrained by a permanent Order and Injunction of this Hon''ble Court from in any manner interfering with or preventing the Applicants and/or its directors or employees or servants and agents from exclusively and without any let or hindrance whatever enjoying the use and occupation of the said flat No. 9 on the 1st Floor and the basement in Echjay House, 31A, M.L. Dahanukar Marg, Bombay-400 026 and from in any manner obstructing the Applicants, its directors, employees, servants and agents from having free ingress and egress to the said Flat No. 9 on the 1st Floor and the basement in Echjay House, 31A, M.L. Dahanukar Marg, Bombay-400 026.

(d) pending the hearing and final disposal of this Company Application, Respondents Nos. 1 and 3 to 8 be restrained by an interim Order and Injunction of this Hon''ble Court from in any manner interfering with or preventing the Applicants and/or its directors or employees or servants and agents from exclusively and without any let or hindrance whatever enjoying the use and occupation of the said flat No. 9 on the 1st Floor and the basement in Echjay House, 31 A, M.L. Dahanukar Marg, Bombay 400 026 and from in any manner obstructing the Applicants, its director, employees, servants and agents from having free ingress and egress to the said Flat No. 9 on the 1st Floor and the basement in Echjay House, 31A, M.L. Dahanukar Marg, Bombay 400 026.

(e) that pending the hearing and final disposal of this petition the Respondent Nos. 1 and 3 to 8 through themselves, their agents, servants and officers be restrained by an order and injunction of this Hon''ble Court from taking any steps which would prejudice giving effect to the order dated 3rd September, 1986 passed by this Hon''ble Court including giving effect to the order dated 9th March, 2001.

(f) For ad interim, and interim reliefs in terms of prayer (b), (c), (d) and (e) above.

(g) For costs.

(h) For such further and other reliefs as the nature and circumstances of this case may require."

2. Briefly stated, the Respondent No. 1 Company owned a separate and distinct undertaking situated at Kanjur Village Road, Kanjur Marg, Mumbai ("the Kanjur Division"). Some time prior to September 1984, it was agreed between the Applicants and Respondent No. 1 Company that by a Scheme of Arrangement to

be sanctioned by this Court u/s 391 of the Companies Act, 1956, the whole of the assets of the Kanjur Division of Respondent No. 1 Company, inter alia, including its ownership flats/buildings and other assets pertaining to or belonging to Kanjur Division would be transferred to the Applicant Company. As per the said agreement, above numbered Company Petition was filed before this Court along with connected Company Petition No. 272 of 1985, after the requisite sanction was obtained in this regard from the shareholders of both the Companies. This Court, by an order dated 3rd September 1986, was pleased to sanction the proposed Scheme. The relevant portion of the said order reads thus :

". . .And this court doth order that with effect from the effective date namely the 1st day of January 1983, referred to in the Scheme of Arrangement hereby sanctioned the whole of the undertaking of Kanjur Division belonging to Echjay Industries Private Ltd., the Transferor Company including all its assets and movable and immovable properties such as lands, hereditaments and premises together with all factory buildings, machinery and plant (the items of plant and machinery being listed in Annexure "A" to Scheme) in use for manufacturing business at Kanjur and lying or situated in or at Kanjur (except those mentioned in Clause 2 of Part I of the Scheme and listed in Annexure "B" to the Scheme) furniture, fixtures, stores, stock of raw materials, stock in process and finished goods, spare parts, equities, licences, trademarks, privileges, liberties, easement and advantages, quote rights, book debts and obligations* ownership flats/building, investments and other assets appertaining or belonging to Kanjur Division together with the benefit of all contracts and engagements and all other interest rights or powers of whatever kind, nature or description, books, papers and documents and also all the liabilities and obligations arising out of and/or relating thereto shall without any further act, deed, matter or thing vest in and be transferred to Forgings Private Limited the Transferee Company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, be transferred to and vest in the transferee company free from all encumbrances but subject however to all charges now affecting the same...."

3. It is the case of the Applicants that in view of the aforesaid order, on and from 1st January, 1983, the subject flat and basement stood transferred to and vested in the Applicant Company. After this order was passed, an application was made to the Respondent No. 4 Society for transfer of membership in favour of the Applicant Company. That application was filed some time in December 1986, but as no decision was taken on the said application and no communication was received by the Applicants, a fresh application came to be filed in December 1998. That application was, however, rejected on 21st April, 1999. Against the said decision, the Applicants carried the matter in appeal before the Deputy Registrar of Co-operative Societies. The Deputy Registrar Co-operative Societies, however, allowed the appeal preferred by the Applicants on 7th August, 2000 and declared that the Applicant Company stood admitted to the membership of Respondent No. 4 Society in respect of Flat No. 9 on the first floor and basement with effect from 1st January, 1983 As per the direction issued by the Deputy

Registrar, the name of the applicant Company was entered as shareholder in the Share Certificates concerning the basement and flat No. 9 on the first floor of Respondent No. 4 Society on 12th May, 2000. However, Respondent No. 1 assailed the order passed by the Deputy Registrar before the Division Joint Registrar, Cooperative Societies, by way of revision application, being Revision Application No. 539 of 2000, who, in turn, allowed the revision application and set aside the order passed by the Deputy Registrar, which was in favour of the applicant Company by judgment and order dated 9th March, 2001. While reversing the order passed by the Deputy Registrar, the revisional authority, inter alia, found that even though Respondent No. 4 had full authority to decide the membership issue either u/s 22 or Section 23 of the Maharashtra Co-operative Societies Act, however, there was dispute between the two companies, and it was, therefore, in the fitness of things that Respondent No. 4 ought to have directed the parties to first approach the two experts as was required by the order passed by this Court sanctioning the Scheme on 3rd September, 1986. The revisional authority further noted that the parties had relied on certain High Court proceedings touching the provisions of the Companies Act, 1956, in respect of which it had no authority and jurisdiction to comment upon.

4. Having regard to the observations made by the revisional authority, the Applicants have filed the present application for the reliefs already reproduced above. In substance, the case of the Applicants is that the revisional authority has adverted to certain proceedings before this Court under the provisions of the Companies Act and, for which reason took the view that the application filed by the Applicants for transfer of membership was premature. It is contended on behalf of the Applicants that it has become imperative for the Applicants to approach this Court under the provisions of Section 392 of the Companies Act, so that the doubt expressed by the revisional authority could be clarified and, in particular, this Court would exercise power to supervise the carrying out of the comprise or the arrangement already sanctioned. During the course of arguments, however, Counsel for the Applicants has pressed this application only with regard to reliefs (a) and (b). Insofar as the other reliefs are concerned, the same were not pressed with liberty to the Applicants to take recourse to appropriate proceedings as may be permissible in law. In the circumstances, discussion in this order is confined to reliefs (d) and (b), referred to above.

5. The Respondents have resisted this application. Preliminary objection regarding maintainability of the application has been raised on the ground that it is barred by limitation. According to the Respondents, this Court passed order on 3rd September, 1986, whereas the Application for the aforesaid reliefs has been filed on 16th July, 2001. According to the Respondents, the reliefs as claimed are nothing but to seek execution of the order dated 3rd September, 1986. So understood, the application is clearly barred by virtue of Articles 65, 136, or, for that matter 137, read with Section 27 of the Indian Limitation Act. The objection regarding application being barred by limitation is, however, raised only across the Bar and no specific pleas has been taken in the reply affidavit filed on behalf

of the Respondents. During the arguments, the learned Counsel for the Respondents, referring to the record, pointed out that the Applicants had made first application in December 1986, which was not granted. Whereas, another application was made on 5th January, 1999, which was rejected on 21st April, 1999. It is next contended that the applicants were seeking execution of the order dated 3rd September, 1986 and that order was in the nature of a decree, for which reason, recourse to execution proceedings ought to have been taken by the Applicants within the period provided for by Article 136, or, for that matter, Article 137 of the Limitation Act. Reliance is placed on the decision of the Division Bench of this Court in the case of *In Re: Nilesch Lalit Parekh*, which has clearly held that Section 634 of the Companies Act, 1956, applies to any order made by the Court under that Act and for which reason, it will have to be enforced in the same manner as a decree made by a Court in a suit pending therein. Reliance was also placed on the decision of the Calcutta High Court in the case of *Techno Metal India (P.) Ltd, v. Prem Math Anand* [1973] 43 Comp. Cas. 556, wherein it was held, inter alia, that the petition filed under the Companies Act, having been filed within 12 years as provided by Article 136 of the Limitation Act, it was within time. Reliance is placed on those observations to contend that the provisions of the Limitation Act apply with full force to application, such as the present one. It was thus contended that the present application having been filed 12 years after the date of the order dated 3rd September, 1986, the same was barred not only by Article 136, but also by Article 137 of the Limitation Act. It was next contended that the applicants have taken recourse to parallel proceedings. It is submitted that the Applicants having filed proceedings before the Authority under the provisions of the Maharashtra Co-operative Societies Act cannot seek the same relief by way of present application. Even on this count, the maintainability of the present application was questioned. It was lastly contended that the parties were governed by the directions issued by the two experts, who were appointed by the Family Arrangement dated 27th May, 1983 and the Supplemental Family Arrangement dated 6th June, 1984. It was contended that even the Scheme of compromise or Arrangement as sanctioned by this Court dated 3rd September, 1986 recognises that position. In other words, the decision of the two experts as to the construction of the scheme or as to any account, valuation, apportionment to be taken or made of any property or liability to be transferred or as to anything contained in the Scheme shall be decided by the two experts, whose decision shall be final and binding on all concerned. It is the case of the Respondents that the said two experts, in fact, gave directions from time to time, which were forwarded to the parties under covering letter dated 12th September, 1986. The relevant directions are item Nos. 2 and 3 of the letter dated 11th September, 1984 and 13th June, 1985. Relying on the said directions, it was contended that the Applicants were not entitled for the reliefs as claimed in this application.

6. Having considered the rival submissions, I shall first deal with the objection regarding maintainability of the application on the ground of being barred by

limitation. As is rightly contended on behalf of the Applicants, plea of limitation is a mixed question of fact and law. However, in the reply affidavit as filed by the Respondents, no such plea is taken. In the circumstances, the foundation for taking the view that the application is barred by limitation is not laid by the Respondents. Indeed, Counsel for the Applicants made an attempt to persuade me that the provisions of the Limitation Act will have no application to proceedings, such as the present one, taken out u/s 392 of the Companies Act. That contention does not commend to me; inasmuch as although the width of power to be exercised u/s 392 of the Companies Act by the Court is very wide, but that would not mean that it can be exercised de hors the provisions of the Limitation Act. The Applicants are justified in relying on the dictum of the Apex Court in S.K. Gupta v. K.P. Jain AIR 1979 SC 734 to contend that Section 392 of the Companies Act enables the Court, rather obligates the Court, to continually supervise the carrying out of the scheme over a period of time and to issue directions to overcome the difficulties so as to ensure proper working of the compromise and/or arrangement. However, that enunciation cannot be construed to mean that it expressly or even impliedly extricates the application of the provisions of the Limitation Act to the proceedings such as the present one. On the other hand, in my considered opinion, the provisions of the Limitation Act will apply with full force even to the proceedings, such as the present one taken out u/s 392 of the Companies Act. Reliance was placed on the decisions of the Apex Court in Union of India Vs. M/s Popular Construction Co., , Hukumdev Narain Yadav Vs. Lalit Narain Mishra, and Vidyacharan Shukla Vs. Khubchand Baghel and Others, , to contend that even in the present enactment, namely, the Companies Act, the Scheme of the relevant provisions is departure from the limitation period prescribed under the Limitation Act. However, in my view, there is nothing in the provisions of the Companies Act to suggest that it provides period of limitation different from the period prescribed by the Schedule of the Limitation Act, 1963. Accordingly, the argument canvassed on behalf of the Applicants that the period of limitation provided under the Limitation Act, or, for that matter none of the provisions of the Limitation Act will have any application to the proceedings such as the present one has no substance. Viewed in this perspective, by virtue of Section 3 of the Limitation Act, it is the bounden duty of the Court to examine whether the proceedings/application suffers from limitation, even though limitation has not been set up as a defence. The Respondents pressed into service Article 65 of the Limitation Act. In my opinion, however, Article 65 has no application to the fact situation of the present case, and especially having regard to reliefs (a) and (b) of the application, which are pressed into service. For, Article 65 would apply in relation to matter for possession of immovable property or any interest therein based on title. The relief claimed in the present application is obviously not referable to Article 65 of the Limitation Act. According to the Respondents, in any case, Article 136 of the Limitation Act would apply to the reliefs claimed in the application. Even this submission does not commend to me. Indeed, the Respondents have rightly relied on the Division Bench Decision of this Court in the case of Nilesh Lalit

Parekh (supra), but that is an authority on the proposition that any order passed by the Company Court is in the nature of a decree in a suit and will have to be enforced in the same manner as decree made by a Court in a suit by virtue of Section 634 of the Companies Act. The question that arises in the present case is, whether the reliefs as claimed are for enforcement of the order dated 3rd September, 1986 as such, and if that is to be answered in the affirmative, only then the argument canvassed on behalf of the Respondents would deserve consideration. Indeed, going by the plain language of the reliefs claimed in this application, at the first blush, the argument canvassed on behalf of the Respondents would seem to be attractive. However, in my opinion, what is required to be answered in the present application is to clarify the position and the doubts, which have been expressed by the revisional authority while considering the claim of the parties under the provisions of the Maharashtra Co-operative Societies Act though viewed in this perspective, it cannot be said that the relief that needs to be granted by this Court is in the nature of execution or implementation of the order dated 3rd September, 1986 as such. On the other hand, the decision in the present application will be one in the nature of and for supervising the carrying out of the compromise or arrangement, which is referable to Section 392 of the Companies Act; and, more importantly, because as aforesaid, even the Revisional Authority under the provisions of the Maharashtra Co-operative Societies Act has expressed doubt, which is in relation to the proceedings before this Court under the provisions of the Companies Act and also made reference to the order passed by its Court which has approved the scheme of compromise or arrangement, as to its interpretation. So understood, the provisions of Article 136 of the Limitation Act will have no application to the fact situation of the present case, because that only deals with the execution of any decree or order. According to the Respondents, in any case, Article 137 of the Limitation Act, would apply to the present application and if it does, the limitation for filing the application was only three years from the date when the right to apply accrued. Indeed, the proceedings such as the present one u/s 392 of the Companies Act will be governed by the limitation period provided by Article 137 of the Limitation Act. However, as mentioned earlier, in the first place, no foundation has been laid by the Respondents as to when the right to apply for the reliefs as claimed in this application accrued to the Applicants. On the other hand, going by the averments in the application, the Applicants have clearly asserted that the present application was required to be filed because of the observations made by the Divisional Joint Registrar in his order dated 9th March, 2001. It is clearly asserted that the applicants have no option, but to approach this Court for the necessary clarification and direction in the matter. The present application, as is stated earlier, has been filed on 16th July, 2001, which is obviously within three years from 9th March, 2001. The aforesaid stand taken by the Applicants has remained uncontroverted and is indisputable. Viewed in this perspective, it is inconceivable that the application can be dismissed on the ground of being barred by limitation. Reliance was placed by the Respondents on the decision of the Apex Court in the The Kerala State Electricity Board,

Trivandrum Vs. T.P. Kunhaliumma, , S. Rajan Vs. State of Kerala and another, and The Addl. Spl. Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others, . However, for the view that I have taken it will be unnecessary to elaborate on the said decisions.

7. That takes me to the next objection taken on behalf of the Respondents for granting any relief in the present application. It was contended on behalf of the Respondents that the petitioners have already elected their remedy before the authorities under the provisions of the Maharashtra Co-operative Societies Act, for which reason it was not open to them to claim reliefs as pressed into service in this application, which, in substance, is a claim for the same relief, considered by the said authorities. I find no substance in this submission. As mentioned earlier, the application has been filed before this Court by the Applicants, essentially because of the observations made by the revisional authority as referred to earlier. By this application, the Applicants are essentially seeking clarification and directions in the matter, which is necessary for carrying out the compromise and/or arrangement as sanctioned by this Court. In my opinion, there is substance in the argument canvassed on behalf of the Applicants that the scope of Section 392 of the Companies Act is wide enough to encompass the relief that I propose to grant by way of this application. Reliance has been rightly placed on the decision of the Apex Court in S.K. Gupta's case (supra). It will be apposite to reproduce the dictum of the Apex Court in para 13 of this decision in toto, which reads thus :

"When a scheme is being considered by the Court, in all its ramifications, for according its sanction, it would not be possible to comprehend all situations, eventualities and exigencies that may arise while implementing the scheme. When a detailed compromise and/or arrangement is worked out, hitches and impediments may arise and if there was no provision like the one in Section 392, the only obvious alternative would be to follow the cumbersome procedure as provided in Section 391(1), viz., again by approaching the class of creditors or members to whom the compromise and/or arrangement was offered to accord their sanction to the steps to be taken for removing such hitches and impediments. This would be unduly cumbersome and time consuming and, therefore, the Legislature in its wisdom conferred power of widest amplitude on the High Court u/s 392 not only to give directions but to make such modifications in the compromise and/or arrangement as the Court may consider necessary, the only limit on the power of the Court being that such directions can be given and modifications can be made for the proper working of the compromise and/or arrangement. The purpose underlying Section 392 is to provide for effective working of the compromise and/or arrangement once sanctioned and over which the Court must exercise continuous supervision [see Section 392(1)], and if over a period, there may arise obstacles, difficulties or impediments, to remove them, again, not for any other purpose but for the proper working of the compromise and/or arrangement. This power either to give directions to overcome the difficulties or if the provisions of the scheme themselves create an impediment,

to modify the provision to the extent necessary, can only be exercised so as to provide for smooth working of the compromise and/or arrangement. To effectuate this purpose the power of widest amplitude has been conferred on the High Court and this is a basic departure from the scheme of the U.K. Act in which provision analogous to Section 392 is absent. The sponsors of the scheme u/s 206 of the U.K. Act have tried to get over the difficulties by taking power in the scheme of compromise or arrangement to make alterations and modifications as proposed by the Court. But the Legislature foreseeing that a complex or complicated scheme of compromise or arrangement spread over a long period may face unforeseen and unanticipated obstacle, has conferred power of widest amplitude on the Court to give directions and if necessary, to modify the scheme for the proper working of the compromise or arrangement. The only limitation on the power of the Court, as already mentioned, is that all such directions that the Court may consider appropriate to give or make such modifications in the scheme, must be for the proper working of the compromise and/or arrangement."

It will be also apposite to advert to para 15 of this decision, wherein the Apex Court has approved the view taken by the Gujarat High Court in the case of *Mansukhlal v. M.V. Shah*, Official Liquidator, Liquidator of Hathising Mfg. Co. Ltd. [1976] 46 Comp. Cas. 279 while construing the provisions of Section 392 of the Companies Act. The same reads thus :

In this context the observations of the Gujarat High Court, extracted hereunder, in *Mansukhlal v. M.V. Shah* [1976] 46 Comp. Cas. 279 can be referred to with advantage as it precisely lays bare the ambit and width of Court's power u/s 392 :

". . .The framers of the company law in India have conferred statutory powers on the High Court to make such modifications in the compromise or arrangement as the Court may consider necessary for the proper working of the compromise and arrangement. The power of the widest amplitude has been conferred on the court u/s 392(1)(b) and the width and the magnitude of the power can be gauged from the language employed in Section 392(1)(a) which confers a sort of a supervisory role on the court during the period the scheme of compromise or arrangement is being implemented. Reading Clauses (a) and (b) of Sub-section (1) of Section 392, it appears that Parliament did not want the court to be functus officio as soon as the scheme of compromise and arrangements is sanctioned by it. The Court has a continuing supervision over the implementation of compromise and arrangement. Unenvisaged, unanticipated, unforeseen or even unimaginable hitches, obstructions and impediments may arise in the course of implementation of a scheme of compromise and arrangement and if on every such occasion, sponsors have to go back to the parties concerned for seeking their approval for a modification and then seek the approval of the court, it would be a long-drawn out, protracted, time-consuming process with no guarantee of result and the whole scheme of compromise and arrangement may be mutilated in the process. Parliament has, therefore, thought it fit to trust the

wisdom of the court rather than go back to the interested parties. If the parties have several times to decide the modification with the democratic process, the good part of an election machinery apart, the dirt may step in, the conflicting interests may be bought and sold, and, in the process, the whole scheme of compromise and arrangement may be so twisted and torn out of context as to be thoroughly useless and may be jettisoned. In order, therefore, to guard against this eventuality and situation, which is clearly envisageable, Parliament has conferred power on the court, not only to make modifications even at the time of sanctioning the scheme, but at any time thereafter during the period the scheme is being implemented. Conceding that, before the Court sanctions the scheme, it partakes the character of an emerging contract between the company and the creditors and members; once the court approves it, it becomes a statutorily enforceable contract even on dissidents, with power in the court to modify, amend or correct or revise the contract the outer periphery or the limit on the power being that, after testing it on the anvil of probabilities, surrounding circumstances and the prevalent state of affairs, it can be done for the proper working of the compromise and arrangement, and subject to this limit on the Court's power, the power seems to be absolute and of the widest amplitude and it would be unwise to curtail it by process of interpretation...."

8. Applying the tests laid down by the Apex Court in this decision, in my opinion, this Court is obliged to clarify the position and the doubt, as has been expressed by the revisional authority in its order dated 9th March, 2001. That course is permissible by virtue of the plenitude of powers, which is coupled with duty, u/s 392 of the Companies Act, to continually supervise the carrying out of the compromise and/or arrangement and issue such directions as may be necessary for its proper working. It cannot be disputed that in para 5 of the order, the revisional authority has adverted to the pending proceedings before this Court and has also gone on record to observe that the order passed in favour of the Applicants for transferring the membership in its name was premature, because the authority failed to first direct the parties to the two experts, as was required by the Scheme approved by this Court. In the same para, it is further observed by the revisional authority that it had no jurisdiction to comment upon the issues, which touch upon the provisions of the Companies Act. In other words, the revisional authority has set aside the order of the lower court because of the aforesaid doubts, which weighed on its mind. The said doubts can only be clarified by this Court to ensure carrying out the compromise and/or arrangement sanctioned by this Court viewed in this perspective, I find no substance in the argument that the Applicants are precluded from seeking any relief from this Court on the ground that they have elected their remedy before the authority under the provisions of the Maharashtra Co-operative Societies Act. As mentioned earlier, this order would only clarify the position in relation to the scheme already approved by this Court and I am not examining, nor I may be understood to have examined, any contention or, for that matter, the correctness of the opinion expressed by the Authorities under the provisions of the Co-

operative Act in relation to the requirements or compliances to be made under the provisions of the Maharashtra Cooperative Societies Act or the Rules framed thereunder.

9. It was next argued on behalf of the Respondents that the revisional authority has interfered with the order of the Deputy Registrar on several grounds, inter alia, that the Applicants have committed default in payment disentitling them, from membership under Rule 24 of the rules; inapplicability of the Companies Act to the Co-operative Societies by virtue of Section 167 of the Maharashtra Co-operative Societies Act; pendency of suit No. 1577 of 1988 seeking specific performance of some of the Family Arrangements reached between the parties; the fact that the applicants did not first seek appropriate directions from the two named experts; and of non-compliance of various provisions of the Maharashtra Co-operative Societies Act. As mentioned earlier, I am not dealing with those aspects, nor sitting in appeal over the decision of the revisional authority, but this order would only clarify the doubts expressed by the revisional authority in relation to the issues arising from and under the scheme sanctioned by this Court. In other words, the reliefs in terms of prayer Clauses (a) and (b) of this application will be subject to compliances to be made by the Applicant Company in relation to the provisions of the Maharashtra Co-operative Societies Act and rules framed thereunder.

10. It was lastly argued on behalf of the Respondents that the scheme as sanctioned by this Court also recognises that in matters relating to subject flat and basement, opinion of the two named experts would be binding on the parties. It was argued that the experts have already issued directions in that behalf and the same would be binding on the parties, for which reason the Applicants are not entitled for the reliefs claimed in this application. This contention has been, in my opinion, rightly resisted on behalf of the Applicants on the grounds that, in the first place, the purported directions given by the two named experts cannot be reckoned for deciding the present application. Reliance has been rightly placed on the observations made in the decision of this Court dated 14th September 1990 in Company Application No. 191 of 1990, wherein the Court, after considering the submissions, has observed that it is an admitted position that the said directions have not been accepted by all members of Mansukhlal group, in spite of the fact that Sarvadaman has initialled the draft directions. It is further observed that it was clear that decisions taken by Sarvadaman are not always accepted by the other members of his group or by the Applicant Company. The Court went on to record a clear finding that, in its opinion, it was clear that the Respondents herein could never have presumed or implied an ostensible authority. In other words, it is contended that the efficacy of the purported directions issued by the two named experts has been questioned in that proceedings and the Petitioners plea in that behalf has been accepted, which decision has become final. Moreover, what is relevant to notice is that, admittedly, the said directions are stated to have been issued much prior to the scheme was sanctioned by this Court on 3rd September, 1986. In my

opinion, therefore, those directions, particularly with regard to the subject properties, are not the basis for sanctioning the scheme by this Court. On the other hand, the parties are bound by the scheme as sanctioned by this Court and will have to act in furtherance of that scheme. By virtue of the sanctioned scheme, the flat and basement has already vested in and transferred to the Applicant Company by virtue of Section 394(2) of the Companies Act. In other words, the question of referring the matter to the two experts with regard to transfer of membership thereof in favour of the Applicant Company does not arise at all; because by virtue of the scheme sanctioned by this Court, the subject flat and basement are already transferred to and vested in the Applicant Company. Moreover, the pendency of any other proceedings between the parties for specific performance cannot be the basis to disentitle the Applicant Company for transfer of membership in its favour, especially when the said property has already vested in and stood transferred in favour of the Applicant Company under the said scheme. The scheme clearly provides for automatic transfer and vesting of the said property with effect from 1st January, 1983. The fact that the said property has been shown in the balance sheet of respondent No. 1 as at 31st December, 1982 as belonging to Kanjur Division of Respondent No. 1 cannot be disputed and if it is so, by virtue of the sanctioned scheme, the same automatically stood vested in and transferred in favour of the Applicant Company with effect from 1st January, 1983.

11. Accordingly, this application succeeds in terms of prayer Clauses (a) and (b), subject to the necessary compliances to be made by the Applicant Company in terms of the provisions of the Maharashtra Co-operative Societies Act and/or the Rules framed thereunder. No order as to costs.

12. At this stage, Mr. D"Vetre prays that the interim arrangement in terms of order dated April 18, 2001 be continued for some time to enable the Respondents to take up the matter in appeal. The request seems to be reasonable. Interim arrangement as obtained by virtue of order dated April 18, 2001, be continued till 19th June, 2004.

13. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.