

(2005) 11 AP CK 0047

In the Andhra Pradesh High Court

Case No : Company Petition No. 163 of 2004

In Re: Spartek Ceramics India Ltd.

Date of Decision : 22-11-2005

Acts Referred:

Companies (Court) Rules, 1959 — Rule 79

Companies Act, 1956 — Section 117C, 235, 236, 237, 238

Citation : (2006) 1 ALT 589 : (2007) 7 SCL 548

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : C. Srinivas, Kranthi Narahari, S.C., M. Venkataramana Reddy, V.S. Raju, for the Appellant;

Final Decision : Allowed

Judgement

T. Ch. Surya Rao, J.—The petitioner company seeks sanction of the scheme of arrangement under Sections 391 and 394 of the Companies Act.

2. M/s. Spartek Ceramices India Limited, the petitioner company was incorporated on 09-03-1983 with its Registered Office at Mittapalem in Chittoor District, with the object of carrying on the business of ceramic and stoneware glazed and unglazed tiles; ceramic electronic components and powerline insulators, spark plug and industrial ceramic components; and to deal in frits and glazes, colour stains, chinaware and glassware articles of industrial and domestic application. The authorized, issued, subscribed and paid up share capital of the company as on 31-03-2003 was Rs. 17,30,11,100/-. The audited balance sheet of the company as on 31 -03-2003 has been annexed to the petition. The company is also a registered company having its stock listed in three stock exchanges at Mumbai, Madras and Hyderabad. For the purpose of its business, the petitioner company availed terms loans from various Banks and financial institutions for its working capital requirements during the course of its operations such as IDBI, ICICI, State Bank of India, Central Bank of India, Indian Bank, Unit Trust of India (hereinafter referred to as "UTI"), Life Insurance Corporation of India (hereinafter referred to as "LIC of India") and Army Group

Insurance Fund. Owing to various internal and external factors including recession in ceramic tile industry, the petitioner company was unable to adequately service their secured loans.

3. The Reserve Bank of India in consultation with the Government of India finalized the scheme of Corporate Debt Restructuring (hereinafter referred to as "CDR") a non-statutory mechanism for restructuring corporate debts on voluntary basis outside the purview of BIFR and Debt Recovery Tribunals for the benefits of all concerned. The petitioner company approached the CDR empowered group and the CDR Cell in fact framed and approved a restructuring package for the petitioner company and its secured creditors. A scheme of arrangement had been framed as contemplated under Sections 391 and 394 of the Companies Act with a view to benefit the petitioner company and its creditors as well. The Board of Directors of the petitioner company at its meeting held 21-11-2003 approved the said scheme of arrangement between the petitioner and its secured creditors with effect from 01 -04-2003 subject to approval and consent of the secured creditors and confirmation by the Company Court.

4. By an order dated 30-06-2004 in Company Application No. 1209/2004 and by an order dated 14-07-2004 in Company Application No. 1461 /2004 this Court directed the petitioner company to conduct meeting of its secured creditors after duly advertising the notices of the meetings in Business Standard, Hyderabad Edition, and in Andhra Jyothi, Tirupati Edition and by sending individual notices to all the secured creditors. Accordingly meeting was conducted after due notification and issuance of notice on 12-12-2004 at Chennai. The meeting was attended by all eight secured creditors of the company who held a value of Rs. 7,892.00 lakhs. The scheme was voted by six secured creditors who constitute the requisite majority among the secured creditors holding 83% of the value. A resolution was passed to that effect in the said meeting. The remaining two secured creditors, namely, UTI and LIC of India who held minority shares of the debts though attended the meeting voted against the scheme. The Chairperson who conducted the meeting submitted his report on 23-08-2004 to this Court. Subsequently the petitioner company filed the instant petition seeking approval of the Company Court.

5. Notice of the admission of the instant petition was published in Business Standard, Hyderabad Edition and Andhra Jyothi, Tirupati Edition, pursuant to the orders of this Court. Notice was ordered to the Central Government i.e. Regional Director, Department of Company Affairs, Chennai.

6. The UTI and LIC of India filed their counters resisting the petition. The case of UTI is that CDR is a non-statutory mechanism and hence the legal basis to the CDR mechanism shall be debtor and creditor agreement and the inter-creditor agreement. The creditors have not signed any such agreement and, therefore, the very foundation of the company petition is not applicable to the objectors. The petitioner company acted in an unfair and discriminatory manner and selectively prepaid huge amount to certain creditors excluding UTI. On that

ground the scheme entails rejection. The UTI constitutes a different class of secured creditors since it is a debenture holder as per Section 117C of the Companies Act. Therefore, the petitioner company cannot hold a single meeting of all the creditors since UTI constitutes a different class among the secured creditors. The UTI granted earlier a reschedule payment package to the petitioner company in the month of March, 2001 which was accepted by the petitioner company according to which the entire principal and outstanding amount with simple interest was to be paid in instalments by March, 2005. The petitioner company failed to adhere to the same. As a result, UTI has already cancelled the said package and filed O.A. before the Debt Recovery Tribunal. The voting rights in the meeting of the secured creditors should be as per the existing outstanding. The petitioner company, however, reduced the outstanding amount to be paid to UTI with a view to lower the value resulting in lower voting rights. When UTI filed I.A. before the Debt Recovery Tribunal for recovery of Rs. 29,97,49,626,01 ps. the petitioner company has shown the outstanding due as Rs. 575.16 lakhs only which is not correct. Thus, UTI opposed the scheme of arrangement.

7. The case of the LIC of India is that as per the CDR system the LIC of India had approved for restructuring the debt by its letter dated 27-10-2003. It envisages payment of 100% of the principal and funded interest upto 30-09-1988 and the petitioner company was to pay down payment of 25% principal and funded interest within 90 days from the date of approval of package and balance 75% shall be paid in three annul instalments thereafter with waiver of 0% interest bonds and interest from 01-04-2001 to 31-03-2003. But the petitioner company failed to pay the debts due to the LIC of India. Therefore, the LIC of India voted against the scheme in the meeting of the secured creditors. Not only that, the LIC of India withdrew the package sanctioned to the petitioner company. Under the above circumstances, LIC of India cannot approve the scheme.

8. A reply affidavit was filed by the petitioner company to the objections taken by UTI and LIC of India. It is stated inter alia that the UTI with malicious intention filed O.A.N6.203 of 2004 before the Debt Recovery Tribunal, Mumbai, since it realized that it could not defeat the scheme at the meeting of the secured creditors held. The scheme is binding on the UTI though it has not approved it. The petitioner company could not make the payments as per the package of UTI due to reasons beyond its control.

9. The learned Counsel appearing for UTI represents that UTI constitutes a separate class of secured creditors; that a single meeting should not have been held for all the secured creditors including UTI; that the scheme is not fair, just and reasonable and discriminatory insofar as UTI is concerned; that the present petition is time barred; and that the scheme has already been commenced and, therefore, the petitioner company cannot approach the Court half the way seeking sanction.

10. The points that arise for determination, having due regard to the above

contentions, are

- (1) Whether UTI can be reckoned as a separate class?
- (2) Whether the proposed scheme is in any way unjust, unreasonable and unfair?
- (3) Whether the petitioner company approached the Company Court half the way but not at the beginning? and
- (4) Whether the company petition is barred by limitation?

11. Point No. 4: Apropos the point of limitation, as per Rule 79 of the Companies (Court) Rules, 1959 a petition for sanctioning the scheme by the Company Court shall be filed within seven days of the filing of the report by the Chairperson, when the proposed compromise or arrangement is agreed to in the meeting convened by the Chairperson. In the instant case, the Chairperson submitted his report on 23-08-2004. The company petition was filed on 31-08-2004. It is obvious that the company petition was filed on the seventh day when the date on which the report was submitted by the chairperson is excluded. Presumably, therefore, the point of limitation has, however, been not pressed later because of the clear case of the petitioner company.

12. Point No 1: Obviously unlike the other secured creditors UTI is a debenture holder. Section 117C of the Companies Act mandates that where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures to which adequate amounts shall be credited from out of its profits every year until such debentures are redeemed. The amounts credited to the debenture redemption reserve shall not be utilized by the company except for the purpose of redemption of debentures. That by itself cannot place the UTI as a separate class. Creditors can be divided into three categories viz. preferential creditors, secured creditors and unsecured creditors.

13. What constitutes a separate class had been discussed by the Apex Court in its leading Judgment in *Miheer H. Mafatlal v. Mafattal Industries Limited* (1996) 87 Com.Cas 792 . At page 84 the Apex Court referred a passage from Palmer's treatise on Company law, 24th Edition, as under:

What constitutes a class:

The Court does not itself consider at this point what classes of creditors or members should be made parties to the scheme. This is for the Company to decide, in accordance with what the scheme purports to achieve. The application for an order for meetings is a preliminary step, the applicant taking the risk that the classes which are fixed by the Judge, unusually on the applicant's request, are sufficient for the ultimate purpose of the section, the risk being that if in the result, and we emphasis the word "in the result they reveal inadequacies, the scheme will not be approved". If e.g. rights of ordinary shareholders are to be altered, by those of preference shares are not touched, a meeting of ordinary shareholders will be necessary but not of preference shareholders. If there are

different groups within a class the interest of which are different from the rest of the class, or which are to be treated differently under the scheme, such groups must be treated as separate class for the purpose of the scheme. Moreover, when the Company has decided what classes are necessary parties to the scheme, it may happen that one class will consist of a small number of persons who will all be willing to be bound by the scheme. In that case it is not the practice to hold a meeting of that class, but to make the class a party to the scheme and to obtain the consent of all its members to be bound. It is, however, necessary for at least one class meeting to be held in order to give the Court jurisdiction under the section.

While quoting the said passage with approval, the Apex Court in the subsequent para held thus:

It is, therefore, obvious that unless a separate and different type of scheme of compromise is offered to a sub-class of a class of creditors or shareholders otherwise equally circumscribed by the class no separate meeting of such subclass of the main class of members or creditors is required to be convened.

One has to see the entire scheme so as to know whether there are any classes amongst the secured creditors. As discussed hereinabove, merely because Section 117C of the Companies Act mandates a reserve to be created and funds are to be deposited in that reserve for redemption of the debentures, the debentures holder will not constitute as a separate class from among the secured creditors. The debts of the other secured creditors are also secured. The debt of debentures holder is secured under law by making the company obliged to create a fund and to deposit in that fund the amounts from out of the profits which shall eventually go in liquidation of the debt. This arrangement itself cannot make the holder of Debentures a separate class. The scheme envisages payment of the debt of all the secured creditors by deferring the payment of interest from a particular point and then paying that interest at the end in equal instalments. On a perusal of the scheme, it is not discernible from out of it that the scheme is in any manner different qua UTI from that of the other secured creditors. For the above reasons, UTI cannot be considered as a separate class requiring thereby a separate meeting to be held u/s 391 of the Companies Act. Therefore, the contention of the learned Counsel for UTI that a separate meeting ought to have been convened insofar as UTI is concerned since it is a debenture holder and constitutes a separate class, cannot be countenanced.

14. Point No. 2: It is expedient to notice the law on the point at the outset before dealing with the facts obtaining in the instant case. The law on the point has been crystallized succinctly by the Apex Court in *Mafatlal's* case (referred to supra). At page 812 the Apex Court held thus:

On a conjoint reading of the relevant provisions of Sections 391 and 394 it becomes at once clear that the Company Court which is called upon to sanction such a scheme has not merely to go by the ipse dixit of the majority of the

shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court had to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. This is implicit in the very concept of compromise or arrangement which is required to receive the imprimatur of court of law. No court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the requisite majority if the Court finds that it is an unconscionable or an illegal scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. Consequently it cannot be said that a Company Court before whom an application is moved for sanctioning such a scheme which might have got the requisite majority support of the creditors or members or any class of them for whom the scheme is mooted by the company concerned, has to act merely as a rubber stamp and must almost automatically put its seal of approval on such a scheme. It is trite to say that once the scheme gets sanctioned by the Court it would bind even the dissenting minority shareholders or creditors. Therefore, the fairness of the scheme qua them also has to be kept in view by the Company Court while putting its seal of approval on the scheme concerned placed for its sanction, it is, of course, true that so far as the Company court is concerned as per the statutory provisions of Sections 391 and 394 of the Act the question of voidability of the scheme will have to be judged subject to the rider that a scheme sanctioned by majority will remain binding to a dissenting minority of creditors or members, as the case may be, even though they have not consented to such a scheme and to that extent absence of their consent will have no effect on the scheme. It can be postulated that even in case of such a scheme of compromise and arrangement put up for sanction of a Company Court it will have to be seen whether the proposed scheme is lawful and just and fair to the whole class of creditors or members including the dissenting minority to whom it is offered for approval and which has been approved by such class of persons with requisite majority vote.

However, the further question remains whether the Court has jurisdiction like an appellate authority to minutely scrutinize the scheme and to arrive at an independent conclusion whether the scheme should be permitted to go through or not when the majority of the creditors or members or this respective classes have approved the scheme as required by Section 391 Sub-section (2). On this aspect the nature of compromise or arrangement between the company and the creditors and members has to be kept in view. It is the commercial wisdom of the parties to the scheme who taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the parties concerned to the compromise as the same would be in the realm of corporate and commercial wisdom of the parties concerned. The Court had neither the expertise nor the

jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to played is left to the players and not to the umpire. The supervisory jurisdiction of the Company Court can also be culled out from the provisions of Section 392 of the Act....

15. Keeping in view the above, let us see the facts of the instant case. CDR evolved certain guidelines for revival of the companies by means of restructuring the debt schedule. The scheme evolved by CDR although it is a non-statutory mechanism, precedes the scheme to be evolved by the BIFR. The parties can seek to settle by resorting to the scheme as evolved by the RBI. However, if it is not viable for any reason, they can approach the BIFR. Even if that scheme is also not viable, BIFR would recommend for the dissolution of the company. In this case, CDR formulated the scheme by re-scheduling the debt recovery in respect of all eight secured creditors. So as to legalise the scheme, the petitioner company is now seeking the necessary approval of the Company Court u/s 391 of the Companies Act. It is not a case where the petitioner company is approaching the Company Court half the way after implementing the scheme. The scheme as evolved in accordance with the guidelines framed by the RBI has been approved by the majority of the secured creditors in the meeting held in regard thereto. Undoubtedly, UTI and LIC of India constitute a minority. The other secured creditors constitute a majority. It is a case where 83% value has been held by the majority.

16. It is the scheme which seeks to revive the petitioner company which received a set back on account of recession in the market. The Board of Directors of the petitioner company in the meeting held on 21 -11 -2003 approved the scheme of arrangement between the petitioner company and its secured creditors with effect from 01-04-2003, of course subject to the confirmation of this Court. The scheme envisages restructuring of debt payment schedule. Some of the salient features seem to be that in respect of IDBI, it shall waive the entire further interest and liquidated damages as on the appointed date; it shall defer interest accruing upto 31 -03-2003 on term loans and the petitioner company shall repay the deferred interest along with existing deferred interest carrying 0% interest from 01-07-2006 in 16 quarterly instalments. Further the creditor shall reduce the principal outstanding and shall reduce the rate of interest on the loan outstanding from 13% to 12.5% per annum from the appointed date. The petitioner company should pay an amount of Rs. 25 lakhs within 30 days, Rs. 25 lakhs within 90 days and the balance of Rs. 75 lakhs within one year from the effective date. The balance principal outstanding term loans shall be re-scheduled so as to be re-payable in 12 quarterly instalments commencing from 01-07-2010. Insofar as the ICICI Bank is concerned, the secured creditor agreed

to accept an amount of Rs. 1,596 lakhs as One Time Settlement (OTS) being payment of 70% of principal outstanding and 70% of interest deferred upto 30-09-1998 and waiver of balance dues. Insofar as SBI is concerned, it agreed to accept a devolved guarantee and outstanding working capital aggregating Rs. 400 lakhs and waive the balance dues. From out of the said settled amount, the petitioner should pay Rs. 100 lakhs i.e. 25% before 15-12-2003 and the balance amount shall be paid before 15-12-2004. Insofar as the Central Bank of India and the Indian Bank are concerned, they did not agree for sanction of additional working capital limits as envisaged in CDR package. The proposed scheme qua UTI and LIC of India is concerned, they shall accept payment of entire principal outstanding and funded interest till 1998 with 25% of the OTS to be paid within 90 days from the date of filing of the order of this Court with the Registrar of Companies, Hyderabad, and the balance 75% shall be paid by the petitioner company in 3 annual instalments thereafter carrying 0% interest and the creditor shall waive the zero interest bonds and interest from 01-04-2001 to 31-03-2003. As regards the Army Group Insurance Fund, it shall accept 100% principal outstanding within 9 months including 3 months moratorium and waive the balance dues from the date of filing of the order of this Court. It shall also accept repayment of public debentures in 4 annual instalments from April, 2004. The petitioner company shall provide additional security in favour of the secured creditors and create an escrow facility in favour of the secured creditors having first pari passu charge on the fixed assets of the company. The scheme is subject to periodical review by the secured creditors who have a right to convert upto 100% of the loans outstanding into equity shares at par. The secured creditors whenever they deem fit may constitute a monitoring committee to monitor the implementation of the scheme with reference to the performance of the petitioner company on quarterly basis. If the petitioner company commits default in payment or re-payment of the principal amount, the secured creditors have an unqualified right to disclose or publish the details of default and the name of the company and its directors. In the event of the petitioner company not complying with any of the terms and conditions of the scheme, the secured creditors shall by notice in writing

declare the scheme as failed and revoke the reliefs and concessions granted to the petitioner company pursuant to the scheme.

17. The learned Counsel appearing for the petitioner company, seeks to place reliance upon a recent judgment of the Apex Court in Administrator of the Specified Undertaking of the Administrator of the Specified Undertaking of the Unit Trust of India and Another Vs. Garware Polyester Ltd., . The Judgment is a complete answer to the core contention of the learned Counsel appearing for UTI. What is noteworthy from the said Judgment is that UTI which has raised the objections in the instant petition is the appellant in that case. In fact, the company raised well nigh the same objections as in the instant case therein also. Repelling the said objections, the Apex Court approved the sanctioning of the scheme of arrangement. The main contentions raised by UTI among others in the

above referred case were that the scheme of arrangement was unfair, unreasonable and unjust, which no prudent businessman would accept and UTI being an investment company forms a separate class by itself and thus could not be compared with other financial institutions as they were only lenders whereas UTI is an investing agency. All the contentions raised by UTI were rejected by the Company Court initially. In para 35, the Apex Court held thus:

Once it is held that the normal rule, namely, the principle of majority in corporate democracy or in other words, governance of the company by majority, is accepted, the appellant could not be heard to say that they had an absolute right to exercise veto power and thereby scuttle a bona fide attempt to revive a company. Efforts to keep a company from becoming insolvent and even to revive an insolvent corporate have been receiving legislative and executive support, as would be evident from several Parliamentary Acts, for example the Sick Industrial Companies (Special Provisions) Act, 1985 and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The decision of the Company Court was ultimately upheld. This judgment was sought to be distinguished by the learned Counsel appearing for UTI on the premise of variation in the fact scenario in each case. I am afraid that I cannot accede to the said contention. UTI was also a debenture holder in the said case.

18. Point No. 3: It is the contention of the learned Counsel for the UTI that in the instant case even company started implementing the scheme, which is against the provisions of Section 391 of the Act and therefore sanction cannot be accorded. To buttress the said contention, the learned Counsel seeks to place reliance upon the Judgment of the Punjab and Haryana High Court in *Exedy Ceekay Limited and Ceekay Daikin Ltd.* (2000) 4 Comp.L.J. 142 (P & H). That was a case of amalgamation. The amalgamation as proposed between the transferor and transferee companies although approved by the members of the both the companies, their creditors, etc. were found to be conditional. It was further noticed that the effect had been given to those clauses without the necessary permission of the Court. It was held that in according sanction to a scheme of amalgamation, the Company Court was basically having supervisory jurisdiction but it is not a rubber stamp. The claim had to be seen as a whole. If it was found that it was not fair or what was being projected was not true, the Company Court could well refuse the claim.

19. A passing observation has been made about giving effect to the scheme before approaching the Company Court. But, there has been no prohibition either in the Act or as could be seen from the Judgment being sought to be relied upon. In this context, it is expedient to look at the provision germane in the context, to the extent necessary for the present purpose which, reads as under:

Section 391 . (1) Where a compromise or arrangement is proposed--

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them;

the Court may, on the application of the company or of any creditor or member of the company, or, in the case of company which is being wound up, of the liquidator, order a meeting of the creditor's or class of creditors, or of the members of class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourths in values of the creditors, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under the rules made u/s 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or in the case of a company which is being wound up, on the liquidator and contributories of the company:

Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under Sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under Sections 235 - 251, and the like.

20. A perusal of the said provision shows that what is sine qua non is in the first instance holding a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, and the majority in number representing three-fourths in value to the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxies at the meeting, agree to such compromise or arrangement. The Court shall satisfy when approached for sanctioning of the compromise or arrangement that the petitioner company disclosed the Court all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigating proceedings in relation to the company under Sections 235 - 251 and the like. If the procedure of holding the meeting, of the creditors or members, as the case may be, is followed and a resolution is passed with the requisite majority as enjoined under Sub-section (2) of Section 391, the Court has only to satisfy about the other requirements of the latest financial position, disclosure of material facts and pendency of any investigation or the like. Merely because the Section reads that where a compromise or arrangement is proposed followed up by holding of the meeting passing of resolution and the satisfaction of the Company Court about the requirement contained in the provision to Sub-section (2) of Section 391, it does not mean that before sanctioning of the compromise or arrangement by the Court the scheme shall not be given effect

to. Furthermore, such an objection has not been taken by the respondent inter alia in the counter filed. In my considered view, giving effect to the scheme because of the fact that CDR evolved the restructure package and approved the same and because of the fact that the requisite majority of the secured creditors approved the scheme in the meeting held for the purpose in accordance with the provisions contained u/s 391 of the Companies Act, perhaps, the petitioner started giving effect to the scheme; that cannot be a bar for sanctioning the scheme if the conditions enjoined u/s 391 and the proviso incorporated there under are satisfied. Passing observations sought to be relied upon by the learned Counsel from the Judgment of the Punjab and Haryana High Court referred to supra will not come in the way of the petitioner company as a legal bar. That apart, the compromise or arrangement takes effect from the date when it is arrived at subject to the sanction of the Court. If the Court refuses sanction, it becomes without effect. If the court grants sanction, it takes effect not from the date of the sanction, but from the date when it was arrived at, or the appointed date as envisaged in the scheme. Further more, the effect of the order of the Court sanctioning the scheme is to make the scheme binding on all the creditors including the dissenting creditors. That being the scheme and object of the Act u/s 391 even if the arrangement has been given effect to before the necessary sanction is accorded by the Court, in my considered view it is no infraction -of any of the provisions of the Act or the Rules made thereunder. I, therefore, see no merit in the contention of the learned Counsel.

21. The learned Counsel further seeks to place reliance upon a Judgment of the Delhi High Court in Bhagwan Singh and Sons (P) Ltd. v. Kalawati and Ors. (1986) 60 Comp.Cas 94 (Delhi). It was held thus:

that the proviso to Section 391 laid down that no order sanctioning any compromise or arrangement should be made by the court unless the court was satisfied that the company had disclosed to the court all material facts relating to the company such as the latest financial position of the company, the latest auditor's report, etc. This had to be up to the stage when the petition became due for sanction. But the company had withheld the full material facts and its latest financial position. All this information was only necessary for ascertaining whether the so-called other creditors were actually shareholders but also for finding the current net annual profits and how far the past losses had been wiped off.

22. The facts obtaining in the instant case are entirely different. As can be seen from the scheme evolved in this case as set out above, it is obvious that it is nothing but restructuring the debt re-payment schedule. There is nothing to see that any preferential treatment is sought to be made in respect of one creditor qua the other. From the facts, it is obvious that the scheme envisages equal treatment insofar as all the eight secured creditors are concerned. In my considered view, it is not discernible from the above salient features that UTI and LIC of India are in any manner discriminated. It cannot be said that the scheme

is unfair, unreasonable and unjust which no prudent businessman would accept. On the other hand, it appears that the scheme is meant to help the petitioner company to revive by restructuring the debt re-payment schedule. Therefore, the decisions relied on by the learned Counsel have no application to the facts of this case.

23. Following the Judgment of the Apex Court in Garware Polyester Ltd.'s case (referred to 2 supra) and for the reasons discussed hereinabove, the scheme of arrangement shall have to be approved.

24. For the above reasons, the Company Petition is allowed. A certified copy of this order shall be filed with the Registrar of Companies within 14 days from the date hereof. The order shall be drafted in Form No. 41.