

(1974) 12 GUJ CK 0001

In the Gujarat High Court

Case No : Company Petition No"s. 9 of 1965 and 12 of 1974, Company Application No. 43 of 1972

In Re: Hathising Manufacturing Company Ltd. (In Liquidation)

Date of Decision : 10-12-1974

Acts Referred:

Companies Act, 1956 — Section 391, 391(1), 391(2), 393, 457

Industries (Development and Regulation) Act, 1951 — Section 18A, 18B(2), 18C, 18E

Citation : (1976) 46 CompCas 59

Hon'ble Judges : D.A. Desai, J

Bench : Single Bench

Advocate : I.M. Nanavati, V.B. Patel, for Official Liquidator, G.N. Desai, for Ahmedabad Municipal Corporation, K.G. Vakharia, for Employees' State Insurance Corporation, B.R. Shah, for Ambica Industrial Development Corporation, M.B. Shah, for Sales Tax Commissioner, S.B. Majumdar, for Textile Labour Association and M.I. Hava, for State of Gujarat, for the Appellant;

Judgement

D.A. Desai, J.—One Shri Rajendrakumar Maneklal has filed this petition u/s 391(1) of the Companies Act, 1956, praying for an order sanctioning the scheme of compromise and arrangement between Hathising Manufacturing Company Ltd. (in liquidation) (hereinafter referred to as "the company") and its members and creditors.

2. The company was incorporated on 14th July, 1897, under the Indian Companies Act, 1887. At the relevant time, its original authorised capital was Rs. 5,25,000, consisting of 525 equity shares of Rs. 1,000 each. Its issued, subscribed and paid up capital was Rs. 4,45,000 consisting of 445 equity shares of Rs. 1,000 each. Subsequently, by amendment and alteration of the capital clause of the memorandum of association, the issued, subscribed and paid up capital was Rs. 2,22,500. In all, 890 shares each of Rs. 250 fully paid were subscribed. The main object for which the company was incorporated was spinning of cotton yarn. In course of time, it had an installed capacity of 14,000 spindles. The company was registered under the Industries (Development and Regulation) Act, 1951, on 26th October, 1953, under registration certificate

bearing No. R/10(a)/509

No. R/23(1)/461.

Initially, the company was progressing well, but subsequently in the early fifties it weathered a heavy storm and on 27th of April, 1957, it was forced to close down its business. The Government of India appointed a committee of inspection under the chairmanship of Shri Arvind Mafatlal for technical examination of the spinning unit of the company to ascertain whether it can be restarted. The committee submitted its report on 18th February, 1958; fortunately those then in management and control of the affairs of the company restarted the spinning unit of the company on 28th January, 1958. But it had again to weather a heavy storm and its financial difficulties multiplied with the result that it again closed down its business on 20th October, 1959. Before, however, closing down, the directors then in the management of the company, executed an equitable mortgage on the land, building and machineries in favour of one Shri Rajendrakumar Maneklal and others on 14th July, 1959, to secure repayment of Rs. 12,70,710.71. One Shri Ambalal Mulchand Shah was appointed an Authorised Controller by the Government of India u/s 18A of the Industries (Development and Regulation) Act by an order dated 28th July, 1959. The authorised Controller took charge of the spinning unit of the company and restarted it, till again it was closed down on 14th July, 1965. When the Authorised Controller took over in July, 1960, the total accumulated carried forward loss was to the tune of Rs. 36,63,175. In order to find liquid capital for running the mills, the Central Government gave direction u/s 18E of the said Act to the Authorised Controller, inter alia, to mortgage the entire assets in favour of the Government of Gujarat, simultaneously conferring upon him powers under sections 18B(2) and 18C. The Authorised Controller borrowed funds from the State Bank of India, possibly on the guarantee of the Government of Gujarat and on this guarantee, the Authorised Controller borrowed Rs. 8,50,000 from the State Bank of India on 26th November, 1961. The amount was to be secured to the State of Gujarat by way of mortgage by hypothecation in accordance with the terms and conditions mentioned in resolution of the Government dated 21st November, 1961. The State of Gujarat as per its resolution dated 24th July, 1963, extended the guarantee to cover a further loan of Rs. 5,00,000 by the State Bank of India against the mortgage of the assets of the company in favour of the State of Gujarat. A third extension was granted on 15th May, 1965, for a further loan of Rs. 3,41,000 on identical terms. Ultimately, the Authorised Controller and possibly the State of Gujarat were exhausted and the company again came to a standstill. But a noticeable event took place before the Authorised Controller finally walked out in that he created regular mortgage for the entire amount of all the assets of the company in favour of the state of Gujarat and after the State of Gujarat was assured that it has become a secured creditor, on the next day, the State of Gujarat as secured creditor filed Company Petition No. 9 of 1965 for winding up the company. The performance first of the private management and then Authorised Controller had led the company on the date of its closure to

accumulated loss of Rs. 36,63,175. Then starts the chequered history of litigation keeping this productive unit unproductive and unutilised for a span of nine years with indescribable miseries of unemployed workmen which, to put it mildly, a developing country can ill afford. Whatever that may be, it would be necessary to refer to some of the proceedings which were commenced against the company or some persons who were in management at one or other time. The first shot was fired by the State Government through the Authorised Controller by filing Civil Application No. 308 of 1964 in the City Civil Court at Ahmedabad challenging the creation of the equitable mortgage by the directors in favour of Shri Rajendrakumar Maneklal and others. However, this application was withdrawn in 1970, for an identical prayer. After the petition for winding up the company was made, the court appointed the official liquidator as provisional liquidator. The court ultimately made an order on 16th August, 1965, winding up the company and appointed the official liquidator as the liquidator of the company.

3. The official liquidator obtained directions of the court on 5th March, 1968, for sale of assets of the company. Possibly, this direction was obtained on a report without complying with the procedure prescribed under rule 139 of the Companies (Court) Rules, 1959. This has some bearing on the future course of events and, therefore, it is necessary to take note of it. When the offers for sale of the assets of the company were invited, one M/s. Ambica Land Development Corporation gave its offer as per its letter dated 9th April, 1968, disclosing its desire to purchase the assets for Rs. 14,00,101. Along with the offer, the intending purchaser deposited Rs. 25,000 as per the terms for making the offer and when the offer was accepted, it deposited 10% of the proposed purchase price, being Rs. 1,40,011. Before the sale could go through, a judgment was pronounced by a Division Bench of this High Court in *In re Anant Mills Ltd.*, wherein it was held that rule 139 is mandatory in terms and any sale in violation of rule 139 would be illegal and void. Possibly taking note of this decision, the liquidator took out judge's summons in Company Application No. 77 of 1968 challenging the sale of the assets of the company in favour of the intending purchaser. Simultaneously, the intending purchaser also took out judge's summons in Company Application No. 79 of 1968 for leave to institute or file a suit against the official liquidator for specific performance of the agreement of sale. On 21st December, 1972, the liquidator withdrew his summons with liberty to take out fresh summons for directions in respect of the same subject-matter and a consent order was obtained on judge's summons in Company Application No. 79 of 1968 by which the intending purchaser withdrew its offer to purchase the assets of the company, conveyed as per its letter dated 9th April, 1968, and to treat the offer as cancelled. Intending purchaser also made a statement to the court through its advocate that it has no claim hereafter against the official liquidator in respect of the said offer. The court further directed that an amount of Rs. 1,65,011 deposited by the intending purchaser be refunded to the purchaser on all its partners sending the receipt in favour of the official liquidator. A further direction was given that the interest realised by the liquidator on the

said amount be returned to the intending purchaser after 8 weeks.

4. In 1970, Shri Rajendrakumar Maneklal and one other took out judge's summons for taking misfeasance proceedings against the Authorised Controller, Shri Ambalal Mulchand Shah. A question about the proper stamp on the summons arose and it was finally decided in 1973 and the requisite stamp was affixed. It was numbered as Company Application No. 48 of 1973. Shri Rajendrakumar Maneklal and six others took out judge's summons in Company Application No. 42 of 1971, against the official liquidator for a declaration that the equitable mortgage in favour of the applicant by the company on 14th July, 1959, is valid and legal and for incidental reliefs. The liquidator took out judge's summons in Company Application No. 12 of 1973, for obtaining directions as required by rule 139 of the Companies (Court) Rules, 1959, to exercise powers u/s 457 of the Companies Act. This summons was granted on 21st September, 1973. Under the directions given in this summons, the State of Gujarat was called upon to hand over Rs. 34,000 to the liquidator and the amount was paid to the liquidator. This amount represented the cost of protecting the assets of the company for the benefit of the State of Gujarat who claimed to be a secured creditor and who was the petitioning creditor seeking an order for winding up the company. The official liquidator took out judge's summons in Company Application No. 54 of 1973, questioning the validity of the equitable mortgage alleged to have been executed by the directors in favour of Shri Rajendrakumar Maneklal and his companion creditors and there are several other incidental prayers in this summons. The respondents to the summons were Shri Rajendrakumar Maneklal and his companion creditors. They have filed their affidavit-in-reply and the summons is pending. The official liquidator took out another judge's summons in Company Application No. 65 of 1973 against the State of Gujarat and the Registrar of Companies challenging the validity of the three mortgages executed by the Authorised Controller in favour of the State of Gujarat. The State of Gujarat has filed its affidavit-in-reply and the summons is pending.

5. In the meantime, Shri Rajendrakumar Maneklal filed Company Application No. 43 of 1972, u/s 391(1) of the Companies Act, praying for directors for convening the meetings of the equity shareholders and unsecured creditors for examining and if thought fit to approve with or without modification the scheme of compromise and arrangement proposed by one Shri Chhotalal Devanand Shah. The summons came up for directions before B. J. Divan J. (as he then was), who by his order dated 5th June, 1972, and 3rd July, 1972, directed different meetings of different persons interested in and affected by the scheme of compromise and arrangement to be convened and appointed Shri S. D. Parekh, Assistant Registrar of this High Court and failing him Shri K. C. Mankad, Assistant Registrar of this High Court, as chairman to preside over the meetings. The State of Gujarat claiming to be a secured creditor attended the meeting through one of its officers, and held discussion with the chairman and the sponsor of the scheme with regard to the scheme proposed by the sponsor qua the claim of the State of

Gujarat. A similar procedure was adopted with regard to the claim of Shri Rajendrakumar Maneklal and companion creditors. Various meetings of different classes of members and creditors were held on different dates and were adjourned from time to time and it will not be necessary to clutter the record to refer to each meeting in detail, save and except that a meeting of the workmen, who were in employment of the company till the company closed down represented through their representative textile labour association was convened pursuant to the directions given in Company Application No. 86 of 1972. This meeting was actually held on 15th October, 1972, but it had to be adjourned to await a report of an expert who would give technical advice about the conditions of the spinning unit of the company, whether it can be restarted. Before the meeting could be convened, the petitioner took out a judge's summons in Company Application No. 44 of 1973 praying for direction that the liquidator be directed to verify the claims of the creditors belonging to the class of labour workmen on the basis of the claim lodged with him. It is at this stage that the matter came up before me.

6. When Company Application No. 44 of 1973 was taken up for giving appropriate directions to the liquidator, I had an opportunity to peruse the scheme because it was at that stage that I came to handle the matter for the first time. The scheme was thoroughly unconscionable, absolutely unjust and unfair and the court should have never wasted its time in even prima facie examining it, much less the time of all concerned should be taken to examine the scheme. It was a tripartite venture for dividing amongst themselves the body of an insolvent company, the partners being the State Government, whose Authorised Controller contributed his own mite to complete the ruination of the company, the past management who squeezed everything out of the company leaving it a skeleton to be taken over by the Government; and the sponsor of the scheme who wanted to dismantle the machinery and make profit out of the speculative prices of the land on which the spinning unit of the company was installed. The most damnable feature of the scheme was that it offered Rs. 25,000 in satisfaction of all their claims in lump sum to the workmen who were the worst sufferers of the inept management of the Authorised Controller and the past management. One can hardly conceive of such a naked exploitation of the poorest segment of the society; but then there are people who can sponsor such a scheme and courts are asked to examine it. The moment this fact came to light, I did not want to waste a single minute of the court's precious time to further examine the scheme by giving an opportunity to the sponsor of the scheme to invite me even to look into this absolutely unjust and unfair proposal. I straightway proceeded to dismiss it and gave my detailed reasons why the court cannot be a party to such an unconscionable transaction. If the parties can do it outside the court, they are free to do it within the four corners of the law, but to search or seek court's stamp on this criminal venture, I refused to be a party to it. It is at this stage that a slight ray of social economic justice dawned upon those who are interested in pursuing the matter a little further. A halting

step was taken to offer instead of bare Rs. 25,000 which would have hardly provided one anna in a rupee to the workmen and to which one would not care to give consent, the offer was raised to 50 per cent. of the claim of the workers who cannot be offered re-employment. An attempt at eating away the carcass of the insolvent company was put an end to by asking the sponsor to state in no uncertain terms that the scheme is for re-starting and rejuvenating a sick unit to be used for productive purposes and not for sharing the bones and hide because flesh was already eaten away. The sponsor acted, I must frankly confess, a little positive by saying that he would amend the scheme by offering 50 per cent. to the workmen who cannot be re-employed and continuity of service to workmen who are willing to join and who are below the age of superannuation. An assurance was given that if the scheme goes through an undertaking would be given to the court to restart the sick unit. Some ray of hope appeared in the eyes of the workmen who appeared at the hearing of the matter in the court without understanding even a bit of what was going on. It was at one stage necessary to disclose to them who are putting impediments in the path of progress and I was inclined to give direction that everybody must address the court in Gujarati so that the role of each one can be thoroughly exposed. However, frankly it must be again confessed that wiser counsel prevailed and we reached a very satisfactory conclusion and the end of the judgment will clearly disclose it.

7. After making two basic changes in the scheme, namely, that the scheme is for restarting the unit by necessary process of rationalisation and renovation and re-employment of old workers and providing employment to new workers by opening up job avenues and offering those, who cannot rejoin, a reasonably decent sum which may appeal prima facie to the court, the scheme was placed before the court for reconsideration and an application being Company Application No. 50 of 1973 for review of my order dismissing the application was moved. At that stage, another impediment was put forth probably with an idea that the court would be ultimately compelled to grant or sanction the scheme for dismantling and scrapping the unit. The impediment put forth was that the registration certificate of this company under the Industries (Development and Regulation) Act, 1951, was already cancelled and, therefore, even if the sponsor agrees and undertakes to restart the mill, unless the licence is restored, he cannot do it. And once the licence was cancelled, the spindles must have been distributed to some other manufacturer and unless someone applies for fresh licence and goes through the entire gamut of procuring a new licence, it is not possible to think of restarting the mill. I was somehow or other not impressed by the so-called Herculean impediment as it was once described.

8. At this stage, the liquidator took out a very well considered judge's summons in Company Application No. 32 of 1974, praying for an order setting aside the order revoking or cancelling the registration certificate/licence granted to the company under the Industries (Development and Regulation) Act on various grounds set out in the affidavit in support of the summons. The petitioner followed suit by taking out identical summons in Company Application No. 34 of

1974. Notice of the summons in each case was ordered to be issued to the Central Government and I am very happy to record that the Central Government reacted in a forthright and constructive manner by cancelling the order contained in letter dated 24th November, 1967, by which registration/licence certificate of the company was revoked. The letter dated 19th November, 1974, bearing No. 6/11/74-Tex. II from the under Secretary to the Government of India, Ministry of Industrial Development, in terms says that the order revoking the licence is cancelled and "this" letter revives the registration certificate mentioned above. In other words, the licence stands there again as effective as it was before this cloud of revocation cast its shadow on its validity. The last hope of getting scramble of dismantled company so as to make unearned profit disappeared and the sponsor was left with no alternative but to come out frankly with the definite and constructive proposals for restarting the mill with whatever obligation it involved.

9. After thus removing all the intermediate impediments, the matter was set down for examining the scheme on merits with the alterations and modifications proposed by the sponsor to bring the scheme in conformity with the discussion in the court. Initially, the scheme may be examined from the standpoint of legal formalities that ought to be completed before the court proceeds to examine the scheme on its merits. By a catena of decisions, it is well-established that before the court sanctions a scheme, it will normally need to be satisfied on three points : (1) whether the statutory provisions have been complied with; (ii) whether the class or classes affected by the scheme have been fairly represented ; and (iii) whether the arrangement is such as a man of business would reasonably approve.

10. Applying the first test, whether the statutory provisions have been complied with, it must be made distinctly clear that except for some contentions taken on behalf of the Commissioner of Sales Tax, Gujarat, and the Ahmedabad Municipal Corporation, no one has raised a contention about the formalities which must precede the stage when the court sanctions the scheme. I will deal with the case put forth by the Commissioner of Sales Tax as well as the Ahmedabad Municipal Corporation presently. Suffice it to say that they claim to be creditors each in its own class and wanted the arrangement as desired by them to be offered by the sponsor and that they would agree or withhold their consent to the scheme depending upon the understanding that they may be able to arrive at with the sponsor of the scheme. However, to carry the steps taken by the sponsor, before reaching the present stage of examining the scheme on merits, it may be stated that an appropriate judge's summons was taken out in Company Application No. 43 of 1972, inviting the court to convene a meeting of different chalcies of members and shareholders to wit : (i) Equity shareholders, (ii) secured creditors, (iii) separate meeting of specified creditors, such as (a) Ahmedabad Municipal Corporation, (b) Employee's State Insurance Corporation, (c) Sales Tax Commissioner, (iv) Unsecured creditors; and (v) Workmen of the company employed by the company till the date of its last closure. The order specified the

quorum for each meeting and appointed one Shri S. D. Parekh, the Assistant Registrar of this High Court to be the Chairman to preside over each meeting. The report, or for that matter reports, submitted by the chairman gave a vivid picture of what transpired at each meeting. Now, before meetings were convened, the chairman issued notices and annexed to the notice the whole scheme as proposed by the sponsor and explanatory statement as required by section 393 of the Companies Act in printed booklet containing the three documents with a form of proxy too. No grievance has been heard from any quarter than the explanatory statement did not comply with the requirement of section 393.

11. The meeting of the equity shareholders was held at 1-00 p.m. on 17th September, 1972. This meeting was attended by 19 shareholders, 17 in person and two by proxy; their aggregate holding was 493 shares. It may be recalled at this stage that the issued, subscribed and paid up capital of the company consists of 890 shares of Rs. 250 each fully paid. It would thus appear that more than 50 per cent. or to be exact about 55 per cent. of the equity shareholders attended the meeting and the report shows that the scheme as then proposed, especially the provision affecting the equity shareholders, namely, that each one will transfer his share to the sponsor or his nominee on payment of Rs. 10 per share was unanimously approved.

12. Next meeting was of the secured creditors. The State of Gujarat claiming to be the secured creditor under three mortgages executed by the Authorized Controller in its favour, two dated 15th June, 1965, and the third dated 3rd July, 1965, for an aggregate amount of Rs. 16,42,263.86 attended through its officer in the Industries, Mines and power Department. Similarly, one Smt. Subodhkumari Rajendrakumar Sheth attended the meeting on behalf of Shri Rajendrakumar Maneklal and his companion creditors who claim to be secured creditor under the equitable mortgage dated 14th July, 1959, purporting to have been executed by the company in favour of the creditors for an aggregate amount of Rs. 12,70,710.11. It may be mentioned that in Suit No. 2 of 1970 the State of Gujarat has challenged the validity and legality of the equitable mortgage in favour of Shri Rajendrakumar Maneklal and his companion creditors and similarly in Company Application No. 42 of 1971 Shri Rajendrakumar Maneklal and his companion creditors have challenged the validity of three mortgages executed by the Authorized Controller in favour of the State of Gujarat. It may incidentally be mentioned that the liquidator has challenged the validity of three mortgages in favour of the State of Gujarat in Company Application No. 65 of 1973, and in Company Application No. 64 of 1973, he has challenged the validity of equitable mortgages in favour of Shri Rajendrakumar Maneklal and his companion creditors. If these proceedings had been heard on merits, it would have thrown lurid light on the machination of those in power disclosing their scramble for the assets of an insolvent company, which winding-up proceedings are expected to put an end to. When Shri Rajendrakumar Maneklal had his stranglehold on the affairs of the company, as he was holding a majority block of

shares in the company, he modulated the affairs of the company to his advantage. When the Authorised Controller stepped in, not only that the management did not improve, but even the Government behaved like a typical money-lender in calling upon the Authorised Controller to executed three mortgages and after thus securing its money quietly proceeded to file a winding-up petition. There was a sort of an unholy scramble for picking up and running away with whatever Assets of an insolvent company that came handy to the detriment of all others and to the detriment of the public interest too, because productive unit was completely ruined almost beyond repair and the present attempt is to reassemble it from a heap of ash. However, these contending claimants have settled their claims with the sponsor of the scheme in the scheme and, therefore, it would not be necessary now to examine the rival contentions on merits, though I must confess, I would have really enjoyed doing it. Ultimately, it would have exposed the notorious manipulations in the private sector management. But this will have to wait a better opportunity. In fact, initially, my reaction was that this sponsor is a protege of Shri Rajendrakumar Maneklal who has been asked to put forth an entirely unfriar scheme to provide a cloak and sheath to the misdemeanour both of the past private management as well as the Authorised Controller to save them from exposures in winding-up proceedings. But the scheme has been changed, modified or resurrected much beyond its original undersirable shape and I have reason to believe that, in the course of examination of the scheme, possible the sponsor's intentions have changed for the better and he has now ceased to provide a cloak or sheath to cover the mismanagement of some people at the cost of public money and public interest. With certain modifications, the Stage of Gujarat has accepted the scheme as it is being finally sanctioned. So also Shri Rajendrakumar Maneklal and his companion creditors through Mr. C. C. Gandhi, learned advocate, has unreservedly accepted the scheme as is now being sanctioned and, therefore, ti can be said with confidence that the secured creditors or those claiming to be secured creditors have accepted the scheme as it is now being sanctioned.

13. The next important creditor is the Ahmedabad Municipal Corporation. When the direction was sought u/s 391(1), the sponsor of the scheme has described the Ahmedabad Municipal Corporation as the specified but unsecured creditor. That was never questioned. At the meeting of the Ahmedabad Municipal Corporation, it is true that the Corporation claimed to be the secured creditor and supported its claim by reference to section 141 of the Bombay Provincial municipal Corporation Act, 1949. In the scheme as originally proposed the sponsor had offered to settle the dispute between the company and the Corporation with regard to the past and reassuring liability of the company for municipal taxes and agreed that such amount as may be settle between the sponsor and Corporation or found to be due and payable by the company shall be paid by the sponsor to the Corporation in six equal installments of four months each, the first installment being payable on the company shall be of four moths each, the first installment being payable on the expiry of four months from the

date on which the final sanction to the scheme is accorded by the High Court and possession of the block of the company is handed over to the sponsor of the scheme.

14. One Mr. A. K. Zaveri, Assessor and Collector of the Ahmedabad Municipal Corporation, attended the meeting on behalf of the Corporation and contended that the Ahmedabad Municipal Corporation should be considered as the secured creditor for the payment of the outstanding arrears of municipal property tax and education cess. He produced statement of the tax in arrears payable by the company and as per the statement as on 31st March, 1972, Rs. 4,68,810.55 were due payable by the company to the Municipal Corporation towards property tax and education cess. As a corollary to the statement that the Ahmedabad Municipal Corporation is a secured creditor, it was contended at the meeting that it would be entitled to priority in payment and the scheme as offered by the sponsor was not acceptable to the Corporation. The one statement was made by Mr. Zaveri, which may be reproduced in extenso :

"However, the Corporation has no objection to abide by whatever orders that may be passed by the honourable High Court at the time of sanctioning finally the arrangement which may be arrived at as a result of the meeting. The Corporation reserves its right to submit its say before the honourable High Court of Gujarat at the time when the scheme or arrangement is submitted for the necessary action."

15. It would thus appear that the consideration of the scheme and acceptance or rejection remained inconclusive and in terms the Ahmedabad Municipal Corporation agreed to submit to the orders of the court. But the chairman, in paragraph 9 of his report, further observed that Mr. A. K. Zaveri further stated that subject to what has been recorded as the statement of the case of the Corporation, the Corporation approved the scheme. The stand appears to be slightly self-contradictory but it would reveal one fact the Corporation did not actually oppose the scheme or firmly rejected the scheme but probably wanted to keep all its options open so that proper arrangements can be worked out at the time of final sanctioning of the scheme and that the Corporation may not have the misfortune or ignominy of rejection of the scheme on account of its recalcitrance. Now, at the hearing of the scheme, Mr. G. N. Desai, learned advocate, appeared and argued the point for some time and then Mr. M. D. Pandya took over. It was contended that, on the date of winding-up, the company was in arrears to the tune of Rs. 73,945.09 and that there is no dispute about this amount and the sponsor should straightway pay the same. It was further contended that there cannot be a blanket stay against the recovery of occurring property tax and education cess and that in respect of the tax and cess the Corporation is a secured creditor and it opposed the scheme or compromise offered to it and that it chose to remain outside winding-up. It was also contended that the statutory charge cannot be waived. And finally a legal contention was sought to be put forth that nothing can be done by way of a

scheme of compromise and arrangement between we persons which the parties cannot do by way of contract inter vivos. As a corollary, it was contended that statutory charge cannot be waived and even if it was contended that statutory charge cannot be waived and even if it can be waived, the Corporation is not inclined to do it. It would have been quite interesting also to examine the effect of this statutory charge upon an order of winding-up being made and when the assets of the company are in the hands of the liquidator. The claim that the Corporation chooses to remain outside of the winding-up is now of academic interest, because if I sanction the scheme I will have to cancel the winding-up order and we will be relegated back to the position is 1955 when the winding-up order was made. The claim that the Corporation chooses to remain outside winding-up is arrange and curious, if not downright contradictory, because an affidavit was filed by the same Shri A. K. Zaveri before the liquidator in an attempt to prove its claim in winding-up. Assuming without enter deciding or admitting that the Corporation can Claim to the a secured creditor, in view of the statutory change, it was up to it to remain outside winding-up, or come in the winding-up and give its charge. The moment the Corporation submitted its affidavit with a view to proving its claim before the liquidator in winding-up, it decided to come into winding-up and impose facto waived the charge. I need not express any on any opinion on this point, because at a later stage wiser counsel prevail with the Corporation and Mr. Pandya on behalf of the Corporation staged as under :

"The Corporation agrees to accept the amount in arrears in six equal installments each of four months" duration, the first installment to commence after expiry of four moths from the date on which the final sanctions accorded by the court to the scheme of arrangement and possession of the block of the company and affairs of the company is handed over to the sponsor. The Corporation reaffirms that it has a charge and does not waive it and that in the event of any breach of the terms of the compromise, it would be free to enforce the charge."

16. When this concession to the scheme on behalf of the Corporation was being discussed, Mr. Pandya made further statement that the Corporation has no objection to the court fixing date of first installment and reasonable spread-over of installments and a further reasonable modification of the terms suggested by the Corporation so as to make it workable by providing a breathing time to the sponsor of the scheme of payment. Mr. Pandya made it distinctly clear that in order to be helpful so that a sick unit restarts, the Corporation would submit to the scheme as may be reasonably modified by the court and would accept the scheme and come within the scheme and remain in the scheme. I then asked Mr. Pandya what about the charge which the Corporation is not willing to waive and to that Mr. Pandya answered that while retaining the charge units statutory form, the Corporation concedes and stages that it would not unilaterally proceed to enforce the charge even if the occasion arises and that before undertaking any step to enforce the charge, it would approach the court under the scheme and seek directions of the court. These are very fair concessions and both of them

deserve to be accepted.

17. Mr. I. M. Nanavati, learned advocate, who appeared on behalf of the sponsor of the scheme, conceded that the suggestion of the Corporation will be incorporated in the scheme but requested the court to phase out a proper program of payment of the instalments. To begin with, it must be stated that Rs. 73,945.09 were found to be due and payable by the company to the Corporation on the date of winding-up and that at least at present this amount is not in depute except that the company may have to claim some refund from the Corporation. Subject to this claim of refund, which must be immediately preferred, and got settled, the amount that was due and payable on the date of winding-up should be paid in one installment within six months from the date on which the ring-frame department of the spinning upon of the company Starts working; in other words, the amount is to be paid latest on the expiration of six months from the date on which the spinning unit starts working, for which the regular phase out schedules are being annexed to the scheme, which is being finally sanction by the court. For the balance, one-third of the amount payable each year should be paid in six equal installments of four months duration commencing from the date on which the installment of Rs. 73,945.09 is paid. If something more than one-third is payable on the claim being adjudicated in a proceeding now pending in the Supreme Court, the High Court of Gujarat and the Small Causes Court, Ahmedabad, the same will be payable in one installment within four months from the last installment. This would assure payment to the Corporation at regular intervals and the sponsor will have breathing time in making payment. I must confess that some more time is given to the sponsor to pay up the tax, but then if primary consideration in sanctioning the scheme is to restart a sick unit, provide employment and assure production, two prime needs of the country units present stage of economy, then the sponsor should have enough liquid funds for meeting its production targets and the Corporation may wind for some time more. That is my guiding consideration.

18. The Employees" State Insurance Corporation was shown as the secured creditor. The meeting Was held by the sponsor of the scheme with one Mr. V. N. Kachru, Depute Regional Director, Employees" State Insurance Corporation, Ahmedabad, on the same day at 12-30 p.m. He presented a letter dated 17th September, 1972, which spelt out the terms on which the Employees" State Insurance Corporation would accept the scheme. The total claim of the Corporations Rs. 10,859.55 payable with running interest at 6 per cent. per annum. The Corporation insisted upon full payment immediately. The sponsor accepted the suggestion and the Corporation has accorded it approved to the scheme.

19. Next meeting was with the officers of the Sales Tax Department. But no one attended the meeting and the meeting was adjourned to 18th October, 1972. At the reconvened meeting on 18th October, 1972, one Shri Maharaja attended on behalf of the Commissioner of Sales Tax and produced a letter showing the terms

on which the Sales Tax Commissioner approves the scheme. The claim of the sales tax Commissioner approves in the relevant portion of the scheme. The sponsor had offered to pay whatever is ultimately found due as and by way of sales tax within a period of twelve months from the date on which the scheme is finally sanctioned by the High Court and possession of the block of the company is handed over to the sponsor of the scheme. All these stages have become irrelevant because at that time the sponsor of the scheme was processing a scheme for scrapping the spinning unit and, therefore, the sponsor had his own time schedule for payment, because he would sell the scrap and land and realise the money and would pay off various types of claims. But the whole schedule of payment as proposed has become otiose because the scheme has undergone a wholesale change, namely, from scrapping to running. Therefore, rescheduled phased out payment program had to be devised. Accordingly, in the case of sales tax initially phased out program cannot be adhered to and, therefore, Mr. M. B. Shah, learned Assistant Government Pleader, was invited to submit fresh proposal about the claim of the sales tax. It so transpired that there were ex parte assessments for the years 1963, 1964 and 1965. Mr. V. B. Patel, learned advocate who appeared for the official liquidator, informed the court that in an appropriate proceeding taken by the liquidator, ex parte assessments for the years 1964 and 1965 have been set aside and the matter has been remanded to the Sales Tax Officer for redetermination. Mr. Patel also informed the court that the liquidator had missed an opportunity to challenge the ex parte assessment for the year 1963. In the ex parte assessment for the year 1963, the liability has been determined at Rs. 38,684.56. Mr. M. B. Shah, learned Assistant Government Pleader, appeared for the Sales Tax Commissioner and suggested that all the amounts payable as and by way of sales tax should be paid within four months from the date of the final sanctioning of the scheme. Now, it may be mentioned that it would not be fair to permit ex parte assessment for the year 1963 to stand as it is, even though the liquidator had inadvertently missed preferring appeal against it and challenge it by appropriate proceedings and the court can take a cue from the decision of the Assistant Commissioner of Sales Tax, when in an appeal preferred by the liquidator against the ex parte assessments for 1964 and 1965, ex parte assessments have been quashed and set aside and the matters have been remanded to the Sales Tax Officer. Had proper appeal been preferred, for 1963 assessment also, the same outcome may have easily come. Now, such a procedural wrangle cannot be allowed to stand in the way of proper justice being done. As part of the scheme, the court directs the Commission of Sales Tax to exercise his suo motu revisional jurisdiction and set aside the ex parte assessment for the year 1963 and remand the proceeding back to the Sales tax Officer to be disposed of along with the proceedings for the assessment for the years 1964 and 1965. After the liability is thus computed, if necessary by way of appeals and revisions after the assessment is done by the Sales Tax Officer, the sponsor should pay. There are two assessments of the year 1962, one in the amount of Rs. 2,620.17 and another in the amount of Rs. 462.20. There is no dispute about this amount and this amount must be paid off

within one month from the date of court Sanctioning the scheme. For the assessments for the years 1963, 1964 and 1965, after the Sales Tax Officer determines the liability, and if the sponsor accepts the liability, the amount shall be paid within six months from the date on which the ring-frame unit of the company starts functioning, or the date of assessment order, whichever is later. If the sponsor chooses to prefer appeal as advised by the legal advisers, he should abide by the orders made by the appropriate authority under the Act itself. Mr. M. B. Shah who appears for the Sales Tax Commissioner is of the opinion that this is a fair compromise for the sales tax department and would like to make it part of the scheme itself and the original scheme would stand modified to the extent hereinabove mentioned. Mr. M. B. Shah stated that the Sales Tax Commissioner unreservedly accepts the scheme as modified by the court, and agrees to abide by it.

20. Then comes the most abominable portion of the original scheme. The meeting of the workmen employed by the company till the date of its closure was convened on 15th October, 1972, around 10 a.m. 202 workmen were present in person and one held proxy on behalf of 290 workmen. There were some workmen who had attended through proxy and simultaneously attended in person but overlapping counting was removed and net calculation of the persons present shows that 202 workmen attended the meeting in person and one held proxy for 115 workmen. Mr. K. S. Nanavati attended the meeting and tried to lure the workmen into the snare. At that time the offer to the workmen was a round sum of Rs. 25,000 in settlement and satisfaction of their entire dues with no hope of getting employment back because the sponsor was bent upon scrapping the mill Luckily for the workmen a very able adviser in the person of Mr. R. M. Shukla, a representative of the textile labour association which is the representative of the workmen, was attending the meeting and he saw through the game of the sponsor and well advised the workmen not to walk into the trap. Mr. Shukla suggested that the scheme must be radically revised with an undertaking to restart the mill, offering to make tremendous sacrifices on behalf of the workmen that they will give up their dues and contribute throw mite to increase production. After such views were expressed on either side, the meeting was adjourned to thrash out some workable solution. As the adjourned meeting of the workmen could not be convened till 17th August, 1973, the chairman submitted his report stating that the adjourned meeting has not been reconvened. Possibly, thereafter, the sponsor got the date extended for convening the meeting Recalling here the fact that by the order dated 14th August, 1973, the original application itself was rejected by the court; subsequently, however, by an order in Company Application No. 50 of 1973, order dismissing Company Application No. 43 of 1972, was reviewed and Company Application No. 43 of 1972 was restored to file and directions were given for convening the meeting of the workmen. Pursuant to the direction, Mr. Parekh convened the meeting of 16th December, 1973, at 10-30 a.m. 163 workmen attended the meeting in person. Mr. R. M. Shukla and Mr. N. A. Vyas,

officers of the textile labour association, were also present. By this time the scheme had undergone a change in relation to workmen. The sponsor agreed that if the registration licence is restored, he with one approved industrialist, shall restart the spinning unit of the company and the sponsor shall pay 50 per cent. of the labour dues including gratuity and closure compensation, retrenchment compensation, bonus, etc., to such workers who have already reached the age of retirement or do not propose to join service of the mill or to their heirs, assignees and executors; and those who want to rejoin will be offered employment, with continuity of service but no retrenchment compensation or gratuity. The scheme had acquired a little respectability at this stage and workmen unanimously approved the scheme as modified. The chairman submitted his report on 19th December, 1973, setting out the aforementioned details. When the scheme came up for discussion before this court, a question was put to Mr. I. M. Nanavati as to what is the total investment that the sponsor will have to make initially for running the unit. I also wanted to know what would be the total liability in respect of the workmen, assuming that 50 per cent. of the workmen at least rejoin and give up their claim on the offer of continuity of service. Full figures were not available to me. In making this query, the idea uppermost in my mind was to ascertain the degree of sacrifices that the poor workmen were being called upon to make in forgoing half of their well-earned and richly deserved money. The sacrifice is expected from a class of persons who sacrifice at their own peril and is being taken advantage of by the State Government and past private management and the sponsor. I was thinking on the line that offer of 50 per cent. in the present context is reasonable, but if the company makes profits at a future date, it should not thrive on the sacrifice of poor workmen and, therefore, a further provision may be inserted in the scheme. It may be something in the nature of a payment of the balance related to profits and dividends. This will give a breathing time to the sponsor and yet in future the workmen may look to the chance of sharing the prosperity of the concern for rebuilding which they made sacrifices. By now one thinking born out of recent experience that has dawned in this type of cases is that the hypothesis on which the scheme is proposed sometimes work out a tremendous advantage unimaginable in favour of the sponsor and that this happens because the last management did not compile the stock or dead stock registers, property. One other factor which is responsible for this situation is that if the unit remained closed for a long period, it almost becomes no man's land except that the liquidator keeps a watchman and tries to protect and preserve the assets. The court has vivid experience on this point, but it is not fair to state it. In any event, when the unit starts and makes profit, shareholders get return and in this case a share of Rs. 250 is made available for Rs. 10. I suggested that the initial offer of 50 per cent. of the dues to the workmen may be accepted but in the event the unit makes profits and declares dividend of 10 per cent. from then onwards an amount equal to the amount of dividend should be set apart for paying to the workers for the balance of 50 per cent. of their dues, the idea being that worst sufferers and least capable of suffering the consequences of mismanagement

should be paid back their hard earned dues. When this was discussed, Mr. I. M. Nanavati suggested that this would be a long drawn out spell and the sponsor will have to go on keeping accounts and workers will have to wait, may be even for a long period and that in fact some round sum should be worked out to be paid in praesenti in equal instalments. All the concerned persons including Mr. Shukla of the Textile labour association suggested that it should be 75 per cent. of the dues and that should be accepted as fair and just. Alternatively, it was also suggested that in case workmen want 100 per cent. of the dues, an option should be given to each worker from amongst those who are not being reemployed that they may be paid 50 per cent. of their dues by certain equal instalments to be worked out in the scheme and to wait for the remaining 50 per cent. after the mill starts making profits and declaring dividends; or they may taken 75 per cent. of the dues in the manner herein above indicated. I feel that the option should be left to the workers to be exercised in a meeting of the workmen to be convened for the very purpose only. Subject to his option, for those who do not exercise the option 75 per cent. of the dues should be paid within a prescribed period by instalments as set out in the scheme itself. I must say that the sponsor has now acted fairly and justly to the workmen and that deserves mention in the judgment. Those who apply for rejoining the mill, they should be taken up subject to this provision that they have not reached the age of superannuation and that they would be offered service with continuity and without break but they would not be entitled to any retrenchment compensation or closure compensation, gratuity, difference in dearness allowance and bonus. This is also accepted by the workmen and endorsed by the textile labour association.

21. The meeting of the unsecured creditors was held on 17th September, 1972, at 1-30 p.m. when five creditors having a claim of Rs. 28,53,344.75 were present. At this meeting that part of the scheme by which the unsecured creditors were offered 2 per cent. of their claim as verified by the chartered accountants was debated and it was resolved that the scheme as proposed be approved and the resolution was unanimously adopted.

22. The analysis herein made would show that all the necessary formalities prior to submitting the scheme for court's sanction have been gone through and the statutory provisions have been complied with. In each meeting, the scheme was properly thrashed out and all those for whom it was unworthy of acceptance, they rightly rejected and reacted. Modifications had to be done in order to make the scheme a little more attractive and that has been done. After the modifications were made the scheme was again offered for consideration, and it has been accepted.

23. On the question with regard to what transpired at each meeting as well as the number of persons present from the class of which the meeting was discussed, it can be stated that each class was fairly represented. In fact the scheme has been approved unanimously. There was no attempt on the part of

the majority to impose itself upon the minority or which has been coerced by statutory majority into falling in line. However, I must frankly say that as far as the equity shareholders and unsecured creditors are concerned, what the sponsor offers is Hobson's choice. In the winding-up, the State of Gujarat and Shri Rajendrakumar Maneklal and his companion creditors claiming to be secured Creditors would eat away very vital of the residue of the company's assets, and one has to recall huge carried forward loss at this stage. Thereafter, come the preferential creditors like the workmen, Employees' State Insurance Corporation, possibly the Sales Tax Commissioner and several others in their line. Necessarily, therefore, nothing would be available to the unsecured creditors and equity shareholder. Therefore, even though whatever is offered to them is so negligible as to merit discussion they had choice between something and nothing. They had but an option either to get nothing or to get something which is paltry. But then nothing can be done for them. Therefore, one can record the satisfaction of the court that it cannot be said that there was some minority challenging the scheme which has been coerced into submission by the statutory majority. I would, therefore, say that not only each class was fairly represented in the respective meetings, but the scheme was well debated and each class has disclosed its commercial judgment in approving and accepting the Scheme and it has been often said that the court should not substitute its own judgment for the commercial judgment of the class affected one way or the other by the scheme of compromise and arrangement.

24. The third criteria is whether the scheme of compromise and arrangement is such as a man of business would reasonably approve. The position can be examined in the wider context and not in the narrower context of the interest adversely affected by the scheme. Today, in our country, the corporate sector of economy has to play a vital role both for phased expansion of the expansion of the economic growth rate which can only be brought about by production and higher production, and the corresponding obligation to provide job avenues is of equal importance. It is the upward trend in growth result in higher economic growth rate which will provide expanded job avenues. And these are the twin objects visualised in the world of economic planning. One cannot push up the living standard of those living below starvation line, unless some job is offered to them. Expansion of job avenues is the need of the day and this can keep pace with the economic growth rate, provided production is pushed up. A sick unit is a luxury, which we can ill afford in the present state of economy. This unfortunate unit is lying idle since the last nine years and it was right in midst of the thickest jungle of litigations. One can confidently say that everybody has contributed its mite to the complete ruination of this unit and over the head of it, enveloped it in litigations which have meticulously passed through every stage from which the luxury of litigation can be taken in this country and we may have to wait for another 15 to 20 years before one can think of infusing life into this dead carcass. At one stage, even the Government of India contributed to the utter confusion by canceling licence by a procedure which in the present context of

judicial process may be sticks. But it has undone a Working which it had done by mere notice of the court for canceling the order revoking the licence. Dead seems to have turned in the grave. Everybody now is in a mood to help in resurrecting and resuscitating a dead unit. It was once said that is spindles cannot work. It was said that licence cannot be recovered. It was said that huge investment would be necessary before smoke can rise through the chimney of the mill. A very ghastly picture was drawn. If was a nightmare. When initially I suggested a change from scrapping to running, it was dubbed as wild dream. But I am satisfied that all those clouds of unthinking mind, not prepared to make venturesome approach, have been dispelled and to the credit of everyone who has now appeared, it must be stated that a very vital and positive contribution is being made to run the unit. How would a businessman look at the scheme. I am not thinking of a businessman of today who wants those profits before doing anything without earning profit. For that type of businessman there is no place in the scheme sanctioned by the court; but an honest businessmen with genuine commercial judgment can Feel very happy as to how by judicial process and legal contrivance a dead unit of production can be revived, revitalised and resurrected. That is our attempt and if one can avoid scrapping machine by profit-oriented businessman, the scheme must go through. I would, therefore, say that this is a scheme of compromise and arrangement which must appeal to a businessman of the type herein discussed and that should be the approach of the court.

25. The next problem that faced the court was whether all these prophets of doom are at all right when they prognosticated that this old sick unit is beyond repair and cannot be worked. The sponsor was directed to produce a technical report, on the efficiency and efficacy of the machinery of the mill. A confidential report prepared by the Ahmedabad Textile Industry's Research Association, properly known as ATIRA, has been put on record. I would not venture to go through the technical details of this report. The summary of the report discloses that not only this unit can be revived but they have given details of the workmen to the employed at regular intervals and the sum and substance of the report is that latest within six months from the date on which the sponsor enters into possession of the block of the spinning unit of the company, it can be restarted as a whole. Undoubtedly, the machinery is very old. There was no attempt at rationalising or remodelling the unit. All the profits were bogged without reploughing anything for renovating machinery. It is because of this policy that when keen competition came, the unit failed to come up to the economic competition and lost. But with the modern technical know-how, the problem did not defy solution. ATIRA's report shows that the unit can be restarted, and in the process, some rationalisation will have to be undertaken and, in the long run, it can be a successful unit. Undoubtedly, in the present days of big gigantic concerns, a unit with an installed capacity of 14,000 spindles cannot be said to be a viable or economic unit. But if the sponsor successfully revitalises this unit, he can certainly hope to aspire for the installed capacity of 25,000 spindles. And the court would strongly recommend that his licence should be expanded for the

same.

26. One stock argument was put forth during the course of discussion that the sponsor should satisfy the court about his financial ability to invest. For some time, I fell in for this type of argument and now I wish I should not have done it. If the sponsor comes with a detailed scheme and he is tied down to an undertaking to the court, it is his responsibility to know wherefrom finances would be brought and today finances come from such diverse sources that it would be inadvisable to expect the sponsor to disclose them in his own interest. It should not be the worry of the court at all. In fact an intermediate worry of this sort lost the scheme in Rajnagar Mills case and I am satisfied that I am not going to raise the question of the financial viability or the capacity of the sponsor to bring finances to run the scheme. He has been sitting in this court. He appears to be a typical businessman. He knows his responsibility. He has agreed to give an undertaking to the court that what would run the mill as per the scheme and schedule annexed to it and that he has modified the scheme with liability to run and what it means and is further conscious of the consequences of an undertaking and its breach. It is his worry to find out finances and I am not interested in exploring from where he is going to bring it. In fact, hereafter, I am not going to permit anyone to pose that that question. It is common knowledge that the mills do not run without money and if one agrees to run the mill he knows wherefrom finances are going to come. In order to see that the court has a positive check on the working of the scheme, more detailed directions are going to be given in this judgment. An apprehension was voiced that if the court sanctions the scheme without examining its economic viability or financial capacity of the sponsor to bring in the required liquid capital, he may again come to grief for want of liquid finances and the court may again be called upon to wind up the company. There is little justification for such apprehension. A businessman who after examining all the aspects of the matter, and after obtaining a detailed technical report on the condition and efficiency of the machinery, and knowing the accumulated losses must be quite well aware of what liquid funds he would require. He is aware of his present liability and future running liability while running the mill. It is too much to expect that he was oblivious to all these consequences and that he has entered upon a hazardous venture without foreseeing the consequences of his act. He would be called upon to deposit certain amount as a guarantee money for implementing the scheme as sanctioned by the court with a reservation that in case of breach the court would forfeit the amount. He would be asked to reconstitute the board of directors as directed by the court with a court's nominee on it. He is being called upon to submit progress report at regular intervals. The textile labour association agrees to submit the detailed report on the steps taken by the sponsor to revive the unit. If all these checks are not sufficient, then a mere statement that he has enough money, would not improve the matter. And yet, in his affidavit dated 3rd October, 1974, the sponsor has set out his financial capacity and his standing in the market. He is also running a spinning unit in the name and style of Vinod

Cotton Industries at Jodia. He says that he has got experience. He has sufficient finance to run the mill and we will not probefurther; probably he may not like. His affidavit should be given its due weight. But I will rest my judgment on my earlier observation that a businessman who is coming forth to run a really sick unit must have finances and knows his wherewithals and knows the ways of procuring liquid finances. Therefore, the question of financial capacity of the sponsor need not detain me any more.

27. As the scheme is likely to be spread over a long period, it is but meet that the court should have a continuous supervision over the scheme and that, therefore, within one month from the date of the sanctioning of the scheme, the sponsor should take out judge's summons inviting the court's directions for reconstituting the board of directors. He may suggest his own nominee and the court would also nominate a director. If the textile labour association is interested in the appointment of its own nominee on the board, it may as well make its won recommendation.

28. That brings me to the most important part of the scheme. The scheme as is now sanctioned by the court is primarily a scheme to restart a closed production unit, a sick unit which even the Government of India did not want to touch under its plan of taking over sick textile units to be run by the National Textile Corporation. Its segregation was complete and everyone shunned it. This apathy has been the cause of its suspended animation over a long period of nine years. The agony of unemployed workmen is immeasurable. Number of workmen are attending this court day to day. They do not understand what is going on. They are here in a fond hope that they would get employment. They are hardly interested in the legal niceties and they are keen to know the outcome. Mr. Shukla of the textile labour association and Mr. I. M. Nanavati stated to the court that within one week from today they would work out detailed phased out programme for restarting different departments, outer limit being six months. But every attempt should be made to start it as early as possible and earlier the better for all. The textile labour association should co-operate with the sponsor firstly in getting high tension power by approaching jointly the Ahmedabad Electricity Company Ltd., impressing upon the company that this is a venture for providing employment to the unemployed. Same procedure is to be adopted for reconnection of water supply. A detailed schedule of the phased out programme of restarting various department is annexed as annexure I to the scheme which is being sanctioned by the court.

29. The liquidator informs that at present there are 7 to 8 persons employed by him for the purpose of keeping watch on the assets and properties of the company as also for some such incidental work. The sponsor agrees to take them over except those who have reached the age of superannuation. For the present, they should be continued on their present wages and when the mills restart they should be absorbed on regular basis.

30. Various balance-sheets and auditors' report show that the company has

disclosed the latest financial position. No investigation is pending against the company, and no such case arises because the company is already ordered to be wound up. Therefore, the first proviso to sub-section (2) of section 391 is fully complied with.

31. It thus appears that after examining the scheme with the utmost care and anxiety, I see nothing which comes in the way to may Sanctioning the scheme and I would accord sanction to my sanctioning the Scheme and I would accord sanction to the scheme not as originally proposed but as amended and modified and as accepted by the concerned parties, and it is annexed as part of this judgment. It binds all the classes of members and creditors who have accepted the scheme.

32. Accordingly, the scheme As proposed with the directions and modifications herein set out to be incorporated in the scheme and the scheme after incorporating the aforementioned conditions is sanctioned and it should be annexed to this judgment :

"(a) The sponsor shall give an undertaking to the court to run the company in accordance with the scheme herein sanctioned and especially specific undertaking to restart the spinning unit of the company according to the phased out programme as annexed to the scheme. The sponsor shall also deposit Rs. 50,000 with the Registrar of the court as guarantee money for faithfully and scrupulously implementing the scheme and agreeing that in the event of his committing breach of the relevant and important provisions of the scheme, the amount shall stand forfeited to the State to be utilised in the manner as directed by the court.

(b) The sponsor shall specify in the undertaking that he would not scrap the mill but would start and run it and that is the fundamental understanding and basic postulate on which the scheme is sanctioned. It would be open to him to sell old and scrap machinery with a view to replacing it by new one and he should strive to expand spindlage to 25,000 spindles. The court recommends that the Government should favourably consider such a request for making the unit economically viable.

(c) Shri Rajendrakumar Maneklal shall sell the shares held by him and his nominees and relations to the sponsor at price agreed in the scheme and for that purpose he would hand over the shares and transfer forms to the sponsor latest within 30 days from the date on which the scheme is sanctioned.

(d) The amount due and payable to the Ahmedabad Municipal Corporation as and by way of property tax and education cess shall be paid by the sponsor in the manner herein indicated. Rs. 73,945.09 in respect of which there appears to be no dispute and which amount was payable to the Ahmedabad Municipal Corporation on the date of winding-up, shall be paid by the sponsor subject to the claim of refund in one instalment within six months from the date on which the ring frame department of the spinning unit of the company starts working as

per the phased out programme of restarting annexed to the scheme. For the balance one-third of the amount payable each year it should be paid in six equal instalments of four months" duration commencing from the date on which the amount of Rs. 73,945.09 is paid. If something more than one-third is payable on the claim being adjudicated in the proceedings pending in the Supreme Court of India, or in the High Court of Gujarat or in the Small Causes Court at Ahmedabad, the same will be payable in one instalment within four months from the last instalment. The Ahmedabad Municipal Corporation would have its statutory charge on the assets of the company as provided in section 141 of the Bombay Provincial Municipal Corporation Act subject to the specific condition that the Ahmedabad Municipal Corporation shall not unilaterally proceed to enforce the charge even if occasion arises and that before undertaking any step to enforce the charge, it would approach the court under the scheme and seek directions of the court.

(e) The Sales Tax Commissioner shall under the suggestion of this court suo motu exercise revisional jurisdiction and set aside the ex parte assessment in respect of the company for the year 1963, and remand the proceedings to the Sales Tax Officer to be disposed of along with the proceedings for the assessment for the years 1964 and 1965, which are already remanded to the Sales Tax Officer. After fresh assessment is made by the Sales Tax Officer and subject to the appeal and revision that may be preferred the sponsor should pay up the amount of tax found due within six months from the date on which the ring frame department of the spinning unit of the company starts functioning or the date of assessment order, whichever is later. If the sponsor chooses to prefer appeal as advised by the legal adviser against the assessment orders made by the Sales Tax Officer he should abide by the order made by the appropriate authority under the act itself. The sponsor should pay up the amount of tax found due on two assessments for the year 1962, which is not in dispute.

(f) The sponsor with the help of the official liquidator should determine the amount payable to the workmen. It must be separately done in respect of those who are re-employed and those who are not re-employed according to the relevant directions on the point. Fifty per Cent. of the amount found due should be paid to the workmen as per the programme of payment to be worked out by the sponsor and the textile labour association. For the balance of 50% at the option of workmen individually or collectively, the sponsor should either pay 25% of the total claim in full and final settlement to those workmen who want the payment at the rate, or the remaining 50% should be paid after the company starts making profits and declaring dividends according to the phased out programme to be worked out in the agreement with the textile labour association. In the event of dispute, direction of the court should be sought. It would be open to the textile labour association to convene a meeting of the workmen to decide whether the majority or in the case of any individual workman desires to exercise one or the other option.

(g) The sponsor should taken out judge's summons within eight weeks from the date of the court sanctioning the scheme to constitute or reconstitute the board of directors as per the directions of the court. The sponsor may suggest the names and number of directors to be nominated on the board. The court may, if it so thinks fit, nominate a director or directory who would be responsible for supervision and implementation of the scheme. Such court-appointed director would not be require dot hold qualifying shares and would be paid meeting attendance fee as directed by the court."

33. Now, that the scheme is being sanctioned, what should we do with the winding-up order. The scheme envisages running of the mill, the company being restored to tis position prior to winding-up. The company is expected to stand on its legs. The liquidator must quit and that can only be done if winding-up order is cancelled. At one stage there was cleavage of opinion, whether the winding-up order once made can be cancelled, alternative suggestion being that it can be permanently stayed. This aspect was examined by me In re Pellad Bulakhidas Mills Company Ltd. (In liquidation), Company Petition No. 32 of 1969, wherein after examining all the aspects, a conclusion was reached that winding-up order made by the court can be cancelled by the court. I, therefore, need not rediscuss that position here. Following my earlier judgment, I would direct that the order for winding up this company passed on 16th August, 1965, in Company Petition No. 9 of 1965 is hereby cancelled simultaneously with my granting sanction by this order to the scheme of compromise and arrangement.

34. The liquidator is accordingly directed to hand over all the assets and block and all the relevant papers which he has in his custody to the sponsor on 16th December, 1974.

35. That brings me to the last question about the costs. Mr. V. B. Patel stated that as the winding up proceedings lasted for several years, the Central Government should be paid fees as required by rule 291 of the Companies Court Rules. It is more appropriate according to Mr. Patel because winding-up order will have to be cancelled for the working and implementation of the scheme. A token amount of Rs. 1,000 would be more than sufficient as fees for the Central Government and the sponsor is ordered to pay the same.

36. The Ahmedabad Municipal Corporation and the State of Gujarat shall bear their own costs. Rs. 1,000 shall be paid as and by way of costs of the textile labour association. There shall be no order as to costs as far as the Sales Tax Commissioner is concerned. No order as to costs in favour of M/s. Ambica Development Corporation. As far as the liquidator is concerned, Mr. V. B. Patel shall prepare bill and send it to Mr. I. M. Nanavati who shall pay the bill as proposed by Shri V. B. Patel. The sponsor's entire costs of the proceedings should come out of the company.