
(2013) 01 BOM CK 0223

In the Bombay High Court

Case No : Company Appeal No. 14 of 2012

Innovatherm GmbH

APPELLANT

Vs

Sesa Goa Ltd.

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2)
Companies Act, 1956 — Section 100, 203, 235, 236, 237
Companies Act, 2013 — Section 391, 392, 393, 394

Citation : (2013) 4 ABR 1142 : (2013) 3 BomCR 720

Hon'ble Judges : V.M. Kanade, J;U.V. Bakre, J

Bench : Division Bench

Advocate : Shyam Mehta, Ms. Sonu Tandon and Nikhil Vaze, for the Appellant; Iqbal Chagla and A.N.S. Nadkarni, Senior Advs., Riyaz Chagla, Parag Wagle and Dattaprasad Lawande, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—The appellant is challenging the judgment and order passed by learned single Judge dated 22/11/2012 in Company Application Nos. 78 and 79 of 2012. By the said judgment and order, learned single Judge was pleased to dismiss the Company Applications filed by the appellant by holding that the appellant Company had no locus to be heard in the Company Petition filed by the respondent u/s 391 of the Companies Act, 1956.

Brief facts which are necessary for the purpose of deciding this appeal are as under:

The respondent Sesa Goa Ltd. has filed Company Petition in this Court seeking sanction of proposed scheme of awsmalgamation and arrangement under Sections 391 to 394 read with Sections 98, 100 and 203 of the Companies Act, 1956 between Sesa Goa Ltd. and Sterlite Industries India Ltd. ("SIIL" for short) amalgamating Company No. 1, Madras Aluminum Company Ltd. ("MALCO" for short) amalgamating Company No. 2, Sterlite Energy Ltd. ("SEL" for short)

amalgamating Company No. 3, Vedant Aluminum Ltd. ("VAL" for short)/ demerged Company and Sesa Goa Ltd. ("SGL" for short) amalgamated Company.

2. The appellants herein/the original applicants are unsecured creditors of VAL, the demerged Company. They filed an application challenging the scheme of amalgamation on various grounds and more particularly on the ground that if the scheme is sanctioned, it would have adverse civil consequences and it would adversely affect their interest.

3. It is an admitted position that VAL, the demerged Company has filed a petition u/s 391 of the Companies Act in the Madras High Court and in the said petition, the appellants herein had filed their objections and were duly heard by the Madras High Court and the scheme for amalgamation including the objections taken by the appellants, were reserved for orders on 29/10/2012 and the judgment is not yet pronounced. The appellants are now seeking to intervene in the Company Petition filed by SGL Company which is pending in this Court and have prayed that they may be heard. It is an admitted position that the appellants are neither the members nor they are the creditors of SGL Company. But it is alleged that since they are the creditors of VAL, the demerged Company, if the scheme is accepted by the Goa High Court, their interest will also be adversely affected and, therefore, they have locus to file their objections and intervene in this Company Petition. Learned single Judge by his judgment and order dated 22/11/2012 was pleased to reject the Company Applications filed by the applicants for the reasons recorded. In another petition, similar objections were raised namely Company Application No. 74/2012 in Company Petition No. 12/2012 and Company Application No. 75/2012 in Company Petition No. 12/2012.

4. Shri Shyam Mehta, learned Senior Counsel appearing on behalf of the appellants submitted that the appellants being the creditors of transferee Company, have locus to intervene in the petition since the decision in the petition would adversely affect their interest. It was submitted that the financial condition of the respondent is not good and, therefore, if the transferee Company VAL is amalgamated with SGL Company, they would have no chance to recover all their dues. It was contended that it was well settled principle that if the rights of a party are adversely affected, then in that case, it has right to be heard. He submitted that this concept was accepted by the Supreme Court in the case of *Miheer H. Mafatlal Vs. Mafatlal Industries Ltd.*, He invited our attention to the observations made by the Apex Court in paragraphs 28 and 29 (para 28-A of AIR) of the said judgment. He also relied on the judgment of the Apex Court in the case of *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, He submitted that in the said case, the Apex Court had held that the workers working in the said Company had locus to appear before the Company Court in winding up petition since their rights would be adversely affected if winding up order was passed. He submitted that no order involving adverse civil consequences can be passed against any person without giving him an opportunity of being heard. He submitted that on the same ground, even the

creditors of the transferee company were entitled to be heard in the amalgamation petition filed by the transferor company. He invited our attention to two judgments passed by learned single Judge (D.G. Karnik, J.) in the matter of ICICI Bank Limited in Company Application No. 606/2001, reported in In Re: I.C.I.C.I. Ltd., and In Re: Mayfair Ltd., He submitted that learned single Judge in the said case has held that such a creditor could certainly object to the scheme for arrangement on all grounds available to him in law. He also relied upon the judgment of learned single Judge in Re: Hindustan Dorr-Oliver Limited in Company Petition No. 153/2002 and Company Application No. 573/2001, reported in In Re: Hindustan Dorr-Oliver Ltd., He then tried to distinguish the judgments of learned single Judge of the Bombay High Court in the case of The Industrial Credit and Investment Corporation of India Limited Vs. Financial and Management Services Ltd. and others, and also judgments of learned single Judge of Delhi High Court in two petitions namely Appellants: In Re: In Re: Telesound India Ltd., and Union of India (UOI) (through the Union of India (UOI) Vs. Asia Udyog P. Ltd. and Others, He then submitted that even under the Code of Civil Procedure, Order I, Rule 10, it was provided that the party whose rights are adversely affected, has right to intervene. In support, he relied on the judgment in the case of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, He then submitted that the ratio of the judgments on which learned single Judge had relied upon was not applicable to the facts in the present case. He invited our attention to the case of (i) Hindalco Industries Ltd. in Company Petition No. 293/2009 with Company Application No. 234/2009 (ii) Sequent Scientific Limited in Company Petition No. 99/2009 with Company Application No. 1552/2008 and (iii) Securities and Exchange Board of India (SEBI) v. Sterlite Industries Ltd. in Appeal Nos. 520 and 526 of 2002 in Company Petition No. 203/2002 in Company Application No. 18/2002.

5. On the other hand, Mr. Chagla, learned Senior Counsel appearing on behalf of the respondent submitted that it is well settled position in law that a stranger to Company had no right to be heard in the scheme for amalgamation at the stage where the petition was filed u/s 391 of the Companies Act. He submitted that it was admitted position that the appellants were neither shareholders nor creditors of SGL Company. They were the creditors of the transferee Company namely VAL, the demerged Company and that they were heard in the Company Petition filed by VAL, the demerged Company for amalgamation with SGL Company and for sanction of scheme of amalgamation and that the judgment and order was reserved on 29/10/2012. He then invited our attention to the provisions of Section 391 of the Companies Act and submitted that under the said provision, only the members of the Company and/or the creditors of the Company could be heard. He submitted that at the stage of hearing of the petition u/s 391, any other person has no locus to intervene in the said petition. He submitted that so far as principles of natural justice are concerned, the appellants were already heard by the Madras High Court in the Company Petition filed by VAL, the demerged Company for sanction of the scheme and the appellants being the

creditors of the said Company, were duly heard and, therefore, the contention of the appellants that there was violation of principles of natural justice, was without any substance. He further submitted that even in the case of *Miheer H. Mafatlal Vs. Mafatlal Industries Ltd.*, the Apex Court had made it very clear that only the creditors of the transferee company were entitled to be heard in the scheme of amalgamation filed by the transferee company. He submitted that nowhere the Apex Court had accepted the proposition that the creditor of transferee company could be heard in Company Petition filed for sanctioning the scheme of amalgamation by the transferor Company. He submitted that learned single Judge had clearly, after going through the provisions of the Companies Act, held that such a creditor to the transferee company had no locus in the petition for amalgamation filed by the transferor Company as held in the case of *The Industrial Credit and Investment Corporation of India Limited Vs. Financial and Management Services Ltd. and others*, He submitted that the respondent had only relied on the judgment of the Delhi High Court which has been referred to in the impugned order. He then submitted that the judgments of the Division Bench in the case of *Hindalco Industries Ltd. and Sequent Scientific Limited (supra)* were clearly applicable to the facts in the present case. He further submitted that the Division Bench had also held in the *Securities and Exchange Board of India (supra)* that SEBI had no locus to intervene. He also relied on the judgment of the Apex Court in the case of *S.K. Gupta and Another Vs. K.P. Jain and Another*, and submitted that the Apex Court had clearly held that the said judgment on the provisions of Sections 391 and 392 operate in separate fields and that in a petition filed u/s 391, only the creditor or the member of the Company was entitled to move an application opposing the compromise or arrangement.

6. In rejoinder, learned Counsel appearing on behalf of the appellants submitted that there was no golden thread between all the judgments on which reliance has been placed by learned Senior Counsel for the respondent and the ratio of the judgments were not applicable to the facts of this case. He submitted that the financial position of the respondent was precarious and it had negative worth to the extent of minus 5,903 crores. He submitted that the judgment in the case of *S.K. Gupta and Another Vs. K.P. Jain and Another*, was not applicable to the facts of the present case.

7. The short question which falls for consideration in this appeal is whether the appellants who are the creditors of the transferee Company are entitled to be heard in the petition filed u/s 391 of the Companies Act, by the transferor Company.

8. Before taking into consideration the rival submissions, it would be appropriate if the relevant provisions are taken into consideration. Section 391 of the Companies Act reads as under:

Section 391. Power to compromise or make arrangements with creditors and members.

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

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, 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 Tribunal, 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 Tribunal unless the Tribunal is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, 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 to 251, and the like.

(3) An order made by the Tribunal under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for each copy in respect of which default is made.

(6) The Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Tribunal thinks fit, until the application is finally disposed of.

Perusal of the said section reveals that the said provision nowhere contemplates

that notice and hearing can be given to the creditors of the transferee company in the petition filed by the transferor Company since Section 391(1)(a) and (b) clearly refer to a compromise or arrangement which is proposed between the Company and its creditors or any class of them and between the Company and its members or any class of them.

9. Similarly Section 392 of the Companies Act reads as under:--

392. Power of Tribunal to enforce compromises and arrangement --

(1) Where a Tribunal makes an order u/s 391 sanctioning a compromise or an arrangement in respect of a company, it -

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Tribunal aforesaid is satisfied that a compromise or arrangement sanctioned u/s 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made u/s 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of the Companies (Amendment) Act, 2001 sanctioning a compromise or an arrangement.

10. Perusal of Section 392 reveals that the Tribunal can enforce compromise or arrangement sanctioned u/s 391. The wording in sub-clause (2) of Section 392 indicates that some relief can be given either on an application of any person interested in the affairs of the Company or on its own motion. The restrictions, therefore, imposed on the category of person referred to in sub-section (1)(a) and (b) of Section 391 of the Companies Act is not found in sub-clause (2) of Section 392 of the Companies Act. Keeping in view the aforesaid provision, therefore, the rival contentions will have to be taken into consideration.

11. In the present case, since the transferee Company is having its registered office at Madras, the petition was filed in the Madras High Court by the transferee Company and in the said petition, the appellants being the creditors of the transferee Company were duly heard and judgment has now been reserved by the Madras High Court on 29/10/2012. The transferor Company has its registered office at Goa, hence, the petition, at its instance, is filed in the High Court of Bombay at Goa. Since the initiation of proceedings for the same scheme is in two different Courts, whether a direction to club both the proceedings is

necessary was considered by the Bombay High Court in the matter of Bank of India Ltd. Vs. Ahmedabad Manufacturing and Calico Printing Co. Ltd., and in the said case it has been held that sanction would operate only after the necessary orders u/s 394 of Companies Act are obtained by both transferor and transferee Company. In view of this, the final order passed in both the Courts would be dependent on both the transferor and transferee Company obtaining necessary sanction from the Court of competent jurisdiction. Even if one Court refuses to sanction the scheme, the entire scheme resultantly would fail.

12. The Apex Court in the case of Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., , after referring to the provisions of Sections 391 and 393 of the Companies Act has observed that the Company Court has to consider granting sanction of the scheme not merely on the decision of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by the requisite majority, but it has observed that the Court has also 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. The Apex Court, therefore, has not held in the said case that even the creditors of the transferee Company have right to be heard or intervene in the application filed u/s 391 filed by the transferor Company. The Apex Court has taken into consideration the scope of enquiry under the said sections and has very succinctly laid down the guidelines which have been followed by the Courts while examining such a scheme. The observations in the said paragraphs are in relation to the creditors of the Company who have filed an application u/s 391 of the Companies Act. Similarly, the Apex Court has further laid down the scope and ambit of the jurisdiction of the Company Court in the said context. The Apex Court has observed as under:

In view of the aforesaid settled legal position, therefore, the scope and ambit of the jurisdiction of the Company Court has clearly got earmarked. The following broad contours of such jurisdiction have emerged:--

1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1)(a) have been held.
2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 sub-section (2).
3. That the meetings concerned of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.
4. That all necessary material indicated by Section 393(1)(a) is placed before the voters at the meetings concerned as contemplated by Section 391 sub-section (1).

5. That all the requisite material contemplated by the proviso of sub-section (2) of Section 391 of the Act is placed before the Court by the applicant concerned seeking sanction for such a scheme and the Court gets satisfied about the same.

6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously x-ray the same.

7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they purported to represent.

8. That the scheme as a whole is also found to" be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a scheme of compromise and arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction.

The guidelines, therefore, which are laid down by the Apex Court pertain to the power of the Court in taking into consideration the scheme not only from the point of view of majority shareholders or creditors but also from the point of view of minority shareholders and creditors. The submission made by learned Counsel appearing on behalf of the appellants, therefore, cannot be accepted and the ratio of this judgment of the Apex Court in the said case, is not of any assistance to the appellants.

13. Learned counsel appearing on behalf of the appellants further relied upon the judgment of the Apex Court in the case of National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, In the said case, the question which fell for consideration before the Apex Court was whether in a petition for winding up the Company, the workmen of the Company are entitled to ask the Court to

implead them as party in winding up petition or to allow them to appear and contest in the winding up petition or they have no locus standi at all so far as winding up petition is concerned. While dealing with the said question which was raised in the said case, the Apex Court came to the conclusion that the rights of the workers would be adversely affected if winding up order is passed and, therefore, those workers would have right to intervene in the winding up petition. In this context, the Apex Court took into consideration the principles of natural justice and law on the said point. In our view, the ratio of the said judgment does not advance the case of the appellants any further in the facts and circumstances of the present case. In the present case, the appellants are neither the shareholders nor creditors of the transferor Company and as such, the question of permitting them to intervene in the transferor's petition filed u/s 391 of the Companies Act, does not arise.

14. Lastly, it was submitted that it is well settled position in Administrative Law that whenever any action is likely to have adverse civil consequences on any particular person, then, such person has to be given hearing. It was submitted that this concept was accepted by the Apex Court in the cases of *Miheer H. Mafatlal Vs. Mafatlal Industries Ltd.*, and *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, and therefore, on the basis of the extended meaning, which was given by the Apex Court in the said case to the principles of natural justice, the appellants had right to intervene and be heard in the said Company Petition filed by the respondent. It is not possible to accept the said submission. As we have pointed out hereinabove, the judgment in the case of *Miheer Mafatlal (supra)* does not in any way apply to the creditors of the transferee Company and it does not lay down the ratio that the creditor of transferee Company would also have right to intervene in the petition filed by the transferor Company. Secondly, in the case of *National Textiles Workmen Union (supra)*, the issue involved was regarding the workmen of the Company who had filed winding up petition and in that context, therefore, the Supreme Court held that the workers of the said Company would be adversely affected and, therefore, they had right and locus to intervene in the said winding up petition.

15. This Court in a series of decisions, has consistently taken a view that the creditors of the transferee Company would have no right to intervene in the petition filed by the transferor Company u/s 391 of the Companies Act. Learned single Judge of this Court in the case of *The Industrial Credit and Investment Corporation of India Limited Vs. Financial and Management Services Ltd. and others*, has held that the creditors of the transferor Company would have no right to intervene in the petition filed by the transferee Company though they would have right to agitate their claims and grievances in the petition initiated by the transferor Company of which they are creditors in the High Court of Calcutta. In the said case also, a petition u/s 391 of the Companies Act was filed by the Industrial Credit and Investment Corporation of India with a prayer to sanction the arrangement as embodied in the scheme of amalgamation annexed to the petition. The transferor Company was one I.T.C. Classic Finance Ltd. An

application for intervention was filed by Standard Chartered Bank which was creditor of the transferor Company namely I.T.C. Classic Finance Ltd. and it had claim of recovery from the transferor Company to the tune of Rs. 26,76,53,329.22. The transferor Company namely I.T.C. Classic Finance Ltd. had filed a petition under Sections 391-394 in the Calcutta High Court and in this context, learned single Judge came to the conclusion that the Standard Chartered Bank being neither the shareholder, member and creditor of the transferee Company which was before the Court, had no locus to be heard in the said proceedings. Similar view has been taken by the Division Bench of this Court in the case of Hindalco Industries Ltd. in Company Petition No. 293/2009 and connected Company Application No. 234/2009. In the said case, the company was Flagship Company of Aditya Birla Group. The Company proposed to undertake the financial restructuring exercise on the terms and conditions spelt out in the said proposed scheme and it was presented for approval u/s 391 read with Section 100 of the Companies Act. An objection was raised by one Ram Niranjana Kediya of Tourism Service Private Ltd. He was admittedly neither shareholder nor creditor of the petitioner Company. The question before the Court was whether he had any locus to raise any objection in relation to scheme propounded by the Company u/s 391 of the Companies Act and in that context, the Division Bench had observed that the said intervenor neither being the member or creditor of the Company, had no locus to intervene in the said petition. Learned Counsel for the appellants had vehemently urged that the facts of the said case were different since it was a petition filed u/s 100 of the Companies Act for financial restructuring and, therefore, the ratio of the said judgment does not apply to the facts of the present case. We are unable to accept the said contention of learned Counsel. The issue involved in the said case was identical and the question was whether any exercise which has to be carried out by the Company for restructuring as contemplated u/s 100 whether the intervenor, who was neither shareholder or creditor, can intervene and in such context, therefore, the Court had held that the said person had no locus. The ratio of the said case squarely applies to the present case.

16. The Division Bench of this Court in the case of The Securities and Exchange Board of India (SEBI) Vs. Sterlite Industries (India) Ltd., also held that SEBI who had filed an application for intervention had no locus in the petition u/s 391 of the Companies Act not being shareholder or creditor of the Company. In the said case, it was contended that SEBI had interest in the said petition. The Division Bench however, did not accept the said contention and submitted that at the highest notice can be issued only to Central Government u/s 394-A and SEBI could not claim to have any locus in the said application u/s 391 of the Companies Act. In our view, the ratio of the said judgment would also directly apply to the facts of the present case.

17. Delhi High Court in two separate judgments, namely in Company Petition No. 54/1980 and Re: Telesound India Pvt. Ltd. (supra) has also taken a similar view and has observed that there is no provision of notice to creditors of the

transferor Company at any stage either prior to making of the order or subsequent thereto except insofar as the creditors may have notice of it by public advertisement. Similarly, Delhi High Court in *Union of India v. Asia Udyog Pvt. Ltd.* (supra) has observed that such creditors of transferee Company would have no locus in the scheme of amalgamation filed by the transferor Company.

18. It was also contended that in view of the provisions of Order I, Rule 10(2) of C.P.C. since the party whose rights are adversely affected is necessary party in a suit, on the same analogy the appellants being adversely affected by the order of acceptance of the scheme had right to hear in this petition. Reliance was placed on the judgment of the Apex Court in the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others*, In our view, it will not be possible to draw the same analogy as is tried to be drawn on the basis of the provisions of Order I, Rule 10(2) of C.P.C. and consequently, the ratio of the said judgment cannot be made applicable to the facts of the present case.

19. Reliance was placed on two judgments of learned single Judge of this Court in the matter of *ICICI Bank Limited* and in the matter of *Mayfair Limited* (supra). In both these petitions, learned single Judge has come to the conclusion that the creditor of the transferor Company would equally have right to file his objection to the scheme which is not just and fair to him or to the class of creditors to whom he belongs. In our view, we respectfully disagree with the view taken by learned single Judge since the provision of Section 391 of the Companies Act cannot be extended to such extent that even third parties namely those persons who are not shareholders or creditors of the Company can be allowed to intervene in such petitions filed u/s 391 of the Companies Act. It is an admitted position that the appellants who are the creditors of transferee Company namely VAL, the demerged Company were duly heard in the petition filed by the said Company in the Madras High Court for getting their scheme sanctioned and the judgment of the Madras High Court is awaited. If the objection raised by the appellants in the said Court is accepted and the scheme is not approved by the Madras High Court, then, the entire scheme will fail and as such, it cannot be said that there is violation of principles of natural justice. We are, therefore, unable to accept the view taken by learned single Judge in the said two decisions and overrule the said judgments. In our view, therefore, there is no merit in the contention raised by the learned Counsel appearing on behalf of the appellants. The appeals and the applications, therefore, are dismissed.