

(1967) 05 CAL CK 0030

In the Calcutta High Court

Case No : C.A. 330 of 1966 and C.P. 36 of 1967

In Re : Rivers Steam Navigation Co. Ltd.

Date of Decision : 03-05-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Companies Act, 1956 — Section 10, 114, 118, 124, 124
Constitution of India, 1950 — Article 102(1)(a)
Industrial Disputes Act, 1947 — Section 25F, 25FF, 25FFF

Citation : 71 CWN 854

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : S. Banerjee and M.K. Banerjee and S.C. Sen and R.C. Nag for petitioning creditor, for the Appellant; P.K. Das for new company, Central Inland Water Transport Corporation Limited, S.K. Acharyya, S.B. Mukherjee, P.K. Sen, K.D. Bose and Miss Uma Banerjee for other creditors and D.K. Sen for Union of India, for the Respondent

Judgement

P.B. Mukharji, J.—Two cardinal points arise for determination on this application for sanctioning a scheme under sec. 391 of the Companies Act. One is, whether a Government company, or a sterling Company incorporated in the United Kingdom, can at all apply to a High Court in India for sanction of a compromise or arrangement proposed between such a company and its creditors or its members, and whether such a High Court has the jurisdiction or power to entertain such an application either to sanction or refuse the scheme. The other is, can the workers in such an application be heard or have a right in the Court dealing with an application under s. 391 of the Companies Act? The remaining question on this application is concerned with the merits and demerits of the scheme proposed under s. 391 of the Companies Act.

It will be appropriate to set out the main facts relevant for the purpose of the determination of the points involved in this application. This is essential because there are numerous papers, petitions and affidavits and it is necessary that the main facts and features of the case should be clearly under focus.

2. The applicant is the Rivers Steam Navigation Company Limited. This Company was incorporated in England on or about July 10, 1914 as a company limited by shares. The authorised capital of the company is ? sterling 728325 divided into 1,00,000, 6% non-accumulative Preference shares of ? sterling 1 ? each and 6,28,325 Equity shares of ? sterling 1 ? each. The 1,00,000 Preference shares were issued and are all fully paid up. But out of the said 7,28,325 Equity Shares issued, 1,57,985 are fully paid up and the balance 4,70,340 Equity Shares are paid up to the extent of 15 shillings each. The total amount of capital paid up or credited as paid up on December 31, 1965 is ? sterling 6,10,740.

3. The company commenced its business of river transport between Calcutta and Assam in pursuance of the objects in the memorandum and articles of association of the Company. In the last two or three years, the Company has fallen into difficult days. The company owns a fleet of 59 steamers, 19 tugs, 16 launches, 108 flats and 38 barges and employs a large number of staff and workmen, both in West Bengal and Assam.

4. One of the main routes operated by this Company from West Bengal to Assam had to go over the rivers flowing through Pakistan. During the conflict between India and Pakistan in 1965 and thereafter this river transport service had to be closed owing to the attitude of the Government of Pakistan. In fact about 40 vessels belonging to this Company had been seized by the Pakistan Government. The Company had thus been compelled to close down its main vessels. After the termination of Indo-Pakistani hostilities it was thought that resumption of service through East Pakistan would be possible. In that hope the Company started limited operations in Assam and lighterage work in the Port of Calcutta. But even with these activities the Co. had been able to continue so far only by large recurring financial help from the Government. It is an admitted fact that the Company had not been able to pay its dues to the creditors.

5. It will be appropriate at this point to refer to the help which Government of India has rendered to keep this Company alive both for strategic reasons as well as for business and commercial purposes. The Government of India thought that this Company should not just be closed down. With that end in view, since 1965 the Government of India, having regard to the importance of the business of the company, acquired by purchase various shares in the Company. The total number of shares now held by the Government of India in this Company is 5,00,000 Equity Shares of which 29,600 are fully paid up and 4,70,340 are partly paid up to the extent of 15 shillings per share. As a result of this, several senior officers of the Government of India occupy important positions in the Company. Mr. Krishnaswami Srinivasan is the Managing Director of the Rivers Steam Navigation Company Limited and Mr. B. B. Ghosh, Chairman of the Commissioner for the Port of Calcutta is the Chairman of the Board of Directors of the Company.

6. The Government's position as a creditor of the Company is plain. It has lent and advanced large sums of money. First, there is a mortgage dated 23rd December 1958 for Rs. 30 lakhs. Secondly, there is a mortgage dated the 2nd

May 1961 for Rs. 1 crore. Thirdly, there is a mortgage dated 22nd May 1961 for another crore. Fourthly, by an agreement dated the 12th June 1963 the Government of India accepted the liability of the Company in lieu of the liability of another Company, India General Navigation and Railway Company Limited and that the balance of the amount payable under the said Agreement dated the 2nd May 1961 was to be advanced to the Company viz., Rivers Steam Navigation Company Limited. Fifthly, there was another Agreement dated the 15th May 1964 for Rs. 60 lakhs of the various lands, buildings, factories, sheds both in West Bengal and Assam including the Dockyard were hypothecated and charged in favour of the Government. The whole of the Company's fleet of vessels was under a floating charge. Sixthly, there was a further mortgage dated 22nd July 1966 to the Government of India for Rs. 141 lakhs in respect of the Company's present and future debts etc. This mortgage was subject to the existing mortgages in favour of the State Bank of India and the Chartered Bank of India which I shall presently mention. Seventhly and lastly, the Company executed another mortgage in favour of the Government of India for Rs. 90 lakhs whereby the Company mortgaged inter alia the Rajabagan Dockyard comprising lands, buildings, factory sheds structures, plant, machinery equipments, etc. This mortgage was also subject to the existing mortgage in favour of the State Bank of India.

7. From the above account it is clear and undisputed that the Government of India is the largest creditor of this Company and the sums of money that the Government of India had invested for keeping alive the business of the Company are enormously large. But the Government of India is not the only creditor.

8. The State Bank of India is another large creditor of the Company. It is the mortgage of various properties and assets of the Company under three different mortgages, (i) dated the 22nd March 1949 by deposit of title deeds, (ii) by two deeds of hypothecation of goods, both dated 22nd day of March 1949. These mortgages in favour of the State Bank of India were modified from time to time whereby the limits of the overdraft were extended.

9. There is another creditor of the Company which is the Chartered Bank of India. The Company executed several documents in favour of the Chartered Bank of India whereby it hypothecated its goods. There is the first letter of Hypothecation of certain vessels dated the 17th August 1961 modified by a subsequent deed dated 21st December 1962 whereby additional vessels were charged in favour of the Chartered Bank. Secondly, there was a further agreement dated 7th October 1964 hypothecating vessels of the Company. Other deeds in favour of the Chartered Bank are dated 7th October 1964 the Memorandum dated 7th October 1964 and the Agreement of Modification of the same date.

10. From this account alone it will be clear that the Company has borrowed huge sums of money. The principal creditors are the Government of India, the State Bank of India and the Chartered Bank of India. In fact the Chartered Bank claims

to be a creditor of the Company to the extent of about Rs. 1.6 crores. The Bank has filed a suit and obtained an interim order for appointment of a Receiver. The State Bank of India has filed a suit in this Court for recovery of Rs. 1.5 crores and have obtained a similar order for the appointment of a Receiver. In both cases it has been agreed that the Receiver will not take possession of properties until the order for winding up is made.

11. The position, therefore, is indisputable that the Company is in a great financial difficulty. Normally a Company in such a position would be regarded as a Company unable to pay its creditors and will attract the misfortune of winding up.

12. That misfortune happened in this case. On the 21st June 1966 an unsecured creditor by the name of J. S. Desai and Company presented a petition for winding up of this Company. Even advertisements of this petitioner for winding up were issued and published on the 3rd August 1966. That application for winding up is pending for disposal in this Court. This firm of J. S. Desai and Company for which Mr. S. C. Sen appeared has been the main opponent of this scheme. It may be stated here that this firm of J. S. Desai and Company claims to be an unsecured creditor for the sum of Rs. 8,06,020.74 paise alleged to be due for the balance of price of coal and hard coke sold and delivered to the Company.

13. This is not the end of the misery of this Company. On the 2nd September 1966 the Transport Ministry of the Government of India converted the floating charge in its favour to a fixed charge and informed the Company that the Government would take possession. In fact on the 3rd November 1966 the Government of India through its. Under Secretary took possession of various properties and assets mortgaged in favour of the Government both in Calcutta and Assam.

14. The printed Balance Sheet and Profit and Loss Account of the Company as on 31st December 1964 as well as the copy of the unaudited Balance Sheet as on the 31st December 1965 which have both been annexed to the petition for compromise in this case reveal the most depressing financial picture. They show that even on the 31st December 1965 the Company had huge liabilities and the total amount of such liabilities came to Rs. 841,65949.22. Since then the position far from improving has deteriorated because the Company had been obliged to borrow further large sums of money from the Government of India in order to meet the essential and pressing expenditure. From these facts it will be seen that the Company is at present running at a very heavy loss and in the ordinary course it cannot continue in this manner. At present there is no certainty when, if at all the Pakistan Government, would release the vessels belonging to the Company and seized by them. Nor is there any certainty as to when the ships of the Company will be allowed to ply through the river routes in Pakistan.

15. The picture then in plain terms is this : There are no assets of the Company

free from encumbrances against which further borrowings are commercially or administratively possible. Practically the entire assets of the Company have been mortgaged, charged or hypothecated. In fact there appears to be no further need to have a foreign sterling Company incorporated in the United Kingdom for the purpose of carrying on the limited services now open to the Company.

16. According to the Government of India and as specially stated in paragraph 17 of the petition of this Company it was considered financially practicable to continue the present limited but nationally very useful and important services, if a new Company is set up by the Government of India which is not saddled with debts beyond its capacity and whose assets are not all frozen by mortgage, hypothecation or otherwise. In this context the Government of India decided to set up a new rupee company for this purpose. It is stated that this new Company is incorporated in the name of Central Inland Water Transport Corpn. (sic) which have been filed before this Court and which may be kept on the records of these proceedings. It is said in paragraph 17 of the petition that the new Company would be prepared to take over the debts which are adequately covered and secured by sufficient properties and assets of the Company. It is asserted that the maintenance of the river transport in Assam and West Bengal is a strategic necessity and is of national importance even though it may be uneconomic to do so strictly from business or commercial point of view. This point raises a question of some importance. This Company, Central Inland Water Transport Corporation Limited was incorporated on the 16th February 1967 and is a Government of India Company with an authorised capital of Rs. 4 crores.

17. The main reason for the proposed scheme is that unless some compromise or arrangement with the creditors and members is effected serious consequences will follow as all the entire assets of the Company had been mortgaged, charged and hypothecated. A winding up will not satisfy the unsecured creditors including the unsecured loans granted by the Government of India. Secondly, a winding up in such circumstances will throw out of employment large staff and workers of the Company running into thousands. Thirdly, strategic, national and public importance demands that a fair scheme should be evolved to salvage if not the whole company but the limited business of the Company. The vast majority of creditors apparently are agreeable to have their debts scaled down and to accept payment in instalments. The State Bank of India is fully covered and the new Company is prepared to take over the assets along with the liabilities. The State Bank of India, therefore, is not opposing the present scheme. Secondly, the Chartered Bank of India realises its difficulties and that the assets hypothecated to it are not likely to fetch more than Rs. 28/30 lakhs on disposal and in fact large scale disposal of such vessels within a short period may make sale proceeds even less. As there are no other assets free from prior charge the Chartered Bank will be loser to the extent of the balance of the loan in the event of liquidation of the Company. The Chartered Bank is prepared to scale down its claims to a sum of Rs. 60 lakhs in full settlement of its dues. The Chartered Bank of India, therefore, is also not opposing this scheme, but has accepted it.

The Government of India is sponsoring this scheme and is supporting the scheme proposed.

18. This briefly summarises the position of three principal creditors of the Company namely, the Government of India, the State Bank of India and the Chartered Bank of India.

19. It has been said in fact paragraph 19 of the present petition that the new company proposes to employ majority of the existing employees of this company on such terms and conditions as are found suitable by the new Company and that the other staff and workers who could not be absorbed would be paid reasonable compensation being not less than the sums which they are lawfully entitled to under the provisions of the Industrial Disputes Act. Counsel for the new Company Central Inland Water Transport Corporation Ltd. who appeared before me has also supported the scheme.

20. The Scheme proposed and the actual shape, form and content of the compromise are set out in paragraph 22 of the petition. It is as follows:

(1) A new Government of India Company will be incorporated within about six weeks with a Memorandum and Articles of Association amongst others with power to acquire the property and assets of the existing Company with sufficient capital fixed by the Govt. of India (hereinafter called the "New Company")

(2) The Rivers Steam Navigation Co. Ltd. (hereinafter called the "Existing Company") will transfer to the new Company all its properties and assets. Uncalled capital amounting to ? 117,585 or Rs. 24,69,285 will be paid in rupees by the Government of India to the existing company.

(3) The new Company will undertake all the liabilities of the existing Company in favour of the State Bank of India and the Govt. of India will accept the new Company as its debtor in place of the existing company and will release the existing company from all its liabilities in respect of its said debts.

(4) The amount due to the Chartered Bank for principal, interest and costs which forms the subject matter of a suit No. 1730 of 1966 (The Chartered Bank v. Rivers Steam Navigation Co. Ltd.) or otherwise is reduced to Rs. 60 lakhs and the same shall be payable by the new Company within 10 weeks from the date of the final approval of the scheme by this Hon"ble Court on 30th June 1967 whichever is later and this will be final settlement of all dues to the Chartered Bank.

(5) No amount shall be payable to any creditor of the Company existing who has directly or indirectly agreed with any person to accept the shares of the existing Company in payment or satisfaction of his dues in whole or in part. The existing Company, if so required, shall allot the shares agreed to be taken as aforesaid to the creditor concerned.

(6) All the other creditors of the existing Company, which comprise the

unsecured creditors other than the State Bank of India, the Chartered Bank, the Govt. of India and the creditors referred to in paragraph (5) hereof, shall be paid in the manner following viz.,

(a) All the creditors will be paid Rs. 5,000/- or if the amount due to them is less than Rs. 5,000/- then the full amount due, upon the sanction of the Scheme by this Hon''ble Court, within ten weeks from the date of such sanction or the 30th June 1967 whichever is later.

(b) 66.2/3 per cent of the balance of their dues as appearing in the books of account of the existing Company in the following instalments, viz., 33.1/3 per cent before 30th June 1967 and the balance of 33.1/3 per cent on or before 30th June 1968, in full and final settlement of their entire dues.

(7) The new Company will employ such of the workers and staff of the existing Company as may be necessary and suitable for its business on such terms and conditions as it, in its discretion, thinks fit.

(8) Upon the approval of the scheme by the court, the existing company shall be closed and upon payment to all the creditors the existing Company shall be dissolved without winding up pursuant to an order to be obtained from this Hon''ble Court.

(9) The Court shall have the right to add, alter, vary or modify the above scheme and Shri B. B. Ghosh, the Chairman of the existing Company is hereby authorised to accept such additions, alterations, variations and modification as this Hon''ble Court may be pleased to make on behalf of the company and all the creditors and members of the Company shall be bound by such additions, alterations, variations and modifications as this Hon''ble Court may think fit to make."

21. In course of these proceedings for approval of the scheme the Court ordered on the 14th December 1966 three separate meetings of the members secured creditors and unsecured creditors. They were held on the 30th January 1967 at No. 4, Fair-lie Place, Calcutta which is the principal place of business of the Company to consider and pass the proposed scheme with or without modification. Sir Dhiren Mitra and failing him Mr. M. N. Banerjee, Barrister-at-Law was appointed as the Chairman of the said meeting and report the result of such meeting to this court. Sir Dhiren Mitra having died, the meeting was duly held, under the Chairmanship of Mr. Banerjee and the Chairman's report has been duly filed in these proceedings.

22. The meeting of the members of the Company was attended by two members in person and 8 members by proxy and the total value of their share holdings was ? sterling 7,27,325-0-0. The Chairman's minute shows that it was resolved unanimously that:

The scheme of arrangement submitted to the meeting and initialled by the Chairman thereof be and the same is hereby approved and agreed to.

23. The other meeting of the secured creditors was attended by three secured creditors by their proxy and representatives and the total value of their debt was Rs. 687.94 lakhs. The Chairman's minute shows that it was resolved unanimously as follows :

Resolved that the scheme of arrangement submitted to this meeting and initialled by the Chairman thereof be and the same is hereby approved and agreed to.

The third meeting of the unsecured creditors was attended by 65 creditors in person and by 93 creditors by proxy or representatives and the total value of their debts was Rs. 286.83,974.85 paise. Here at this meeting of unsecured creditors it was resolved by the majority in number and representing more than three-fourth in value of the creditors present and voting either in person or by proxy that-

Resolved that the scheme of arrangement submitted to this meeting and initialled by the Chairman thereof be and the same is hereby approved and agreed to.

The total number and the value of the creditors voting in favour of the resolution were 111 and Rs. 268,04,372.12 paise respectively and the total number and value of the creditors voting against the resolution were respectively 45 and Rs. 30.21,281.18 paise. The overwhelming majority even of unsecured creditors supported the scheme.

24. The learned Advocate-General has appeared in support of this application to sanction the compromise or the scheme of arrangement. Learned counsel for the Government of India and for the new Government Company, Central Inland Water Transport Corporation Limited as also other unsecured creditors have supported this scheme. The main opposition to the scheme has come, as I have already said, from the firm of J. S. Desai and Company, who was ably represented by the learned counsel Mr. S. Sen, the spear-head of the opposition.

25. The labour claimed to be heard in this proceedings. There was objection to the locus standi of labour or worker to appear in an application or proceedings u/s 391 of the Companies Act on the ground that such a proceeding is between the Company and its creditors or members and that a worker, whose wages are all satisfied and who is not a creditor, is neither a creditor nor a member. Learned counsel Mr. S. K. Acharjya with Mr. Roy appeared for the Workers' Union, Assam. Learned counsel Mr. Kali Das Bose appeared for Dock Engineering Mazdoor Sabha, Calcutta. Learned counsel Mr. S. B. Mukherjee appeared for Kilburn Employees' Co-operative Credit Society Limited, which was supposed to have lent moneys to the workers of the company and which loans were recoverable from their salaries and provident fund. Mr. Mukherjee was vicariously interested in labour for his real interest was that of a money lender to the labour and he has only a Mahajan's interest to see that the money lent to the worker was sufficiently secured. I do not think that Mr. Mukherjee can be said to represent

labour's interest at all. I am satisfied that Kilburn Employees' Cooperative Credit Society Limited has no locus standi to intervene in this application either on technicality or even on its merits because-

(i) the Kilburn Employees Co-operative Credit Society Limited was primarily concerned with Kilburn and Company Ltd. - quite a different company and a legal entity and it is no good saying that in its operation, its associated companies like the applicant company and others are affected.

(ii) the position of this Credit Society Limited is really that of a middleman money lender, to the workers, and I therefore consider interest too remote in law in fact to have a voice in influencing the scheme under consideration of this Court.

26. The attitude that the two labour unions took in this Court was a practical one. It must be recorded here that the labour in this case was not opposing the scheme at all. The labour realised that all their services would go if the company went into liquidation. Therefore, it was their interest to support the scheme of arrangement but what they wanted was an assurance or a guarantee that their legitimate rights and lawful interests are not prejudicially affected by this compromise or scheme of arrangement. Their main concern was that as the company was really transferring all the property and assets to vest in the new company, Central Inland Water Transport Corporation Limited, the workers and the staff must have some kind of sensible and reasonable protection of their rights, either to continue as many as possible in the new concern or who cannot be continued, their lawful dues, legitimate under the law, should be fairly calculated and provided for. I am happy to say that the learned Advocate-General appearing for the company as well as learned counsel for the new company and also the learned counsel for the Government of India, Mr. D. K. Sen, fully accepted the responsibility to play fair to the labour, workers and the staff of the existing company. I must record here that for the protection of the labour, workers and the staff, first the assurance given by Mr. D. K. Sen, learned counsel appearing for the Government of India, in the following terms :

(1) The Government of India agrees to pay the amount due to the secured and unsecured creditors, as indicated in the scheme proposed in the petition by the Rivers Steam Navigation Company Limited.

(2) The Government of India shall provide necessary funds to the new Central Inland Water Transport Corporation Limited to pay the amount provided in the scheme for settlement to the Chartered Bank of India.

27. Mr. D. K. Sen for the Government of India drew my attention to clause 2 of the scheme of arrangement, set out in paragraph 22 of the petition saying that the words "or Rs. 24.69,285 or, in other words, the rupee equivalent" should be dropped in order to avoid exchange complications. As no one is opposed to the dropping of the rupee equivalent mentioned in the quoted words above, this Court directs that the deletion be effected in clause 2 as proposed by the counsel for the Government of India.

28. On behalf of the new Company-Central Inland Water Transport Corporation Limited the learned counsel Mr. Das supported by the learned Advocate General for the company have given to the labour and the staff of the applicant company following assurances which must be recorded here :

The new company will employ such of the workers and staff of the existing company as are considered by it suitable and necessary for its business on proper terms and conditions to be decided by the new company. The employees of the existing company who are so absorbed by the new company will be paid by the existing company all compensation due and payable to them under the law. If, as a result of the growth of business, the new company requires additional hands, the employees of the existing company who are not absorbed now will, if they are willing and otherwise found suitable, be considered preferentially as and when the occasion arises.

29. The other guarantee for the interest of the labour, workers and the staff is contained in paragraph 19 of the petition for sanction of the scheme affirmed by the Affidavit of Mr. Krishnaswami Srinivasan on February 20, 1966 in these terms:

The new company proposes to employ majority of the existing employees on terms and conditions suitable for the new company. The other staff and workers who cannot be offered employment by the new company will be paid reasonable compensation, being not less than what they are lawfully entitled to under the provisions of the Industrial Disputes Act.

30. Balancing all the interests and considerations involved this is the picture which emerges. A large majority of the creditors, secured and unsecured and the members want the scheme to be accepted. Public and national interest, as well as the interest of the labour and staff demand that a scheme should be evolved to work out the equities between different groups. Except the solitary unsecured creditors J. S. Desai and Company every interest represented before me considers liquidation in such facts will be highly detrimental and prejudicial to all concerned.

31. I shall now deal with the significant question of law raised in this application. That question is that this applicant is a Government company, or at best a foreign sterling company incorporated in the United Kingdom, and such a company has no right to apply before the High Court for sanction of a scheme and this court has no power or jurisdiction to sanction or refuse such a scheme or to entertain such an application.

32. At the outset, it may be stated that there is no direct Indian authority on this point. The first difficulty in this case is to find out the nature and character of the present applicant company Rivers Steam Navigation Company Limited. Is it a Government Company u/s 617 of the Companies An on the ground that it is a company in which not less than 51% of the paid up share capital is held by the Central Government within the meaning of that section ? Admittedly more than 51% of the share capital is held by the Govt. of India in the applicant company at

the present moment. The learned Advocate-General has argued that even though the Government of India is holding more than 51% of the share capital in the applicant company the applicant company is not a Government Company. He relied on the doctrine of not lifting the veil of the separate legal entity of the Company which in this case is the Rivers Steam Navigation Company Limited, incorporated in U. K. The learned Advocate-General takes shelter under what I call this doctrine of Purdah in Company Law and relied on: the observations of Hidayatullah, J. of the Supreme Court in (1) The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others, at page 1835; (2) Between Vale Urban District Council v. South Wales Traffic Area Licensing Authority, (1951) 2 KB 366 at pages 373-74; (3) Tunstall v. Stigmann, (1962) 2 QB 593; laying down the proposition at page 600 that "it was decided in Salomon v. Salomon and Company Limited. 1897 AC 22, that a company and the individual or individuals forming the company were separate legal entities, however, complete the control might be by one or more of those individuals over the company. That is the whole principle of the formation of limited liability company and it would be contrary to the scheme of the Companies Act to depart from the principle", (4) ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION Vs. Income Tax OFFICER, B-I B-WARD, HYDERABAD, AND ANOTHER., , where the Supreme Court of India at pages 532-33 and 536 laid down the same principle.

33. This argument of the learned Advocate-General leads at the very beginning to a piquant situation where the Government of India might be holding hundred per cent shares in a Company incorporated in the United Kingdom and yet be considered as a foreign company although the shares of the Company are wholly owned by the Government of this land.

34. Is it possible that a company under the Companies Act can be both a Government company and a foreign company : A Government Company is denned in section 617 of the Companies Act as follows:

any company in which not less than fifty-one per cent of the paid up share capital is held by the Central Government, or any State Government or Governments, or partly by the Central Government or State Government and includes a company which is a subsidiary of a Government company as thus defined.

35. This definition makes it quite clear that for all purposes of the Companies Act wherever "any company in which not less than fifty one per cent of the paid up share capital is held by the Government it must be regarded as a Government company within the statutory definition. A foreign company or rather companies incorporated outside India is stated u/s 591 of the Companies Act to be-

(a) Companies incorporated outside India which after the commencement of this Act, established a place of business within India, and

(b) Companies incorporated outside India which have before the commencement

of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act."

36. Reading sections 617 and 591 of the Companies Act together it is legally possible for the Government of India to buy shares more than fifty-one per cent in a company incorporated outside India which had before the commencement of this Act established a place of business here at the commencement of the Act. If these two statutory tests are satisfied then the argument is plausible that a Government company can also in legal theory be a foreign company. Conceptually it is perhaps odd and inconsistent that a Government company of this country under its Companies Act should be considered also as a foreign company or a company incorporated outside India.

37. I am, however, not convinced about the soundness of the application of the doctrine of not piercing the corporate veil in this context. The prohibition not to pierce the veil applies only to courts. It only means this that so far as the courts and the outside world or the dealing public are concerned the corporation or the company as such is a separate legal entity, apart from and independent of its members. But I am unable to accept this prohibition against piercing the corporate veil where a statute is concerned. A statute can pierce the veil and if it does, then the courts must see through the pierced veil. The rule of Chivalry not to lift the veil binds the court but does not bind the statute. Here section 617 of the Companies Act says that where the Government holds not less than fifty-one per cent shares of the paid up capital of the company it is a Government company. Court must apply this test. In applying that test the court is not piercing the corporate veil any more but the statute has already done it for the courts and has enjoined by statutory definition that such a company is to be regarded as Government company. The veil, therefore, stands exposed and lifted by the statute itself To ignore this specific definition of section 617 of the Companies Act and take shelter under the purdah doctrine of the Company Law, not to lift the corporate veil will be a plain disregard of the statute, which the court cannot do. In the present context of a statute so clear as this, it is not a matter of mere legal semantics. It is a matter fraught with very great and practical consequences. Foreign companies or rather companies incorporated outside India within the definition provided in section 591 of the Companies Act are governed by certain sets of special sections and provisions as in sections 591 to section 602 whereas the Government companies are governed by a totally different set of specific provisions such as are contained in section 618 to section 620 of the Companies Act. Some of these sections cannot co-exist. Therefore, the learned Advocate-General's argument that a Government company can at the same time be a foreign company or a company incorporated outside India, cannot, in my judgment, be accepted. No doubt, technically when ss. 617 and 591 are read together, it is possible to conceive a company which satisfies the tests in both and therefore be at once both a Government company and a foreign company. But then the separation of these two clauses of companies, Government companies and foreign companies and what is more important the

specific provisions applicable to Government companies as distinguished from the foreign companies, make it unsound and undesirable, in my view, to come to the conclusion that a company can at once be both a Government and a foreign company within the meaning of the Companies Act in India. For instance, what will be the position in that case where a Government company cannot have a managing agent u/s 618 of the Companies Act ? But a company incorporated outside India has no such limitation. Can it be said then that where a company is both a Government and a foreign company at the same time within the meaning of sections 617 and 591 of the Companies Act such a company in its aspect as a foreign company can employ managing agents while as Government company it is debarred from doing so ? It will lead to conflict and the reconciliation is impossible. There are also similar other conflicts with regard to accounts and audit between the Government companies and the foreign companies. I have, therefore, come to the conclusion that a company cannot at once be both a Government company and a foreign company within the Companies Act.

38. The situation in the present cases is charged with special legal difficulties because of the fact that the company is really caught in a period of transition. It was to start with an ordinary company limited by shares, incorporated in London with private share holders and private Boards of Management with interest of certain families such as, I am told of Lord Inchcape pre-dominating. In the many vicissitudes which this company had to go through in recent times and in the circumstances mentioned above, a majority of the shareholding came to be held by the Government of India. In other words, here is an ordinary private or a public limited company in the process of being acquired by the Government of India and caught at a stage where more than 70 or 80% of the shareholding has been owned by the Government of India. The question is whether nationally or in jurisprudence, at any stage or time, there was a metamorphosis of this company from the private or public limited company status to that of a Government company within the meaning of the Companies Act, 1956. Having regard to the definition in section 617, the court cannot but register the fact that at the present moment it is a Government company. I hold accordingly.

39. It is then argued that a Government company is not entitled to apply for a scheme, nor has the court any power or jurisdiction to order or revise or refuse a scheme proposed by a Government company. The argument is developed in this way. It is said that section 2(10) read with section 3 of the Companies Act excludes a Government company u/s 617 of the Companies Act. No doubt, neither subclause (i) nor (ii) of section 3(1) of the Companies Act giving the definition of a "Company" or an "existing Company" or a "Private Company" or "public company" can attract the Government company as in fact it does not attract a company incorporated outside India u/s 591 of the Companies Act. But these definitions, both in section 2(10) and section 3, of the Companies Act are always qualified by the celebrated expression "unless the context otherwise requires". The context in my view, does otherwise require in this case and includes Government companies for the simple reason that Government

companies are defined by the Companies Act itself and section 617 not only defines it but also the subsequent sections like sections 618 to 620 make special provisions with regard to them. If Government companies were completely outside the Companies Act and beyond the administration by the Court in India, then these provisions would be unthinkable. I am therefore unable to accept this view that the Government company is not a company within the meaning of the Companies Act even though they are not within the purview of section 2(10) and section 3 of the Companies Act. I hold that a Government company is a company under the Companies Act in India. Section 2 (18) of the Companies Act actually defines a Government company to be a company within the meaning of section 617. Section 617 also has a context of its own emphasized by the words "any company". The words "any company" in section 617 of the Companies Act must, in my opinion, mean any company in its amplitude and not merely a company within the meaning of the technical definition of section 2(10) read with section 3 of the Companies Act.

40. The next argument against the scheme is more formidable. It is contended that u/s 620 of the Companies Act, the Central Government may by notification in the Official Gazette direct that any of the provisions of the Act specified in the notification shall not apply to any Government company or shall apply to any Government company with such exceptions, modifications and adaptations as may be specified in the notification. There are certain sections which cannot be modified, viz.. sections 618, 619 and 639. Therefore, it is argued that section 391, under which a scheme can be sanctioned by the court, can be modified. In other words, the Government by notification may say that section 391 shall not apply to a Government company. In that view, it is contended further that any scheme that this court might order may be set at naught by notification by the Government u/s 620 of the Companies Act. Then it is said that this court should not act in vain by making an order for a scheme or even making an order which could be imperilled by mere executive notification of the Government of India.

41. Now, the Government of India has so far not made any such drastic notification to alter section 391 for a scheme or section 443 dealing with Court's power to make an order for winding up. The reply given is that although it has not made such a notification so far, in fact it has that power in law and can do it at any moment and at any time. There is an apparent glamour and attraction for this argument. But on a close scrutiny neither the glamour nor the attraction remains. I shall state my reasons briefly for rejecting this argument.

42. According to my interpretation of section 620 of the Companies Act, although power is given to the Central Government to modify the Companies Act in respect of the Government companies, yet it does not in my judgment confer any such power to the Government where, without such notification at the time of making an order for scheme u/s 391 of the Companies Act, as in the present case, the court does make an order. I do not construe that power of the Central Govt. u/s 620 of the Companies Act in such a case would give the power to

modify an order of the court already made u/s 391 and at a time when section 391 was applicable to the Government companies and had not been excluded by any notification. Secondly, it would not be permissible indeed for the Government which is a party to this application applying for and supporting the scheme and submitting to the jurisdiction of this court to torpedo the scheme ordered by the court by purporting to make a notification u/s 620 of the Companies Act under the guise of power u/s 620 of the Companies Act. The Central Government in my judgment, cannot by notification retrospectively nullify an order of the court u/s 391 of the Companies Act made at a time when there was no notification thereunder excluding the operation of sec. 391 of the Companies Act, in which the Government itself was involved.

43. A still broader attack on the Court's power to deal with an application for sanction or refusal of a scheme under s. 391 of the Companies Act in respect of a Government Company is made by the argument that the provision for a scheme in company jurisprudence began as a kind of substitute for winding up. At the beginning or early stages of company statutes, if a company could not carry on its business or was insolvent or unable to pay its debts, it had to go out of business and be wound up. In that stage of juristic development, it was no part of the job of the Court to help a company in difficulty. In course of time it was found that winding up created many problems and hardship, that some of the companies, private and public, sometimes had to face temporary difficulties which, even though they were acute in nature, could be overcome after passage of time provided the Company could survive the stress in the meantime.

44. That is the reason why Courts, in course of time, came to be clothed with power to sanction a scheme or arrangement for compromise between the company and its members or creditors to avoid winding up and extinction. In that light it has been contended with considerable force in these proceedings that a Government Company by its very ideas and nature cannot be a suppliant for that kind of favour, for it normally does not lack funds and that it has not the same handicap of a private or a public limited company to raise funds or capital or to meet creditors or to carry on the management specially when the overwhelming majority, if not the whole body of share-holders is the Government itself.

45. This argument requires consideration. The statutory origin or history of court's power for sanctioning schemes or compromise or arrangement between company and its creditors and shareholders is argued to preclude the idea of applying the whole concept of scheme or compromise to a Government company. But then this argument conceals a fallacy of comparing the incomparable. The statutory origin of the provisions for schemes by court, such as in present section 391 of the Companies Act, historically did not at the time of its origin envisage that there could be a Government company. The Government company is a new concept in modern jurisprudence and in political science. Government today is no longer a police State and a tax collecting State. It is no longer also only a social welfare State. It is a service State. It has actually in the modern age become in

addition a trading State in many fields of business, commerce and industry. Government to-day is a competitor with public and private companies and corporations and doing trade or business or commerce. In doing so the Government is not doing it qua Government. It joins the field of competition in these diverse spheres and fields as Government companies, as State trading corporations and in many other forms under particular statutes. I had occasion myself to discuss and analyse this aspect of the question in (5) *M. Verghese Vs. Union of India (UOI) and Others*, at pages 424 and 425. At page 426 of the report I observed in that decision as follows:

The Welfare State or the service State under the present Constitution of India has encouraged a number of public undertakings where the control lies with the State and the Government. Their number, patterns, and variety are legion. They do not represent any uniform type. The control is not merely in respect of finance but also management. There has yet been no comprehensive study or work on State enterprises in India. It appears, however, that India is evolving three basic legal patterns for State enterprises namely (1) Statutory corporations formed by and under special statutes, both parliamentary and State, (2) Government Departmental undertaking and (3) Government Companies under the "Companies Act with special articles and memoranda.

46. The position is critically analysed by professor Dr. H. W. R. Wade in his recent work on "Administrative Law" published by the Clarendon Press, Oxford, 1965, Second Impression where the learned professor at pages 30 to 36 inter alia described the legal position in the following terms:

The public corporation is a hybrid organism showing some of the features of a Government department and some of the features of a business company, and standing outside the ordinary framework of central and local Government." and again :

Two different techniques of nationalisation were followed in the period 1945-49. One was to set up a corporate body.

This was the method followed for the nationalisation of coal-mining, electricity, gas, railways, airlines and road transport. * * * * * The other technique was the compulsory acquisition of shares. The shares might then either be vested by the statute in a public corporation, as the shares in iron and steel companies were vested in the Iron and Steel Corporation, or else they might simply be held by the Government, as was the case with the nationalisation of the Bank of England, in either event, the control of the undertaking was then secured through the operation of the ordinary rules of company law.

In Dr. Yardley's recent work "A Source Book of English Administrative Law" published by Butterworths, 1963 edition at page 357 this point is put clearly in these terms:

As will be seen from the subsequent analysis, the two types of public corporation

differ greatly in regard to ministerial control, finance and probably also judicial supervision. The commercial corporation is essentially independent of its conduct of business and subject only to remote ministerial control. The social service corporation is generally under closer ministerial direction than the commercial corporation. The finance of the latter do not fall under ministerial budgets and are not a charge on the vote. The former are financed as part of a departmental budget and therefore subject to closer public auditing control. The social service corporation is, in a far more direct sense, a prolonged arm of the Executive.

A similar view is expressed in Gower's "The Principles of Modern Company Law," Second Edition, at pages 224-233 with special reference to the observations of Denning, L.J. in *Tamlin v. Hannaford*, 1951 KBD at pages 23-25. It will not be necessary to proceed further with the analysis on this point of the English law and I shall only be content by referring to my paper in the "Proceedings of the Seminar on Current Problems of Corporate Law, Management and Practice" published by the Indian Law Institute, New Delhi on "Government and Judicial Controls of Company Management in India", at pages 312-325 so far as the present Indian Companies Act, 1956 is concerned.

47. When the Government engages in trading ventures and particularly as Government companies under the Company Law, it does not do so as a political State or a political Government but it does so, in grab and essence, as a company. The Government company, therefore, is a class of company and is not to be placed on the same pedestal as a State or a Government. No doubt Government companies have certain special features and are governed by certain special sections. For instance, section 619 of the Companies Act provides certain special features such as the auditor of a Government company shall be appointed by the Central Government on the advice of the Comptroller and Auditor General and that the Comptroller and Auditor General shall have certain powers to direct the manner in which the company's accounts shall be audited and to conduct a supplementary or test audit of company's account and that the auditor shall submit a copy of his reports to the Comptroller and Auditor General of India who shall have the right to comment upon or supplement the audit report in such a manner as he thinks fit. These features are to apply notwithstanding what is contained in sections 224 to 233 of the Companies Act relating to audit and appointment of auditors with regard to public and private companies generally. Similarly section 620 of the Companies Act, which I have already mentioned, is a special feature of the law relating to the Government companies. Thirdly, no doubt that certain sections of the Companies Act relating to Government control of ordinary companies in respect of investigation etc. such as are contained in sections 234A, 235, 236, 237, 408, 409 and 463 of the Act may be inappropriate for Government companies because the Government cannot itself investigate its own companies and be a judge in its own cause. Analysing and scanning these special features the conclusion is irresistible that these features do not make the Government company any the less a company. These special features are to some extent natural and inevitable in the context of

a Government company. The genus remains that of a company even though the species may be different just as there are different Companies with different Articles of Association.

48. But I do not read these various sections which I have just mentioned and discussed to lead to the conclusion that a Government company cannot be wound up or worked under a scheme under the Companies Act. A Government company even though different in certain respects from an ordinary public or private company may have to tide over certain difficulties as a trading institution under the Company Law or it may require to be wound up for distribution of its assets in certain contingencies. There is, therefore, no justification for holding that a Government company because it is a Government company cannot work under a scheme in an appropriate context or that it cannot be wound up in a similarly appropriate context. To wind up a Government company or to work a Government company under a scheme is not to wind up the Government but a Governmental institution trading under the Company Law with all the rights, liabilities and obligations that the law imposes, no doubt subject to the exceptions that are specifically made in their favour by the statute. This is not an unreasonable classification or discrimination. Administrative expediency requires and justifies these provisions. They are not unusual, for instance, if an individual Government servant, even though he is an ordinary citizen, does an act in his official capacity and if he is to be used, then the issue of a notice u/s 80 of the CPC will be required, a notice not ordinarily required to institute a suit against a private citizen. That does not mean that the Government servant is beyond the law. Similarly with regard to Government companies, the special features that I have stated quoting the special sections regulating Government Companies do not exclude the ambit and provision of winding up or a scheme under the Companies Act. The present Companies Act recognises three types of extrinsic control of Companies viz. Parliamentary control, Governmental control and judicial control of Companies, but these controls do not derogate from the legal nature and character of these Companies.

49. I shall next deal with the argument that a Government company cannot be worked under a scheme or compromise or arrangement u/s 391 of the Companies Act because of the special definition of the company in section 390 of Chapter V of the Companies Act. It is said that section 390(a) of the Companies Act expressly lays down that in sections 391 and 393 of the Companies Act the expression "company" means "any company liable to be wound up under the Act". The contention is that the Government company is not liable to be wound up under the Act. I am unable to accept this contention that the Government company is not liable to be wound up under the Companies Act. Having regard to Sections 390 and 391 of the Companies Act "any company liable to be wound up under the Act" can apply for sanction of a compromise, scheme or arrangement with its creditors or members, part VII of the Companies Act dealing with winding up gives no specially limited definition of company liable to be wound up and is in sharp contrast to the special definition of company in part VI, chapter V,

section 390 of the Companies Act dealing with "arbitration, compromises, arrangements and reconstructions". Chapter II of part VII of the Companies Act and section 433 thereof provide that a company may be wound up by the court under the circumstances mentioned there. Section 433 of the Companies Act does not provide any special limited definition of the word "Company" as in section 391 of the Act. The significant expression in section 617 of the Companies Act defining Government company begins with the crucial expression "for the purpose of this Act", that means for the purposes of the whole of the Companies Act subject to any special exception made by the statute. The expression "for the purposes of the Act" in section 617 must, therefore, include a Government company as a company liable to be wound up u/s 433 of the Act because section 433 of the Act is certainly one of the purposes of the Companies Act, and in that view these words will also override the limitation of the definition of the word "Company" u/s 2(10) and section 3 of the Act. As framing a scheme u/s 391 or winding up u/s 433 is a purpose of the Act, the expression "for the purposes of the Act" must by necessary implication make a Government Company subject to the jurisdiction of the court in the matter of framing a scheme or winding up. The words "for the purposes of the Act" are of deliberate amplitude introduced by the Companies Amendment Act, 1960 (Act LXV of 1960) removing the previous limited purposes of "sections 618, 619 and 620". This amendment was not merely clarificatory but enlarging for a Government Company is no longer for the limited purposes of sections 618-20 of the Act but for all purposes of the Act.

50. The next contention of Mr. S. C. Sen on this branch of the argument is that the High Court has no jurisdiction in entertaining or ordering on an application for a scheme, u/s 391 of the Companies Act because of the limited and qualified jurisdiction Conferred by section 10 of the Companies Act. The essence of this argument is based on the words "the place at which the registered office of the Company concerned is situate" occurring in section 10 which reads as follows :

(1) The Court having jurisdiction under this Act shall be (a) the High Court having jurisdiction in relation to the place at which the registered office of the Company concerned is situate" etc., etc.

It is argued that as the registered office of the applicant company is in the United Kingdom, London, this High Court has no jurisdiction. It is wrong in my view to read S. 10 of the Companies Act in isolation. It has to be read with other relevant Sections of the Act to understand and find the true nature, scope and jurisdiction of the High Court under the Companies Act, s. 10 of the Act is primarily intended for companies registered under the Indian Companies Act but is not exhaustive. For instance S. 583 (1) of the Companies Act makes all the provisions of this Act in respect of winding up applicable to unregistered Companies which cannot ex-hypothesis have a registered office within the meaning of S. 10, of the Companies Act. A foreign company with foreign incorporation is therefore liable to be wound up by this High Court

notwithstanding S. 10 of the Act. This is plain from s. 583 (2) of the Companies Act which expressly enlarges the concept of the registered office as founding jurisdiction of the High Court by providing "For the purpose of determining the Court having jurisdiction in the matter of winding up, an unregistered company shall be deemed to be registered in the State where its principal place of business is situate, and the principal place of business situate in that State in which proceedings are being instituted, shall for all the purposes of winding up. be deemed to be the registered office of Company". It follows that the statutorily deemed registered office in such a case is the principal place of business and this statutory fiction or enlarged definition of "registered office" must be read and engrafted on S. 10 of the Act where it uses the word "the place at which the registered office of the Company concerned is situated". As the principal place of business of the applicant Company is here, it follows that this High Court has the jurisdiction under S. 10 of the Act so interpreted in the light of S. 583 of the Act.

51. What remains necessary now to say on this point is that if a Government company, is incorporated and registered outside India, such a Government company comes within the definition of an "unregistered company" u/s 582(b) and all the provisions of part X consisting of sections 582-590 shall apply mutatis mutandis to such a Government company which do not militate against any special provisions for Government companies in sections 617, 618, 619, 619A and section 620 of the Companies Act.

52. For these reasons I hold this High Court has the jurisdiction u/s 10 of the Companies Act over a Government Company which is registered outside India but whose principal place of business is within the jurisdiction of this court.

53. I, therefore, reach the conclusion on the point of construction that a Government company can be wound up by the court u/s 433 of the Companies Act in the circumstances mentioned there, read with section 425.

54. I shall add another consideration. If a Government company cannot be wound up under the law or work under a scheme, then what is going to happen if the Government decides that the Government company should not continue as a company any more or that the company could not work except under a compromise or scheme or arrangement. To subscribe to the view that a Government company cannot be wound up or work under a scheme would mean that it is a kind of a perpetual company and once established can neither be extinguished nor work under an arrangement with its members and creditors. I, therefore, reject that construction which leads to such a conclusion.

55. Even if the applicant company in this case was regarded as a foreign sterling company incorporated outside India, I would still hold that even such a foreign company is amenable to the jurisdiction of winding up of this court and can be worked under a scheme in an appropriate case. Similar arguments in the case of Government company were advanced from the Bar contending that section 390 of the Companies Act says that a company u/s 391 means a company liable to be

wound up under the Act and a foreign sterling company was argued not liable to be wound up under the Companies Act. For the same reasons stated above, I reject that contention. As already pointed out, section 390(a) of the Companies Act expressly says that the Company u/s 391 means a Company liable to be wound up under the Act. I have no hesitation or doubt in my mind that a foreign sterling company incorporated in the United Kingdom, or for that matter any foreign company with foreign incorporation but doing business here, is liable to be wound up here under the Companies Act in this court.

56. Before discussing some of the authorities on this point, on which reliance has been placed in the course of arguments at the Bar. I shall just analyse the relevant statutory sections on the point. Part XI of the Companies Act deals with Companies incorporated outside India. I have already quoted the definition of foreign companies in section 591 of the Companies Act. All that this section says is that "sections 592 to 602, both inclusive, shall apply to all foreign companies". The sections that follow section 591, that is subsequent sections from 592 to 602 shall apply to foreign companies. But such a provision does not mean that other sections which are not in conflict with sections 592 to 602 of the Companies Act will not apply to foreign companies. A close scrutiny of the provisions contained in secs. 592 to 602 of the Companies Act which are made applicable to foreign Companies will show that they relate to documents and returns to be delivered with the Registrar of Joint Stock Companies and with regard to special obligations relating to accounts, naming of foreign companies, service thereupon, office where documents are to be filed and penalties. These sections 592 to 602 are really to ensure foreign companies' submission to the jurisdiction of the courts in this country. They cannot be considered or construed to mean that other sections of the Companies Act such as winding up and working under a scheme do not apply to foreign companies. The argument, therefore, that because sections 592 to 602 apply to foreign companies, therefore section 391 dealing with scheme, compromise or arrangement does not apply, cannot be upheld. No doubt section 600 of the Companies Act provides that provisions of Part V (sections 124 to 125) and section 118 shall mutatis mutandis apply to foreign company. That does not mean that other provisions do not apply. Sections 124 to 142 related to registration of charges. Sec. 118 relates to right to obtain copies and inspection fees and section 209 deals with books of accounts to be kept by a company.

57. Venkataraman, J., in (6) P. S. Anant Narayan v. Massey Ferguson Ltd., (Canada), reported in 1965 I, Company Law Journal 269 discussed various aspects of this problem and considered sections 592 to 596 of the Companies Act to reach the conclusion, on the rules of private international law, the provisions of sections 592 to 596 of the Companies Act, and the account of returns submitted to the Registrar, that these provisions related to submission to the jurisdiction of the High Court, Lord Sumner's observations in (7) Employer's Liability Assurance Corporation v. Sedgwick Collins and Company, reported in 1927 AC 95 at page 107 compare similar provisions in English Act and the

learned Lord came to the conclusion that these provisions relate to submission of jurisdiction to the court of the country in which a foreign company carries on a business. I shall briefly refer to a Supreme Court decision cited at the Bar. The case decided by the Supreme Court in (8) *Guru Gobinda Basu v. Sankari Prasad Ghosal*, reported in (1964) 2 SCA 188 turns on the question whether a person elected, an auditor of the Government companies could be construed to have held an office of profit in the Government of India within the meaning of article 102(1) (a) of the Constitution. It was held there that the elected person was disqualified and that he so held an office of profit. Discussions there turned on the provisions of section 224 of the Companies Act which empower every company to appoint an auditor, but in case of a Government company an auditor was not appointed u/s 224 of the Act but appointed under section, 619 (2) of the Act. It was there held that on the analysis of those provisions the appellant was appointed an auditor of Durgapur Projects Limited and the Hindustan Steel Limited by the Central Government and was removable by the Central Government. The Comptroller and Auditor-General exercised full control over him and his removal was made also by the Central Government though he was paid by the company. On those facts it was held that the appellant held an office of profit. For the determination of the point in issue before this court in these proceedings that authority of the Supreme Court is not directly or indirectly on the point.

58. Mr. S.C. Sen, learned Counsel for J. S. Desai & Co. opposing the scheme very ably argued one particular point in this branch of the case. It was contended by him that on a proper analysis of Part X of the Companies Act specially dealing with winding up of unregistered companies it would be found that a foreign company could not be wound up. Mr. Sen, particularly relied on the provision under S. 589(2) of the Companies Act stating:

Provided that an unregistered company shall not except in the event of its being wound up be deemed to be a company under this Act, and then only to the extent provided by this part.

On that basis and on the strength of this proviso that argument of Mr. Sen is that as the present applicant company has not yet been wound up, therefore, a foreign company which comes within the definition of an unregistered company under S. 582(B) of the Companies Act cannot be wound up. This argument is ingenious but unsound.

59. Miss. Uma Banerjee, the learned counsel appearing for Chain Manufacturing Enterprises, one of the unsecured creditors of the company supporting the scheme in a remarkably able argument contended that even on the language of the proviso under S. 589(2) of the Companies Act, the applicant Company considered as a foreign company, would be deemed to be a company under the Companies Act. She relied on the fact that the firm of J. S. Dasai & Co's petition for winding is pending before the Court and when the petition for winding up was pending before the Court it came within the expression "except in the event of

being wound up" in the proviso of s. 589(2) of the Companies Act. For this purpose she relied on the decision of the Division Bench of the Allahabad High Court in (9) Mohanlal Huja v. Chawla Bank Ltd. reported in AIR. All. 778.

Bhargava, J. who delivered the judgment of the Division Bench of the Allahabad High Court in that case laid down that the expression "company" in sub-sections 1 and 2 of s. 153 of the old Companies Act (corresponding to s. 391 of the present act) could not be confined to companies formed and registered under the Act or existing companies but it included an unregistered company also. This case is also an authority on the point, now well settled, that a company under s. 153(6) of the old Companies Act means any company liable to be wound up under the Act and an unregistered company was liable to be wound up under s. 271 of the old Act see the observations of Bhargava, J. at p. 782 of that report. The other point on which this case is also an authority is that under the general law it was held that an application under s. 153 of the old Companies Act relating to an unregistered company could be filed in the High Court to whose jurisdiction the company has submitted or made itself amenable or within whose jurisdiction the principal place of business of such company was situated. See, the observations of Bhargava J. at pp. 782-783 of the said Report. On the strength of this proposition, Miss Uma Banerjee has submitted that the company itself is making this application before this court and therefore has submitted to the jurisdiction of this court. She also with considerable force has submitted that the firm of J. S. Desai & Co. the unsecured creditors who are opposing the scheme on the ground of jurisdiction have themselves applied for winding up of this company and they are the petitioning creditors in this Court. It is, therefore, submitted by her that if they have invoked the jurisdiction of this court in winding up they cannot now be heard to contend that this company is not liable to be wound up within the meaning of s. 390(a) of the Companies Act.

60. The next contention of Miss Banerjee is that the expression in the event of its being wound up in the proviso to section 589(2) of the Companies Act means and includes a company for which an application for winding up has been presented in this court and pending. In aid of her argument she invokes section 441 (2) of the Companies Act to say that the winding up of a company by the court shall be deemed to commence at the time of the presentation of the winding up petition. Therefore, she argues that the winding up relates back to the presentation of the petition and the fact of a pending petition for winding up admitted in court shows that "it satisfies the test in the event of its being wound up" appearing in that proviso.

61. In support of her contention Miss Banerjee relied on the celebrated observation of Jessel, M.R. in (10) Rudow v. Great Britain Mutual Life Assurance Society, 1881 XVII Ch. D., at p. 600, overruling the decision of Bacon, V. C. and appearing at page 612 of that report as follows :

Therefore, it is quite plain that so far the 85th section is made applicable to an unregistered company. But there are at the end of the section, these words,

upon which the Vice Chancellor relied that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act and then only to the extent provided by this part of this act. His Lordship read being wound up as if it had been having been wound up, which would make the Act absolutely unworkable. It is necessary that the provisions anterior to the actual order for winding up should apply to an unregistered company and that he seems to have forgotten.

62. I respectfully agree with the observations of Jessel, M. R. made in that case. And as the learned M. R. was construing a statute almost similar in language as the proviso to section 589(2) of the Companies Act, the reasons given by Jessel, M.R. are compelling in this case. It may be noticed here that section 589 of the Companies Act, 1956 is not a novelty in Indian Company Law but is comparable to section 404 of the English Companies Act, 1948.

63. There are two other decisions on which Miss Banerjee had relied. One is (11) In re Strauss and Company Limited, AIR 1937 Bom. 15, where Ran-gnekar, J. considering the old sections 270 and 271 of the Companies Act, 1913 reached the conclusion that the words shall include would not exclude a foreign company not registered under the act and that such company fell within the expression unregistered company and that the High Court had Jurisdiction to wind up an unregistered foreign company irrespective of the number of its members under sections 270 and 271 of the then Companies Act. That case is also an authority for the point that the mere fact that the order for winding up of such a company had been made by a competent court of the place of the company's incorporation could not make any difference to the jurisdiction of the High Court here. The other case is (12) In re Travancore and Quilon Bank Limited, reported in AIR 1939 Mad. 398. This case is a clear authority for the proposition that a foreign company is liable to be wound up as an unregistered company within the meaning of sec. 271 and that the expression company meant a company liable to be wound up under the Act and could include a foreign company u/s 153 of the old Companies Act which that authority considered. This case lays down the proposition that in case of a foreign company having its central office in India the High Court in whose jurisdiction such office was situated could entertain an application for a scheme u/s 153 at the instance of either a creditor or member of such a foreign company. Indeed there Venkataramana Rao, J. at page 327 went so far as to say that a scheme u/s 153 of the old Companies Act provided an alternative mode of winding up a company and it was a provision to avert a winding up and was therefore a provision with respect to winding up within the meaning of section 271 of the old Companies Act, The observations of Rao, J. are as follows :

It was urged that any scheme, which could be proposed in the case of a foreign company must be with respect to a winding up and an application of the nature in question is not with respect to a winding up and section 153 could not be invoked for that purpose. I do not see much substance in this argument. u/s 271

all the provisions of the Act with respect to winding up would apply to an unregistered company and a provision to avert a winding up will be a provision with respect to the winding up. A scheme u/s 153 provides an alternative mode of winding up and it would not be doubted that as much applicable to the winding up of a foreign company and the corresponding section of the English Act has always been employed to give effect to a scheme of compromise already arranged in a simultaneous winding up abroad.

64. I need only add that under sub-section (2) of section 392 if the court is satisfied that a compromise or arrangement sanctioned u/s 391 cannot be worked satisfactorily with or without modification, it may, either on its own motion or on the application of any person interested in the affairs of the company made an order winding up the company, and that will be deemed to be an order u/s 433 of this Act. This particular provision lends support to the view that the scheme is really a substitute or auxiliary or an alternative of or analogous to winding up.

65. I am satisfied that these authorities and the reasons provide a complete answer to Mr. S. C. Sen's argument that a foreign company could not be worked under a scheme or wound up on the strength of the proviso of section 589(2) of the Companies Act. I accordingly overrule Mr. Sen's contention.

66. I need now only notice the final authority of the Supreme Court in (13) *Bajah of Vizianagaram v. The Official Receiver and Official Liquidator*, reported in AIR 1962 Supreme Court 500. There the Supreme Court lays down the law to be as follows, at page 603 of the report:

The courts of a country dealing with the winding up of a company can ordinarily deal with the assets within their jurisdiction and not with the assets of the company outside their jurisdiction.

It is therefore necessary that if a company carries on business in countries other than the country in which it is incorporated, the court of those countries too should be able to conduct winding up proceedings of its business, in their respective countries. Such winding up of the business in a country other than the country in which the company was incorporated is really an ancillary winding up of the main company whose winding up may already have been taken up in that country or may be taken up at the proper time.

Indeed this principle is expressly recognised by the statutory provision in section 584 of the Companies Act which provides :

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India. It may be wound up as an unregistered company under this part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

The Supreme Court in *Rajah of Vizianagaram's* case, (supra) quoted above also

observed at page 503 of the report already mentioned as follows:

It is the company incorporated outside India which is really wound up as an unregistered company in this country.

That I think settles the matter on this point.

67. On the strength of those decisions and the reasons given above, I hold that this Court has jurisdiction to entertain an application for and make an order for sanctioning a scheme or arrangement or compromise between a company and its creditors or its members under sec. 391 of the Companies Act either in respect of a foreign company or in respect of Government Company.

68. Miss Uma Banerjee has advanced one more argument of considerable importance on the point under consideration, Her submission is that to accept the position that foreign sterling companies doing business in India are outside the Indian courts' jurisdiction of scheme and winding up under the companies act would lead to illegal discrimination between Indian Companies and foreign companies both doing business in India and that such an interpretation will lead to the creation of a privileged class of companies which was not the intention of the Indian Companies Act. This is an argument of considerable importance and significance. Her submission is that the true law on the point is that the law of the place of origin of the company governs the incorporation of the company but on contractual and other obligations of law it is the law of the place of business that must govern the company and that such obligation of law covers scheme and winding up. Her argument is that scheme and winding up are matters, relating to the conduct of business of the company. It is in the course of the business of the company that debts are incurred, creditors remain unpaid or it becomes just and equitable to wind up a company and also for analogous reasons of business and administrative difficulty, a scheme or compromise or arrangement with the creditors is a matter germane to the conduct of the business of the company. It is, therefore fundamental in Company jurisprudence that the law of the place of business should govern and regulate the company's business in this respect. Indeed, if a foreign company is allowed to do business in this country and keep the creditors at bay and contend that the unpaid creditors cannot petition for the winding up of the business of such foreign companies, or formulate a scheme or compromise or arrangement for payment then the situation will not only be discriminatory, intolerable, in law. Both common sense and logic support that argument. Miss Banerjee on this point relies on two decisions-one of the Privy Council and the other of the House of Lords. She relies on the decision of (4) State aided Bank of Travancore Ltd. -v- Dhrit Ram. 69 Indian Appeals I, and particularly on the observations of Lord Atkin occurring at pp. 7, 8, and 9 which are as follows:

It is conceded, however, that by the law of Travancore the order of the court makes the scheme of arrangement binding on all creditors where ever situate: and - apart from the question of jurisdiction of the Bombay High Court, which will

be mentioned later - the only question argued in the courts in India and before us was whether the contract between the parties was governed by Travancore Law.

..... It seems highly improbable that such an institution would contemplate making contracts part of which would be governed by the law of Travancore and part by the law of the place of residence of its customers or debtors. But whatever importance should be attached to this, their Lordships came to the conclusion that not only the place where the contract was made but also the place where the contract was to be performed was Travancore and that the law of that state governs the transaction. The appellant, therefore, was protected by the terms of the scheme of arrangement.

The recent decision of the House of Lords in (15) *National Bank of Greece and Athens S.A. v. Metliss*, 1958 AC 509 is also relevant on the point under consideration. Viscount Simonds at P. 522. observed:

My Lords, it must be apparent that, if the appellants are right, a strange situation is revealed. Here is a company whose status is recognised by the courts of this country because it is incorporated by the law of its domicile.

By that law it is invested with duties, powers, assets, and liabilities. It admits that, if sued in Greece, it would be liable on the bonds here in question. subject always to the benefit of any moratorium. It comes to this country, carried on this business, and assumes unchallenged possession of the assets of the dissolved company. It is the strange climax of this narrative that it then disclaims a liability to which that dissolved company was undoubtedly subject. I do not think that an English court of justice should readily give effect to such a pretension and I shall in the first place examine such authority as was cited by counsel for the appellant in support of his propositions.

Viscount Simonds proceeds further to observe at page 525 in 1958 AC as follows:

I believe that justice will be done if your Lordships think it right not only to recognise the fact that the new company exists by the law of its being but to recognise also what it is by the same law. It is conceded that its status must be recognised. That is a convenient word to use. But what does it include or exclude ? If a corporation exists for no other purpose than to assume the assets, liabilities and powers of another company, what sense is there in our recognizing its purposes of its existence and give effect to them accordingly. If, for reasons of comity, we recognize the new company as a juristic entity, neither the Greek Government, the creator, nor the new company, its creature, can complain that we too clothe it with all the attributes with which it has been invested. Thus and thus alone, as it appears, justice will be done.

Lastly Viscount Simonds observes at page 526 in 1958 A.C. as follows:

Clearly the obligations in English law (the proper law of the contract) could not be affected by a Greek law which purported to vary its terms.

Lord Tucker in his speech in the *National Bank of Greece and Athens S. A. v. Metliss*, 1958 AC 509 at pages 529 to 530 quotes with approval the observations of Denning, L.J. in the following terms:

This was an English debt and the obligation to pay it, its quantum and the date of payment are all governed by English law which will not give effect to the Greek moratorium. Denning, L.J. (as he then was) said in the Court of Appeal: "We recognize that Greek law has power of life and death over the company which it created, and we must accept the substitute whom it has provided. But when the substitute stands in our courts to answer for an English debt, it must answer according to English law which says that debt must be paid according to its terms.

69. This really meets the very point in this case. If foreign company is creating debts in India, the Indian debts must be paid or compromised according to Indian law and if inability to pay the debts is a ground for winding up or making a compromise or scheme or arrangement then the Courts of this country have the jurisdiction to entertain application for winding up or application for sanction of a scheme.

70. Although the English law on this point is not a very dependable guide, such law has certain analogous features with the Indian law on the subject. Buckley on the Companies Act, 13th Edition, at pages 735-36 formulates the English law on the point in these terms:

A company incorporated in another jurisdiction and whose principal place of business is in another jurisdiction, but which has its office and assets in this country, may be wound up here, and the pendency of a foreign liquidation does not affect the jurisdiction of the court to make a winding up order. And order can be made even if the company has ceased to exist in the country in which it was formed, in which case it is not necessary to prove that it had, before its dissolution, established at some place within the jurisdiction to administer and persons subject, or at least submitting, to the jurisdiction who are concerned or interested in the proper distribution of the assets.

71. In support of this proposition, such authorities are cited by the learned Editors of Buckley on The Companies Act, 13th edition, as (16) *In Re Commercial Bank of India*, LR 6 Eq. 517; (17) *In Re English, Scottish and Australian Chartered Bank*, (1893) 3 Ch. 385; (18) *In Re Azofj-Don Commercial Bank*, 1954 Ch. 315 and other cases, which it will not be necessary for me to discuss in detail here.

72. In Volume 9 of Simonds' Edition of Halsbury's Laws of England, p. 19, after referring in article 28 to the fact an English Corporation holding all the shares in a foreign corporation did not make the business of the foreign corporation the business of the English corporation on the ground that each corporation is a distinct entity, and that in such a case mere reason of the share-holding would not make it either the trustee or the agent of the foreign corporation the learned Editors go on to say in article 29 as follows:

In so far as the conception of nationality is applicable to corporations, it depends upon the country of incorporation. A corporation incorporated under English law has British Nationality, irrespective of the nationality of its members; but an English corporation assumes an enemy character in time of war if controlled by persons resident in the enemy country, or adhering to the enemy. An English corporation remains subject to English law notwithstanding that its business and centre of administration may be abroad.

73. This last sentence represents the crucial point we are determining in this application and in support of that proposition the authority of (19) Attorney General v. Jewish Colonization Association, (1900) 2 QB 556, on appeal (1901) 1 KB 123 at pages 130 and 144, has been cited in Halsbury.

74. While on this point, it will be appropriate to refer to two other decisions, one, a recent Full Bench decision of this High Court, to complete the Indian authorities on this branch. In (20) In Re The Frontier Bank Limited, AIR 51 Simla 145, the Full Bench of that High Court came to the conclusion that section 153(6) of the old Companies Act provided an exception to the provision of section 276. The general rule laid down in section 276 was not absolute. The ratio of that decision is that if a foreign company had complied with the requirements of section 277 of the old Companies Act it was to be treated as an unregistered company for the purpose of Part IX of the Companies Act and that it was a Company liable to be wound up within the meaning of section 153(6) of that Companies Act. The other ratio of that decision is that on that very ground, a scheme or arrangement could be sanctioned in respect of such a Company. That was the view held by the majority of the Full Bench consisting of Khosla and Kapur, JJ. Harnam Singh, J. dissented and was of the view that an Indian High Court not having jurisdiction over a foreign country has no jurisdiction to sanction a scheme or arrangement with respect to such a foreign company. In fact, Kapur, J. of the majority view expressed his conclusion at page 156 of that report as follow:

(1) For the purposes of winding up, an "unregistered company" would be governed by the definition of the "Company" given in section 2 (2) of the old Indian Companies Act.

(2) Section 153(6) enlarges the definition of the expression "company" and brings within its ambit all companies which can be wound up under the provision of the Indian Companies Act which would include foreign companies. See Mercantile Bank of Australia, (1892) 2 Ch. 204; and North Australian Company v. Goldsborough Company, (1890) 61 LT 716.

75. The old Calcutta case of this High Court is (21) In Re Calcutta Jute Mills Company Limited, reported in ILR 5 Cal. 888, where Wilson, J. expressed the view on the then section 213 of the Indian Companies Act of 1866 that a limited company formed in England under the English Companies Act, 1862, and having its registered office in England, but which had its principal place of business in Calcutta, and was managed exclusively by the Directors in Calcutta, and the

business of which was carried on exclusively in India could be wound up by the High Court here. At page 892, Wilson. J. made the following observation:

It remains to be considered whether the fact that the Company registered in England excludes the jurisdiction of this court. In my opinion, it does not. The provisions of the Indian Companies Act are substantially taken from the English Act; see per Peacock, C.J. In *Re Agra and Masterman's Bank*, 1 Ind. Jur. NS 335. And under the English Acts English courts have exercised jurisdiction to wind up companies formed in foreign countries or in India.

76. Again, after discussing certain apparently contrary dicta of Peacock, C.J., in the *Agra Bank* case, Wilson. J., at page 893 expressed his Lordship's views in this way:

But those dicta must be read with their context, and so reading them. I think that the learned Chief Justice was speaking throughout of an English Company so formed, such as the one then before the court; and did not intend to deal with the very different case of a Company Indian in everything except registration; and section 194 seems to show that companies formed under an Act of Parliament or Letters Patent may register in India, and may do so for the purpose of being wound up. I am, therefore, of opinion that this court has jurisdiction to wind up this company.

77. In this connection it will not be without interest to notice the distinction made between transferor company and the transferee company in section 394(4) (b) of the present Companies Act, 1956 which says:- "transferee company does not include any company other than a company within the meaning of this act; but transferor company includes any body corporate whether a company within the meaning of this Act or not."

78. I shall now leave this branch of the case and proceed to discuss another important point argued at the Bar. It relates to the locus stand of the workers or the laborers to intervene in an application for a scheme or arrangement or a compromise u/s 391 of the Companies Act. 1956. It is a question of importance.

79. Section 391 of the Companies Act deals with a compromise or arrangement with "creditors" or "members" of a Company. Is the worker a "creditor" or "member" of the company ? Now a "member" of the company has a special legal meaning under the Companies Act. u/s 2(27) of the Companies Act a "member" in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114. The definition of a member is contained in section 41 of the Companies Act which says:

(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a member of the

company.

By the test of the statutory definition the labourer or the worker qua worker is not a "member" of the company under the Companies Act and is not on the register of members. Sociologically or rather in economic sociology the worker is certainly a valuable member of the business or a partner with capital and management, but in legal sense that is not the position under the Companies Act. I am also of the view that the worker is not by reason alone of being a worker a creditor. In order to be a creditor there has to be a debt owed by the company to the person who claims to be a creditor. The worker can be a creditor if his dues have arisen and have not been paid. Wages due but not paid would be a debt and would make such a worker of unpaid wages a creditor. A worker can also be a creditor on account of other dues for Provident Fund, gratuity, insurance or other allowances. But a worker qua worker is not a "creditor". That being the legal position the worker does not come into this picture of a compromise or arrangement between a company and its creditors or a company and its members. A worker as such therefore, unless, an individual worker is a creditor, has no locus standi to intervene in a proceeding u/s 391 of the Companies Act dealing with a compromise or arrangement between the company on the one hand and its creditors or members on the other.

80. Although I am of the opinion that the worker qua worker is outside the pale of section 391 of the Companies Act dealing with a compromise or arrangement only between the company and its members or creditors, the court, in considering the scheme proposed has, in my judgment enough discretion and power under sections 391 and 392 of the Companies Act to see that the scheme or compromise or arrangement works without avoidable hardship to the workers or employees and is bona fide in its working in that respect and in doing so the court in my view, can always consider the effect that such a scheme or compromise or arrangement would have on the labour and the worker. Normally it is usual to provide by some such arrangement in the compromise or scheme as that the transferee company under the scheme or compromise or arrangement to absorb as many of the labour and workers as can be consistent with the scheme. The obvious limitations so far as the labour or workers are concerned are that a scheme or compromise or arrangement with creditors or members obviously means difficulty for the company to carry on its normal business in a normal way and therefore it cannot be possible to lay down as a matter of law that such a scheme shall have no effect or repercussion or impact on the labour or the workers. At the same time the court can and should examine the scheme in a way as not to cause any avoidable or unnecessary hardship to the labour or the workers.

81. I need only refer here very briefly to the decision of the Supreme Court in (22) Barsi Light Railway Company Limited v. K. N. Joglekar, A (1957) SC 121 : 1955 SCA 57 and the observations of S. K. Das, J. at pages 129 and 130. This case is not on this point at all although reference to it was made by the learned

Advocate General as well as by Mr. S. K. Acharyya appearing for Labour Union. The case was concerned with the interpretation of sections 25F and 25FF of the Industrial Disputes Act and with the controversy whether the retrenchment had any wider meaning than the ordinary accepted connotation of the word indicating discharge of surplus labour or staff by the employer for any reason whatsoever other than as punishment inflicted by way of a disciplinary action and that it had no application where the service of a workman had been terminated by the employer on a real and bonafide closure of business or where the service of a workman had been terminated by the employer on the business or undertaking being taken over by another employer in the circumstance like that of a railway company in that case being purchased and taken over by the Government under the terms of the contract under which the company constructed the railway. But after the judgment of the Supreme Court in Barsi Light Railway case Parliament passed Act No. XVIII of 1957 introducing sections 25FF and 25FFF in the Act No. XVIII of 1957 introducing sections 25FF and 25FFF in the object of that amending Act it was explained in the "Statement of Objects and Reasons."

In a judgment delivered on the 27th November 1956 the Supreme Court held that no retrenchment compensation was payable u/s 25F of the Industrial Disputes Act, 1947 to workmen whose services were terminated by an employer on a real bona fide closure of business or when termination occurred as a result of transfer of ownership from one employer to another. Since then a number of undertakings have closed down or put up notices of closure for one reason or another. This has led and is likely to lead to a large number of workmen being rendered unemployed, without any compensation. In order to meet the situation which was causing hardship to workmen, it was considered necessary to take immediate action and the Industrial Disputes (Amendment) Ordinance (4 of 1957) was promulgated with retrospective effect from 1st of December 1956..... This was the position which existed prior to the decision of the Supreme Court. In the case of closure of business on account of circumstances beyond the control of employer the maximum compensation payable to workmen has been limited to his average pay for three months. If the undertaking is engaged in any construction work and is closed down within two years on account of the completion of its work, no compensation will be payable to workmen employed therein. This will seek to replace the Ordinance by the Act of Parliament.

The effect all these amendments broadly speaking was to ensure :

- (i) That the transfer does not entail any interruption in service of the workmen;
- (ii) That the terms and conditions under the new management compare favourably with the old ones; and
- (iii) That under the terms of such transfer or by any other method which may include any agreement between the new management and the workers, the management binds itself to pay the retrenchment compensation on the basis of

continued service.

82. These principles are not technically appropriate for consideration of an application such as the present one u/s 391 of the Companies Act. But in most cases of schemes or arrangements or compromises between a company and its creditors or members, they involve such transfers. Although they are not technical considerations under Companies Act yet, I believe, with appropriate limitation and under appropriate circumstances the court may at its entire discretion consider these principles in sanctioning or rejecting a scheme. In sanctioning or rejecting a scheme, undoubtedly the dominant consideration for the court is the interest of the company as such and its members or creditors. Broadly though not technically speaking about the interest of the company as such, the consideration of the fate and condition of the workers is a part of the larger interest of the company and its scheme under consideration. I shall, therefore, adopt a flexible and ambivalent attitude for this court with regard to the consideration of the workers under a scheme u/s 391 of the Companies Act.

83. Having expressed my conclusion and views in this regard. I shall now deal with two more aspects of the scheme vis-a-vis the labour and the workers. The learned Advocate-General, Mr. Banerjee has drawn my attention to the decision of the Supreme Court on this branch of the case, reported in (23) Oil Seeds Exchange Limited v. Their Workmen, (1966) 2 LLJ 324. The reason for learned Advocate General's citing this case is to show the considerations governing retrenchment. Some basic principles were decided by the Supreme Court in this case; first, it had laid down that normally it would be for the employer to decide which of the employees should be retrenched. Secondly, there can be no doubt that the ordinary industrial rule of retrenchment is "first come last go." And where other things are equal, this rule has to be followed by the employer in effecting retrenchment. Thirdly, that this rule should commence with the latest recruit and progressively retrench employees higher up in the list of seniority. Lastly, that this rule is not immutable and for valid reasons may be departed from. These considerations, however, again I say are not germane to this application but will be cogent and relevant at the stage of replacement of the labour and staff by the new transferee company. The Central Inland Water Transport Corporation Limited. If there be any industrial dispute, which I hope will be avoided by the good sense of all parties interested, then it will be for such Industrial Tribunal or such industrial proceeding to take cognizance or consideration of such facts.

84. The other point on this branch of the case, according to the contention of Mr. Roy for the Workers' Union, Assam followed by Mr. Acharyya, is that the scheme proposed and under consideration by the court in this case departs from an agreement said to have been arrived at between the applicant company and its workers. It is said that the scheme ignores that agreement. In an affidavit affirmed on the 6th March 1967 by Nalini Kanta Sharma, Assistant General Secretary of the R. S. N. and I.G.N. and Railway Company Limited Workers'

Union, Assam, this agreement is mentioned in Annexures A and B thereof.

85. So far as the dues of the workers are concerned it has been clearly stated in the affidavit of Krishnaswami Srinivasan affirmed on the 1st April 1987 paragraph 19, as follows:

As regards the dues of the employees, the employees and staff are being paid as far as possible and representations having been made on behalf of the management of the Government of India to advance moneys for paying off the balance of the dues, the Government of India have recently advanced sufficient moneys for settlement of the entire arrears of dues of the employees in full.

In the light of the discussions I have already made such of the workers as are creditors of the company will, therefore, be paid off in full and all their legitimate dues under the law shall be so paid and I order and direct accordingly. That guarantee is given not only in the affidavit of the Managing Director of the applicant company but also by the Government of India which I have recorded and stated earlier in this judgment. And this would also apply to the request made by the solicitor Mr. Chatterjee who appeared for three of the retired employees who inter alia are supposed to have also earned their Provident Fund although it has been said that there are different trustees for such provident fund one set for Eastern Pakistan and other in India.

86. Coming back now once again to the agreement which the applicant company entered into with the clerks of its Ghat establishment and with the Assam clerical and subordinate staff, the company appears to have agreed to avoid retrenchment of the Ghat clerical staff as a consideration for the clerks' agreeing to lower the age of their retirement from 60 to 57, and in the case of Assam staff there was no agreement to avoid retrenchment. The Government's point of view is that the agreement with the Ghat clerical staff was drawn up when the company's business of providing transport from Calcutta to Assam was in full swing but the picture has now totally changed for circumstances beyond the control of any party. It is not a question of proposing retrenchment of the staff of the Ghat establishment but in effect to really close down the company as a whole and to transfer its assets and liabilities to a new company set up by the Government of India. The learned Advocate General has referred to the decision of the Court of Appeal in the case of the employees of Bank of China (28/FJR/300) where it was held that any contract for payment of any large compensation in the event of retrenchment would not be relevant when the company went into liquidation. The real point of merit, however, on this point so far as the Government is concerned, is that the agreement with the Ghat staff has now become incapable of implementation as a result of the Indo Pakistan hostilities and the consequent closure of the company and that the notice of intention to close the Ghat establishment was given to the concerned Union nearly a year ago.

87. Here again in law and u/s 391 of the Companies Act when the Court is considering a scheme or even when the Court is considering an application for

winding up, an agreement between the Company and its workers cannot fetter or qualify or circumscribe the Court's power to sanction a scheme even inspite of the fact that it conduces to the breach of such agreement. To allow such an agreement to override the statutory power of the court to consider a scheme is to reject such a scheme u/s 391 of the Companies Act because it does not give effect to a binding character of such an agreement would, in my view, be illegal and unjustified. It is not necessary for me to discuss the decision of the Court of Appeal here in *Ram Hari De v. Official Liquidator*, reported in 1965 (2) Labour Law, Journal 230.

88. If the company and its business cease to exist due to circumstances beyond its control, it will be illogical and incomprehensible to say or hold that an agreement between such a company which cannot exist any more except by transferring all its assets and liabilities to a new transferee company must still bind the transferee who as a part of its liabilities must carry the burden of the agreement between that transferor company and its workmen made under circumstances which are now so totally changed that the whole substratum of the transferor company with whom the agreement was made, is completely gone. Such an agreement cannot be regarded as a covenant running with company, bona fide extinguished by circumstances beyond its control.

89. With regard to the points raised by the solicitor Mr. Chatterjee and the affidavit of Bipad Bhanjan Malakar and others, the submissions were confined to-

(a) Claim for provident fund.

(b) Claim for gratuity and ex gratia payment.

The main objection of the Government is that the Trustees of the Fund are in Pakistan where these workers served and the Fund was also in Pakistan and that the three employees are not the only persons but there are others. The Government of India as well as the new company have assured this court that if they are legally payable they would be paid. Therefore, it would be unnecessary to pursue this point any further.

90. Mr. S. B. Mukherjee, learned counsel for Kilburn Employees Co-operative Credit Society Limited whose arguments I have earlier considered also raised some legal points which I propose to dispose of here as briefly as possible. His first submission is there was no separate meeting of the preference and the ordinary shareholders, who are different classes. His second submission is there was no quorum at the meeting of members as only two members attended personally while the order of the court was quorum would be 5. His third submission is that there was no compliance with Rule 77 of the companies Rules because the decision was by show of hands and not by poll as required by Rule 77. His fourth submission was that there was no compliance with Forms 41 and 42 of the Forms prescribed under the companies rules. I am not inclined to accept any of these submissions. In the first place, there was no such protest or objection when the meetings were being held and in fact it has not been taken at

any stage at all. These objections are now put forward before me in this court without any affidavit. Non-compliance with any of these points if any, and now urged must be deemed to have waived. Apart from waiver there are also other reasons which successfully meet these technical objections. The very fact that the minimum quorum was said to be 5 itself would show that it was not contemplated that there should be separate meetings for ordinary and preference shareholders because there was only one preference shareholder in this company. Again, the outstanding fact is that there was complete unanimity among both the ordinary and preference shareholders and that would cure irregularity, even if any, if joint meeting could be at all described as an irregularity in such circumstances and facts. With regard to the quorum what Mr. Mukherjee argues is that quorum could only be taken into account of those attending personally and not those attending by proxy and reference in that connection was made to section 174 of the Companies Act as well as article 49 of the Articles of Association. The order of the court in this case was "the quorum of the meeting would be 5", and it not expressly require personal presence. The fact that where quorum requires "personal" presence it is expressly mentioned as in section 184 or article 48 and unless therefore the word "personal" occurs, quorum would also include in its calculation those present by proxy. Besides section 174 of the Companies Act obviously applies to a meeting under the Companies Act and not to meetings ordered by court. Again the learned Advocate General finally has argued that the meaning of the word "poll" does not exclude show of hands. It only means that the value and number of creditors or members represented would be taken into account instead of one man one vote. A person by show of hands can record both the number and value of his own dues and show as well those of persons whom he represents or whose proxies he gives for this purpose. The learned Advocate General relied on the case of (24) Bengal Bank v. Suresh Chakravarty, 55 CWN 206 at page 208 where it is held that both the value and number of creditors and shareholders can be ascertained by the Chairman by show of hands and it is the duty of the Chairman to ascertain the sense of the meeting as best as he can. The learned Advocate General also relied on the point that poll was not necessarily by way of ballot paper as decided in (25) (1906) 1 Chancery Division 331. Lastly, with regard to Forms the fact remains that court's power under sections 391 and 394 of the Companies Act would cure any defect for non-compliance with any Form and because the court can add, alter, vary or modify the scheme as it may think fit. In conclusion it must be repeated that all these technical objections appear to lose all force because of the total absence of protest at all relevant time. In the minutes of the Chairman it was recorded that it was "unanimously" agreed by all those present that voting would be by show of hands by which the number and value of creditors including proxies would be ascertained. I accept these arguments of the learned Advocate General as a complete answer to these points raised by Mr. S. B. Mukherjee.

91. This disposes of all the major legal questions of significant importance raised

in this application. What remains now to be considered is the scheme itself; what are its merits and demerits, whether such a scheme should be sanctioned by the court either as such or with modifications and if so, with what modifications. u/s 392 which is a new section introduced by the Companies Act, 1956 the court has been given large powers of supervising the carrying out of the compromise or arrangement and the court has either at the time of making such order or at any time thereafter the power to give such direction in regard to any matter or make such modifications in the compromise or arrangement.

92. Before analysing the different clauses of the scheme placed before the court it is necessary to indicate the main principles by which the court would be guided in consideration of scheme of compromise or arrangement u/s 391 of the Companies Act because of some of the points raised in regard to the scheme proposed.

93. It is well-settled that in exercising its powers of jurisdiction u/s 391 of the Companies Act the court examines in addition to the provisions of the Act, the preliminary requisites that the members or creditors were fairly represented at the meeting, that the statutory majority was acting bona fide and not coercing any interest and the scheme is fair and reasonable made in good faith and would be supported by sensible people and is a fair business and commercial proposition. These principles are well settled and it will not be necessary in this case to discuss in any detail the well-known authorities in support thereof, Mr. S. C. Sen who mounted the objection against the scheme appearing for the firm of unsecured creditors J. S. Desai and Company, prefaced his objection by reference to the well-known case in (26) Dorman, Long and Company Limited v. South Durham and Iron Company Limited, (1934) 1 Chancery Division 635 and the classic observation of Maugham, J. specially at pages 655, 670 and 671. I hope I shall be pardoned if I said that these observations are far too well-known to need any reiteration here.

94. The following propositions of law have been laid down there:

- (i) in determining whether a compromise or arrangement should be sanctioned, the court must be satisfied that the resolutions in favour of it are passed by statutory majority in value and number in accordance with the Companies Act;
- (ii) that the proposal is such that as intelligent and honest members of the class is concerned, acting in respect of their own interests, would approve.

95. The scheme or compromise or arrangement proposed in this case is set out in paragraph 22 of the petition. It consists of nine clauses. Clause 1 provides that a new Government of India Company would be incorporated within about 6 weeks with a Memorandum and Articles of Association amongst others with power to acquire property and assets of the existing company with sufficient capital fixed by the Government of India. This is the new company which is called the Central Water Transport Corporation Limited. It has already been formed. In fact, it was formed and incorporated on February 16, 1967 with an authorised

capital of Rs. 4 crores. Mr. Sen's criticism is that this new Co. is taking over more liabilities than Rs. 4 crores. That is a matter which the new company will have to solve. It may expect improved business and it may also develop new services in routes and may also raise finances. That, in my opinion, in the present facts, is no ground for rejecting the scheme or compromise and in particular clause 1, thereof which I have just mentioned.

96. Clause 2 provides that the applicant company, The Rivers Steam Navigation Company Limited, will transfer to the new company all its properties and assessed the uncalled capital amounting to ₹117.585 or Rs. 24,69,285 will be paid in rupees by the Government of India to the existing company. The Government of India has suggested through its learned counsel Mr. D. K. Sen. modification of a minor nature of this clause which I accept viz., deletion of the words "or Rs. 24.69,285" being the rupee equivalent of sterling mentioned therein. It must be noted that there is no objection from any of the parties to that deletion. Mr. S. C. Sen, learned counsel for J. S. Desai and Company, has criticized that part of clause 2 which provides for payment of the uncalled capital by the Government of India to the existing company. Surely, if the Government of India is forming a Government company which is taking over the properties and assets of the existing company then some provision has to be made for the uncalled capital and only proper and fair that the Government of India must pay the uncalled capital.

97. Clause 3 provides that the new company will undertake all the liabilities of the existing company in favour of the State Bank of India and the Government of India so that the new company would be a debtor in place of the existing company and the existing company will be released from all liabilities in respect of such debts. It is, therefore, not quite an accurate criticism which Mr. S. C. Sen made that the new company is not accepting any liabilities whatever. I have already mentioned the fact that Government of India and the State Bank of India are perhaps the largest creditors of the existing company.

98. Clause 4 provides that the amount due to the Chartered Bank, which is already the subject-matter of suit No. 1730 of 1966 under the title "The Chartered Bank v. Rivers Steam Navigation Company Limited", is reduced to Rs. 60 lakhs and that this reduced sum shall be payable by the new company within ten weeks from the date of the final approval of the scheme by the court or the 30th June 1967, whichever is later, and this would be in final settlement of all dues to the Chartered Bank. This again shows that the new company is also taking another liability for the Chartered Bank of India and that for the reduced amount of Rs. 60 lakhs.

99. Clause 5 provides that no amount shall be payable to any creditor of the existing company who has directly or indirectly agreed with any person to accept the shares of the existing company in payment or satisfaction of his dues in whole or in part and the existing company, if so required, should allot the shares agreed to be taken as aforesaid to the creditor concerned. It is criticised on the

ground that hardly anyone would take the shares of the existing company if the existing company is in such a bad state or condition and if the existing company is really intended to be untimely dissolved. No doubt, that criticism is justified. But clause 5 of the scheme only shows that whoever has directly or indirectly agreed to accept such shares, no amount shall be payable to such creditors except by way of allotment of shares agreed to be taken in lieu of their dues. If parties agree to follow that course, it is not for this court to say that the agreeing party should not accept the shares of the existing company. In fact there is such an agreement with McNeill and Barry Limited.

100. Clause 6 provided that all other creditors of the existing company namely the unsecured creditors other than the State Bank of India, the Chartered Bank, the Government of India and the creditors mentioned in the preceding clause 5 shall be paid in the following manner, viz.:

(a) All the creditors will be paid Rs. 5000/- or if the amount due to them is less than Rs. 5000/- than the full amount due, upon the sanction of the scheme by the court, within ten weeks from the date of such sanction or the 30th June 1967 whichever is later.

(b) 66.2/3 per cent of the balance of their dues as appearing in the books of account of the existing company in the following instalments, viz. 33. 1/3 per cent before 30th June 1967 and the balance of 33.1/3 per cent on or before 30th June 1968 in full and final settlement of their entire dues.

This is the provision for unsecured creditors generally with the exception mentioned there.

101. Having regard to the finances and balance sheets of the applicant company discussed above, the unsecured creditors have little chance to realise their dues. The provision in the scheme to my mind ensures a fair and reasonable return to them. It ensures minimum for all unsecured creditors and if the claim is for less than Rs. 5000, then the claim has to be fully paid and for the rest of such unsecured creditors the proposed payment of 66.2/3% on the facts and circumstances of this case seems fair and equitable because I am satisfied that if the company was sent to liquidation, then it will be problematic and uncertain whether the unsecured creditors will ever or at all get anywhere near the amount proposed in clause 6 of the scheme of compromise. It is, therefore, in my opinion, in the interest of unsecured creditors as a whole that clause 6 of the scheme should be approved and that is the reason why the majority of the unsecured creditors, as I have noted above, supporting this scheme. I accept the majority view on the point:

102. The other criticism of clause 6 is that the payment clause being in the passive voice the nominative is not clear to say who is making the payment. I accept this criticism. I asked both the Government of India and the new company and the counsel for both have agreed and stated what I record formally here is that the payment will be made by the Government of India. Mr. D. K. Sen, the

learned counsel for the Government of India, as I have already indicated, stated to the court.

(i) That the Government of India agrees to pay the amount due to the secured and unsecured creditors as indicated in the scheme proposed and

(ii) That the Government of India shall provide necessary fund to the new company to pay the amount provided in the scheme for settlement.

These directions are therefore incorporated in clause 6 of the proposed scheme. That solves the problem. It means that the new company will pay and the Government of India will provide the money for such payment as proposed in clause 6 of the scheme.

103. The seventh clause provides that the new company will employ such of the workers and staff of the existing company as may be necessary and suitable for its business on such terms and conditions as it, in its discretion, thinks fit. I do not think that the court in considering a scheme u/s 391 of the Companies Act, can in law go beyond this direction. It will be unwise in my judgment to fetter the new company with any ad-hoc determination suggested by the learned counsel for the labour and the workers at one stage that all the employees of the existing company must be taken over en masse and in a body. Surely, the structure of the new company and its work will determine how many can be taken over and it will not be for this court either under the Companies Act or even under any other statutory law to impose that the whole staff and labour must be taken over bodily from the existing company to the new company.

104. I have already discussed the argument advanced on behalf of the labour and the staff and the guarantees or the assurances given on behalf of the Government of India and the new company. Subject to the actual number which can be taken over by the new company I shall make the following modifications under clause 7 of the proposed scheme and give the following directions :

(a) The new company shall take as many of the existing staff or labour as possible and as can be reasonably taken over by the new company subject to any valid objection to any individual employee or employees.

(b) As to exactly how many can be employed it is left to the new company's bona fide discretion.

(c) Those employees who cannot be taken over I direct that they be paid by the transferor existing company all moneys due to them under the law and all legitimate and legal compensations- payable to them either under Industrial Disputes Act or otherwise legally admissible. I further direct that such moneys be provided by the Government of India to the existing transferor company who will pay these dues. These modifications and directions shall be incorporated in the order of this court sanctioning the scheme.

In order to leave no room for any misunderstanding on this point I asked the

learned Advocate General to give in writing the assurance of the applicant existing company, the Government of India and the new company. He has handed the same over to the court. I record these assurances as part of the modification or qualification of clause 7 of the proposed scheme:

The new company will employ such of the workers and staff of the existing company as are considered by it suitable and necessary for its business on appropriate terms and conditions to be decided by the new company. The employees of the existing company who are not absorbed by the new company will be paid by the existing company compensation due and payable to them under the law. If as a result of growth of business, the new company requires additional hands, the employees of the existing company who are not absorbed now, will, if they are willing and otherwise found suitable, be considered preferentially.

105. The eighth clause of the scheme provides that upon the approval of the scheme by the court, the existing company shall be closed and upon payment to all the creditors the existing company shall be dissolved without winding up pursuant to an order to be obtained from this court. If all the properties and the assets in business of the existing company are taken over by the new company there is no point in continuing the existing company or winding it up because there will be nothing in the transferor company to be administered in winding up by the court. To order dissolution without winding up in these circumstances and on an application dealing with scheme or compromise or arrangement u/s 391 is therefore expressly provided in section 394(1) (iv) of the Companies Act, 1956 which provides inter alia that the court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for "the dissolution, without winding up, of any transferor company." The court therefore approves the 8th clause of the proposed scheme.

The ninth and the last clause of the scheme provides:

The court shall have the right to add, alter, vary or modify the above scheme and Shri B. B. Ghosh, the Chairman of the existing company is hereby authorised to accept such additions, alterations, variations and modifications as this Hon'ble court may be pleased to make on behalf of the company and all the creditors and members of the company shall be bound by such additions, alterations, variations and modifications as this Hon'ble court may think fit to make.

This is consistent with section 392 of the Companies Act, 1956 and I approve the same.

106. With the modifications I have made and the directions I have given, I am satisfied that the scheme is fair, workable and sensible. It reasonably protects the interests of all concerned, the interests of secured and unsecured creditors, the interest of the labour, staff and workers, the interest of the State as well as of the Government company, the national interest and strategic considerations. I am also convinced that liquidation of the applicant company, in the present

circumstances and facts, will be disastrous for all these interests concerned.

107. In conclusion, I shall briefly dispose of three general objections to the scheme. Mr. S. C. Sen, the learned counsel for J. S. Desai and Company for unsecured creditors has criticised the scheme particularly on the ground that it is discriminatory in favour of the Government concerns like the State Bank of India, the Government of India itself and also in favour of the Chartered Bank of India. This objection really is more based on jealousy than on merits. The fact remains that the Government of India, the State Bank of India and the Chartered Bank of India are the largest creditors and most of their claim is secured debt and if they would obtain their pound of flesh there will be really nothing left for the unsecured creditors. The scheme, therefore, is a blessing for the unsecured creditors for it not only ensures Rs. 5000/- for all, but also the unsecured creditors have minimum full payment for any sum below Rs. 5000 and 66.2/3% of the balance of unsecured debts to be paid in reasonably short time on or before 30th June 1968. This is more than any liquidation or even ordinary litigation for these unsecured claims could have given and surely their reliefs under the scheme are much quicker and better than what liquidation or litigation would have produced. I, therefore, do not think that "here is any merit in this general objection of discrimination and I do not think there is any discrimination because they are largely different classes of creditors.

108. The next general objection is about the valuation in balance sheets. It is said that there should have been a better valuation and more recent valuation. The balance sheet figures have been given up to 31st December 1965. The applicant company has also annexed with the petition statement showing its total receipts and expenses from December 1965 to September 1966 and this petition was presented in court on the 13th December 1966. In such circumstances I cannot accept the criticism that there could be any later balance sheet or better balance sheet. In fact the latest balance sheet has been given and no other balance sheet could be available.

109. The third general criticism is that the purchase price paid by the Government to secure the control of the applicant company as was a nominal price of ? 1 for all that 500,000 ordinary shares of what is called "River". Mr. Sen has criticised this part of the Government case which is embodied in clause B of the Memorandum of Agreement between the President of India and Inchcape Company and its subsidiaries like McNeill and Barry Limited, Ganges Transport and Trading Company Ltd., Rivers Steam Navigation Company Holdings Limited, and India General Navigation and Railway Company. I have found it difficult to appreciate Mr. S. C. Sen's criticism on the point when he said that the Government acquired these shares at an under - value at the cost of the creditors of the existing company. I am satisfied that this criticism has no merit. In the first place these shares were not quoted in the market either in India or United Kingdom. In the second place, the value of the assets during the period of Indo-Pakistan hostilities was amount nil and the liabilities were greater. Thirdly, if

the Government got it at ₹ 1 instead of paying ₹ 500,000 it is so much the gain for the Government and saving for the new company as well as for the existing company. The existing company could not have sold the shares at all because they were neither quoted nor saleable in those circumstances. Indeed Mr. S. C. Sen's client J. S. Desai and Company who has petitioned this court for winding up the company and surely, he or his client cannot be heard to say that for such a company the shares would be worth more than ₹ 1. The business of the applicant company suffered heavy losses from the year 1962. In October 1962 India was faced with the problem of Chinese incursions; there was a strike of the Pakistani crew of the company, who constituted about 90% of its floating establishment, in the Pakistan sector of the river route from Calcutta to Assam; the company's financial position was so precarious and the conditions under which it had to operate were so uncertain, that it was not possible for the shareholders of the company to sell their shares at all in any normal way and the shares as such of the existing company could not, therefore, be considered to be an ordinary commercial investment by any prudent person. The liabilities of the company were substantially much in excess over its assets and that was the reason why in December 1964 the Government decided to acquire control over it. If the applicant company had been sent into liquidation in 1964. the shareholders would not have got a farthing from their shares because almost all the assets of the existing company had been mortgaged and hypothecated to the hilt with the Government of India, Chartered Bank and the State Bank of India. Of the 500,000 shares only 29,660 shares were fully paid up and the remaining 479,340 shares, were paid only for 15 shillings against the face value of ₹ 1 each. The shares of the existing company by a special resolution dated 20th December 1963 converted the uncalled capital into "reserve capital" u/s 60 of the English Companies Act in 1948. This uncalled capital which in terms of rupees amounts at present to Rs. 25 lakhs is, therefore, to be paid by the Government of India only in the event of the company's liquidation. It is also needless to point out that the Government had already advanced Rs. 1.2 crores to the existing company till the end of 1964. Both the previous shareholders of the existing company till the end of 1964. Both the previous shareholders of the existing company and the Government were aware that the existing company could not survive unless large funds were made available to them. Indeed Government had to advance Rs. 60 lakhs between February 1965. when they acquired control over the company, and September 1965 when the company's business came to a standstill due to the Indo-Pakistan hostilities. In that context, therefore, the consideration paid to the previous shareholders for the acquisition of the control namely, ₹ 1 must be seen against the background of Government commitment to keep the company going. If that is taken into consideration there is no merit in the objection that this was an under-valuation at the cost of the creditors in general.

I am therefore unable to uphold any of these three general criticisms made against the scheme.

This disposes of all the points argued and placed before the court in this application.

110. For reasons stated and the authorities discussed, I order and sanction the scheme or arrangement or compromise set out in paragraph 22 of the petition of the Rivers Steam Navigation Company Limited, affirmed by the affidavit of Krishnaswami Srinivasan, the Managing Director on February 20, 1967 with the modifications and directions noted in the judgment. There will therefore be an order in terms of prayer (1) of the petition accordingly with those modifications and directions. There will be a further order in terms of prayer (2) of the petition transferring the properties and assets of the company to and vesting the same in the new company, The Central Inland Water Transport Corporation Limited, free from the mortgages and charges in favour of the Chartered Bank. There be a further order directing that the liabilities of the company in favour of the State Bank of India and the Government of India be also transferred to and become the liabilities of the said Inland Water Transport Corporation Limited. There will also be a consequential order in terms of prayer (3) of the petition granting liberty to apply. This liberty to apply will also be available for the new company Central Inland Water Transport Corpn. Ltd. and the Government of India in determining any question relating to the working of this company or arrangement and for dissolution without winding up of this applicant company.

No order is made as to costs.