
(2002) 04 RAJ CK 0085
In the Rajasthan High Court
Case No : Spl. A. No's. 24 and 30 of 1994

Mahendra Kumar Sanghi

APPELLANT

Vs

Ratan Kumar Sanghi

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2003) 3 RLW 1529 : (2003) 44 SCL 592 : (2003) 1 WLC 445

Hon'ble Judges : N.N. Mathur, J; Harbans Lal, J

Bench : Division Bench

Advocate : S.N. Sharma, Mahendra Kumar Sanghi, A.K. Rajvashy and Rajni Sanghi, for the Appellant; Sachin Acharya, R.K. Sanghi, M.S. Singhvi, Uma Sanghi, B.L. Purohit, Pushpa Sanghi, Sandeep P. Agarwal, Vijay Kumar Sanghi and M.R. Singhvi, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—Both the special appeals u/s 18 of the Rajasthan High Court Ordinance are directed against the judgment of the learned Company Judge dated 5/6-9-1994 whereby the learned Judge sanctioned the purported scheme of reconstruction-cum-family arrangement of Western Indian States Motors Ltd. the original respondent No. 1 (hereinafter referred to as the Company). The grievance of the appellant inter alia in D.B. Special Appeal No. 30/94 is that the learned Company Judge by the impugned order has passed the order in terms of the compromise as is being done in a suit without satisfying that the interest of all the parties concerned i.e, the Company, its employees, shareholders and creditors was taken care of. In another appeal being D.B. Special Appeal No. 24/94, the grievance of the appellant Smt. Rajni Sanghi inter alias that the Company Petition filed by her as a shareholder and creditor being Company Petition Nos. 2/92 and 3/92 were directed to be heard along with the Company Petition No. 6/86, still the learned Company Judge disposed of the Company Petition irrespective of the fact that both the company petitions were not listed and they were not on board. It is also submitted that her deceased husband

Ashok Kumar Sanghi who was third respondent in the Company Petition died on 1-2-1990 but without taking his legal representatives on record the Company Petition was disposed of. She also filed an application along with her minor daughter Meenakshi for impleading her a party, but the same was erroneously rejected by the learned Company Judge. Thus, the impugned order sanctioning the scheme of reconstruction has been passed at her back in violation of principles of natural justice. The another significant development during the pendency of the special appeal is that while on 2-3-2000 the sixth respondent Vijay Kumar Sanghi filed an application to transpose him as second appellant. On 4-11-2000 appellant Mahendra Kumar Sanghi has filed an application seeking permission to withdraw the appeal. There is resistance by the respondent No. 6 Vijay Kumar Sanghi in the matter of grant of permission to withdraw the appeal. It is submitted in alternate that he may be substituted as appellant in place of M.K. Sanghi.

2. Briefly stated the facts of the case are, thus :

The first respondent, the Western Indian States Motors Ltd. is a public limited company. The share capital of the Company Rs. 25 Lakhs is divided into equity shares of Rs. 1,000 each. The issue, subscribed and paid-up of the Company is Rs. 10 Lakhs divided into 1,000 equity shares of Rs. 1,000 each. In the year 1985, Company allotted company's shares to its existing shareholders in the ratio of 2 : 1. Thus, the Company has issued and allotted 500 equity shares as bonus shares to its shareholders, raising the paid-up capital of the company to Rs. 15 Lakhs. Though it is a public limited Company as such the family pedigree is not relevant, still the fact remains that all the shares are held by members of the Sanghi family i.e. the petitioner and the respondent Nos. 2 to 5 (in the Original Company Petition and their family members). Thus, it would be convenient to acquaint with the family pedigree, which is given as follows:--

MotiLal	Sanghi			Died	1960
N.K.Sanghi(Raj)	A.K.Sanghi(Delhi)	R.k.Sanghi	M.k.Sanghi(Bom.)		Died 1984
Wife Smt. R.4		Wife		Pushpa(petitioner Appellant	
company	Petition				
Sanghi					Vijay Sanghi Ajay
Akshey	Wife Rajni R.3	Wife Rachna			Ashok Died 1-2-1990

3. The eldest son of Shri Moti Lal Sanghi namely Shri Narendra Kumar Sanghi died on 19-10-1984. During the lifetime of Shri N.K. Sanghi the Company showed net profit of Rs. 22.7 Lakhs for the year 1983. It is alleged that since Smt. Uma Sanghi the widow of late Shri N.K. Sanghi assumed the control of the Company as Director, the affairs of the Company are in mess and the Company has gone from bad to worst. The Company has suffered huge losses and is heavily indebted. According to the original petitioner among others the creditors of the Company are as follows:--

(a) Oriental Bank of Commerce Rs. 25 Lakhs (b) Indian Overseas Bank Rs. 25 Lakhs (c) Rajasthan State Industrial and Investment Corporation Ltd. Rs. 30 Lakhs

It is also averred that the tax in huge sum recoverable from various departments is due against the Company. Serious allegations of mismanagement and misappropriation of Company Account has been levelled. It is also alleged that the annual general meeting of the Board has become long over due. The Company has not submitted its annual audit report. It is, thus, inter alia prayed that to remove all the Directors of the Company and appoint new Directors or in alternate order winding up of the Company.

4. During the pendency of the Company Petition the original third respondent Shri Ashok Sanghi died on 1-2-1990 as such his wife and a minor daughter Meenakshi also filed company petitions being Nos. 2/92 and 3/92 as a shareholder as well as a creditor [under Section 433(e) read with Section 439 of the Companies Act].

5. That the petitioner in the Company Petition namely Shri R.K. Sanghi, Smt. Pushpa Sanghi and the second respondent Smt. Uma Sanghi wife of late Shri N.K. Sanghi, Amrit Kumar Sanghi, Akshey Kumar Sanghi and Smt. Rachna Sanghi appeared in person before the learned Company Judge on 5-9-1994 and submitted a scheme known as scheme of reconstruction-cum-family settlement. The scheme was signed by aforesaid persons present in the Court. A statement was made by Shri R.K. Sanghi that the consent of his son Nitin Sanghi and daughter Mrs. Deepa Kejriwal with respect to the family settlement shall be filed within two weeks. It was further submitted that Shri Amrit Kumar Sanghi will send consent of his sons Vijay Kumar Sanghi and Ajay Kumar Sanghi, his wife Smt. Mithlesh Kumar Sanghi and daughters Dipika Sanghi and Ritu Sanghi within two weeks. Mr. A.K. Rajvanshy appearing for Mrs. Rajni Sanghi opposed the said scheme of reconstruction. At this stage, it would be convenient to acquaint with the gist of the scheme of reconstruction given as follows:--

(a) It was agreed that land measuring 1.1 acres with showroom and workshop building situated at Station Road opposite Khalsa Kothi, Jaipur shall be transferred to a new company known as Burlington Trade Centre (Pvt. Ltd.) (hereinafter referred to as BTC) in which the petitioners Shri R.K. Sanghi and Smt. Pushpa Sanghi and their family members are the shareholders and the Directors for the following considerations:--

(i) BTC will repay loan of Oriental Bank of Commerce on behalf of the Company to the tune of Rs. 1 Crore.

(ii) BTC shall pay the dues of Income Tax, sales-tax, land and building tax, Provident fund, Employees State Insurance and gratuity and compensation to old employees pertaining to the United Motors of Rajasthan to be paid by the transferee on behalf of the Company in case account of non-payment of the dues, the showroom has been attached by the authority or Court.

(iii) BTC shall pay the dues of electricity/water supply/telephone exchange, municipal taxes etc., relating to the showroom building to be paid by the Company.

(iv) 50% of the stamp duty subjected to the limit of Rs. 15 Lakhs should be paid by the transferee on behalf of the Company and in addition the other liabilities of the showroom shall also be cleared.

(v) For the purpose of transfer the value of the land has been assessed at Rs. 1.20 Crore. The BTC shall pay Rs. 1.20 Crore to the Company after the adjustment on account of payment of the money as mentioned in preceding paras. If the total amount paid by the transferee is less than Rs. 1.20 Crore then the balance will be paid to the Company. But if the sum exceeds from Rs. 1.20 Crore then the balance would be paid by the Company to the transferee.

(vi) BTC shall repay the loan in the sum of Rs. 1 Crore on behalf of the Company to M/s. Oriental Bank of Commerce.

(b) Shares of the Company held by Shri A.K. Sanghi and his family members shall be transferred in favour of Smt. Uma Sanghi. Further Shri R.K. Sanghi agreed to pay a sum of Rs. 40 Lakhs to Shri A.K. Sanghi and his family members on behalf of Smt. Uma Sanghi.

(C) Against the requisition of the land sought to be transferred belonging to the Company other property at Bani Park shall be surrendered to the Government under Urban Land Ceiling.

(d) Shri A.K. Sanghi and his family members, who have filed a petition before the Delhi High Court for making the award of the Arbitrator dated 3-12-1987 as the rule of the Court shall withdraw the said proceedings unconditionally.

The learned Company Judge disposed of the Company Petition bearing No. 6/86 in terms of the aforesaid scheme of reconstruction-cum-family settlement by order dated 5-9-1994.

6. An application was made for correction of typographical mistake in the order dated 5th September, 1994. It was prayed that in para 12 a statement may be included to the effect that Shri R.K. Sanghi and his family members shall transfer 505 shares of the Company in the name of Smt. Uma Sanghi or her nominees. A permission was also sought to submit the names of the nominees of Smt. Uma Sanghi in whose favour share of the Company and India Motors Pvt. Ltd. from A.K. Sanghi and his family members and Shri R.K. Sanghi and his family members could be transferred.

7. The fourth respondent Shri Mahendra Kumar Sanghi filed an appeal against the order of the learned Company Judge sanctioning the purported scheme of reconstruction-cum-family arrangements of the Company inter alia on the ground that a petition under Sections 397 and 398 of the Companies Act could not be compromised merely at the will of even all the parties thereto (unlike a

suit) without the Court being satisfied that the compromise was in best interest of the Company. According to appellant the Company had several outstanding and large liabilities including claims from Rajasthan Industrial Corporation Ltd. (Rs. 30 Lakhs) and a suit filed by the Indian Overseas Bank (over Rs. 25 Lakhs), liabilities of the Income Tax Department, Provident Fund Commissioner etc. An allegation has also been made that the assets of the Company have been sought to be siphoned away and taken out of the reach of its creditors by the device of the "scheme for reconstruction" at a gross under valuation. It is submitted that the property sought to be transferred at Jaipur is the subject of equitable mortgage in favour of the Oriental Bank of Commerce in respect of which the said Bank has filed a suit for recovery of mortgaged debt exceeding Rs. 1 Crore and the sale of the property for the recovery thereof and in respect of which debt of the Company the appellant has given a personal guarantee to the Bank and as such the Bank and appellant ought to have been given opportunity of being heard before recording the scheme for reconstruction by the learned Company Judge. The appellant has also filed an application under Order 41, Rule 27, CPC seeking certain documents to be placed on record. Some legal grounds have also been raised to the effect that as per the requirement of Section 391 the learned Company Judge was required to direct to convene the meeting of the shareholders and the creditors before sanctioning the scheme. Objection has been filed by the original petitioner Shri Rajendra Kumar Sanghi with respect to the maintainability of the appeal. It is averred therein that similar settlement was done before the Bombay High Court in a Company Petition No. 128/85 with regard to other concern Sanghi Motors (Bombay Pvt. Ltd. Bombay). There also shares were transferred by Shri R.K. Sanghi and his family members in favour of the appellant Shri M.K. Sanghi and his family members in lieu thereof the property of the Company mentioned in Para 3 of the Scheme of Reconstruction was transferred on its book value which was far less than the market value. However, the appellant did not raise any objection in the said proceedings because he was beneficiary of the scheme of reconstruction. There also no notice was given to other parties including the fourth respondent. Averments have been made with respect to certain payments to the creditors.

8. Smt. Rajni Sanghi wife of late Shri Ashok Sanghi has also filed an appeal u/s 18 of the Rajasthan High Court Ordinance read with Section 391(7) of the Companies Act against the order of the learned Company Judge sanctioning the scheme of reconstruction inter alia on the ground that she had also filed a company petition being No. 3/92 and her minor daughter Miss Meenakshi Sanghi filed Company Petition No. 2/92 and the said company petitions were directed to be heard along with the instant company petition No. 6/86, but the learned Judge without hearing the said company petitions has sanctioned the scheme which has caused serious prejudice to her. It is averred that her late husband Shri Ashok Sanghi was a party to the Company Petition No. 6/86. He died on 1-2-1990 but no steps were taken by the original company petitioner to bring the legal representatives of late Shri Ashok Kumar Sanghi on record. It is also

submitted that in the instant Company Petition No. 6/88 an application was filed on her behalf as well as on behalf of her minor daughter Meenakshi to implead them as party in the Company Petition but the learned Judge erroneously dismissed the same. The petitioner has also raised certain legal grounds inter alia that the scheme of reconstruction does not contain a single word regarding any meeting of shareholders/creditors, passing of resolution of the company etc. The learned Judge has also not recorded any satisfaction with respect to bona fides of the scheme. The contentions have also been raised with respect to the bona fides of the scheme.

9. On 4th November, 2000 the appellant Mahendra Kumar Sanghi submitted an application pointing out certain developments during the pendency of the appeal whereby third party's rights have been created in the subject-property putting the assets and properties beyond the reach of the Companies and the Firms. According to the appellant it has become impossible to restore status quo if the impugned order is set aside. Thus, a prayer has been made to permit him to withdraw the appeal.

10. Before the application for withdrawal of appeal is filed the sixth respondent Vijay Kumar Sanghi filed an application under Order 23, Rule 1A read with Order 1, Rule 1, CPC and Rule 9 of the Company (Court) Rules on 2nd March, 2000 with a prayer that he may be transposed as second appellant along with Shri M.K. Sanghi or in alternate as a sole appellant in case Shri M.K. Sanghi withdraws the appeal filed by him. It is averred that as the applicant was the fifth respondent in the Company Petition and a shareholder as well as the Director of the Company, the scheme of reconstruction could not have been sanctioned without his knowledge and consent. It is apprehended that Shri M.K. Sanghi may withdraw the appeal and as such it is in the interest of justice to safeguard the interest of all the parties concerned to transpose him as an appellant. This application is being opposed by the appellant Mahendra Kumar Sanghi as well as the other respondents. It is averred that the interest of the sixth respondent Shri Vijay Kumar Sanghi and the appellant Mahendra Kumar Sanghi are diametrically opposed to each other. It is also averred that the conduct of respondent No. 6 disentitles him to be transposed as appellant. A reference has been made to Clause 8 of the Scheme which provides transfer of 270 shares to the third respondent Company held by Shri A.K. Sanghi and his family members which includes Shri Vijay Kumar Sanghi against the payment of Rs. 40 Lakhs to Shri A.K. Sanghi and his family members by the first respondent. It is also averred that Shri A.K. Sanghi and his family has already given consent for the Scheme of reconstruction.

11. The first issue which requires consideration is as to whether the sixth respondent Shri Vijay Kumar Sanghi can be transposed as appellants ? It is submitted by Mr. Sandeep P. Agarwal learned counsel appearing for Shri Vijay Kumar Sanghi that transposition of a defendant or respondent as co-plaintiff or the appellant should always be permitted where it is necessary for complete

adjudication upon the question involved and to avoid multiplicity of proceedings. In support of the contention, he has referred to large number of precedents. Per contra, Mr. M.S. Singhvi learned counsel appearing for the Company as well as Smt. Uma Sanghi has raised the question of locus standi of Shri Vijay Kumar Sanghi to file an application to transpose him as an appellant. It is submitted that he is not a person aggrieved. As such he cannot maintain appeal against the order of the learned Company Judge. The learned counsel has referred to Section 399(1)(a) of the Companies Act, which provides the competence of the members of the Company, to apply u/s 397 or 398. A winding up petition u/s 397 or 398 is not maintainable at the instance of a person unless such a person is having not less than 100 members of the Company or not less than 1/10th of the total number of its members whichever is less or any member or members holding not less than 1/10th issued share capital of the Company. It is submitted that Shri Vijay Kumar Sanghi is having only 75 shares out of 1500 shares of the Company and as such he is not competent even to file an application u/s 397 or 398 of the Act. It is further submitted that a person not competent to file an application under Sections 397 and 398 of the Act cannot maintain an appeal from the order passed in proceedings under the said provisions. In rejoinder it is submitted by Mr. Agarwal that the condition of 1/10th share is not attracted in the instant case as Shri Vijay Kumar was already a party in the original proceedings as respondent No. 6 and the instant appeal is only a continuation of proceedings u/s 393(3) of the Companies Act. Reliance is placed on a decision of the Apex Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, It is also submitted that the instant appeal is against the order of the learned Company Judge passed u/s 391 of the Companies Act i.e. the power to compromise or make arrangements with the creditors and members. A remedy of appeal against such an order sanctioning the scheme for reconstruction is provided under Sub-clause (7). Sub-clause (7) simply provides a remedy of appeal without any expressed word limiting to the person or party aggrieved. Thus, according to Mr. Agarwal the right of appeal is conferred on anyone against the order passed u/s 391 having a direct interest in the subject.

12. The question of locus standi to prefer statutory appeal against an order came up for consideration before the Apex Court in Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd. and Others, The Court ruled that in order to earn locus standi as "person aggrieved" other than the arraigned in the original proceedings it must be shown that the said third party has a direct interest in the subject. The Court recorded that it cannot be general public interest or interest of a business rival. The Apex Court in Northern Plastics Ltd. "s case (supra) has quoted the view of James L.J. with approval as follows:--

"But the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or

wrongfully affected his title to something."

Thus, we are of the view that an appeal u/s 391(7) or 483 of the Act can be maintained by any person aggrieved of the order under challenge, which causes him prejudice in some form or the other. In such cases, a leave will be required to be obtained from the Appellate Court. Ordinarily the Court will not refuse leave where the person aggrieved has suffered a legal grievance or has been wrongfully deprived of something or wrongfully refused him something or wrongfully affected his title. If the person satisfies the test of "person aggrieved", an appeal can be maintained even at the instance of the third party. In the instant case Shri Vijay Kumar has undoubtedly interest in the proceedings, which is evident from the fact that in the original proceedings applicant was impleaded as respondent No. 6. It appears that there are number of litigations going on between members of the Sanghi family touching their conflicting interest in the company. It also appears from the record that Shri Vijay Kumar is one of the sons of Shri A.K. Sanghi, who has also not given consent to the scheme for reconstruction. One of the conditions under the reconstruction scheme is withdrawal of the proceedings pending in the Delhi High Court by Shri A.K. Sanghi. Thus, we find no substance in the contention of Mr. Singhvi that Shri Vijay Kumar has no locus to file an application for transposing him as an appellant.

13. The law pertaining to transposition is now well-settled. The spirit of Order 23, Rule 1A is that in order not to defeat the claim even of a pro-forma defendant, who has an identical interest with the plaintiff, be defended by such withdrawal. An Appellate Court under Order 1, Rule 10(2), CPC has ample power in the interest of justice to add parties or to transpose a party from one category to another. In *Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another*, Smt. Saila Bala the appellant before the Supreme Court purchased the suit property from the contesting respondent free from all encumbrances filed an application for being added as an additional appellant. It was alleged by her that the second respondent had been conducting the proceedings in opposition to the execution sale only at her instance and for her benefit. The appeal was also filed on her behalf but later on, he entered into a collusion with the first respondent with a view to defeat her right. Therefore, it was necessary that she should be allowed to come on record as appellant so that she may protect her interest. The application was rejected by the High Court. The Apex Court expressed the view that the appellant on record has dropped the fight with the first respondent. Keeping in view this fact and the fact that no embarrassment will result in there being two appellants with conflicting interest, the Court observed that even if necessary the Court can take action suo motu either under Order 1, Rule 10, CPC or in its inherent jurisdiction transpose a defendant as appellant. The Court observed that Smt. Saila Bala being a purchaser of the property has vital interest in the dispute and as such the justice requires that she should be given an opportunity to protect her rights.

14. In *Surya Kanta Jana and Others Vs. Tarak Nath Jana and Others*, the Court held that the High Court has ample power in the interest of justice to add parties, or to transpose a party from one category to another. In *Bhagwati Prasad Bhagat and Others Vs. Mt. Pahil Sundari and Others*, a Division Bench of the Patna High Court held that a prayer for transposition cannot be disallowed merely on the ground that the decree was not against him. In *R.S. Madanappa and Others Vs. Chandramma and Another*, the Apex Court relying on AIR 1931 162 (Privy Council) ruled that the Court can even suo motu exercise the power to transpose a party from one category to another. The Court further observed the power ought to have been exercised by a Court for doing complete justice between the parties. In *Jethiben Vs. Maniben and Another*, the Court held that to be transposed as a plaintiff, the defendant who claims to be transposed must have interest identical with the interest of the plaintiff. A necessity arises for transposition of a party from one category to another where plaintiff in collusion with the contesting defendant decides to withdraw the suit. In such circumstances to protect the rights of the proforma defendant, it is necessary to transpose a party from the category of defendant to plaintiff.

15. Mr. B.L. Purohit learned counsel appearing on behalf of Shri R.K. Sanghi and Smt. Pushpa Sanghi has also opposed the application for transposition on the ground that the applicant has failed to show that a substantial question of law has to be decided. The learned counsel submits that the provision of Order 23, Rule 1A can be invoked only in a case where a substantial question is to be decided as against any other defendant. We find no substance in the contention. The pleadings as referred to above clearly show that there is a serious dispute as to whether the learned Company Judge was right in sanctioning the scheme for reconstruction and family arrangements. The contention is accordingly rejected.

16. Mr. S.N. Sharma learned counsel submits that the limitation for filing the appeal is only 30 days, therefore, the instant application filed after six years cannot be entertained. The contention deserves to be rejected. High Court has power to transpose from the category of respondent to appellant where ends of justice demands it and the provision of limitation does not affect this power. This view has been taken by a Division Bench of Patna High Court in *Bhubenshwar Prasad Narain Singh Vs. Sidheswar Mukherjee and Others*,

17. The same view has been taken By the AIR 1944 298 (Nagpur) . It is held therein that under Order 1, Rule 10(2), CPC a Court has got ample power to order transposition at any time. The Court further held that no question of limitation is involved where a party is transposed from the array of the defendants to that of the plaintiffs. Thus, the High Court has ample power to transpose a party from respondent to appellant, to meet the ends of justice without objection to the provision of statutory limitation. In view of the aforesaid discussion, the application filed by Shri Vijay Kumar to transpose him as an appellant deserves to be granted.

18. As far as the application filed by Shri Mahendra Kumar Sanghi is concerned,

there can be no objection to permit him to withdraw as an appellant from the appeal. This will not have any effect on the survival of the appeal as we have already ordered Shri Vijay Kumar to transpose him as appellant. It is significant to notice that the validity and correctness of the impugned order i.e. the order of the learned Company Judge dated 5/6-9-1994 for grant of scheme of reconstruction-cum-family settlement has also been challenged in another appeal being D.B. Special Appeal No. 24/94 filed by Smt. Rajni Sanghi, is in existence.

19. It is contended by Mr. Sandeep P. Agarwal learned counsel appearing for the transposed appellant Shri Vijay Kumar that the learned Company Judge has sanctioned the scheme for reconstruction-cum-family settlement in complete violation of the provisions of Section 391 of the Companies Act, A plain reading of the impugned order will show that the learned Company Judge has simply registered the scheme without even looking to the minimum requisite aspects i.e. financial position of the Company, the latest auditor's report etc. The scheme of reconstruction does not contain a single word regarding meeting of shareholders/ creditors and passing of resolution by the Company for approval of the scheme for reconstruction. On the contrary there is enough material to show that no prudent businessman will like to enter into such transaction. On the other hand, Mr. M.S. Singhvi has invited our attention to the affidavit filed by Smt. Uma Sanghi, wherein she has averred that all the cases in which erstwhile Directors of the Company were prosecuted have been compounded and the amount of fine has been deposited. As regards the credit, it is averred that entire amount of the Oriental Bank of Commerce has been repaid. Similarly, the entire liability of M/s. Indian Overseas Bank has also been repaid. As regards the tax liabilities, a sum of Rs. 7, 15,000 and Rs. 11,30,000 were deposited on 23rd January, 1994. A further sum of Rs. 3,50,000 were deposited on 17-2-1996. Some more details have been given with respect to the deposits of the tax amount. A fresh affidavit dated 9th January, 2002 has been filed by Smt. Uma Sanghi, wherein she has stated that the scheme has substantially been acted upon inasmuch as the shares of the family members of Shri Amrit Kumar Sanghi except for Shri Vijay Kumar Sanghi have been transferred in the name of persons representing her group namely herself, her son Akshey Kumar Sanghi and her daughter-in-law Smt. Rachna Sanghi. The shares standing in the name of Shri Ashok Kumar Sanghi have also been transferred in the name of members of her group. The possession of the building in the name of United Motors of Rajasthan has been handed over the nominee of Shri R. K. Sanghi namely M/s. Burlington Pvt. Ltd. The loan standing in the name of M/s. Oriental Bank of Commerce has been repaid by a settlement with the Bank. The penalty proceedings for the alleged violation of the Companies Act have been settled and all the matters have been regularised. Similarly, almost all the liabilities of the Company have been paid off and now the Company is running smoothly. As regards Shri Vijay Kumar Sanghi, it is averred that his stake in the Company is very meagre inasmuch as he is holding only 75 shares. Even as per the award of arbitration, Shri Vijay Kumar was required to transfer the shares in the name of her group. It

is further averred that Shri Vijay Kumar Sanghi has acted upon the scheme of reconstruction by retiring from the partnership of M/s. Sanghi Brothers and his wife retired from the partnership Firm M/s. Rajasthan Theatre. However, she had admitted that the formalities of transfer of title deed of M/s. United Motors to the nominee of Shri R.K. Sanghi is to be completed vice versa Shri R.K. Sanghi was required to transfer the shares in respondent No. 3 standing in his name and in the name of his family members to her group.

20. Shri R.K. Sanghi, who was initially supporting the reconstruction scheme has now filed an affidavit on 23-11-2001 supporting the appeal and seeking the direction to quash order dated 5/6th September, 1994. It is averred that the main beneficiary of the family settlement is Mrs. Uma Sanghi and her family consisting of her son Shri Akshey Sanghi and his wife Smt. Rachna Sanghi and her daughter-in-law Smt. Rajni Sanghi w/o Late Ashok Sanghi (appellant in Appeal No. 24/94). It is alleged that Smt. Uma Sanghi has not only excluded all the shareholders of the Company for last 16 years and retained all income from the Company but from the settlement she also got him to pay all the Company's dues which she herself has illegally raised. The details have been given in the affidavit filed by Smt. Pushpa Sanghi. It is also alleged that Smt. Uma Sanghi has fraudulently nominated her son Shri Akshey Sanghi and his wife Smt. Rachna Sanghi as Directors of the said Company without even calling for any AGM/EGM as per the provisions of the Companies Act. It is further alleged that she has misappropriated and/or siphoned large sum of money from the Company. Shri R.K. Sanghi has also pointed out the change in the circumstances in which the family settlement as sanctioned by the learned Company Judge does not survive.

21. Shri Vijay Kumar Sanghi in his counter-affidavit, has denied that his father Shri A.K. Sanghi has signed any agreement/compromise on his behalf. He has referred to the impugned order dated 5/6th September, 1994 and submitted that it has been clearly mentioned therein that both Shri R.K. Sanghi and Shri A.K. Sanghi would file the consent of their children and family members within two weeks. Since he was party to the Company Petition being a Director of the Company, at the time of settlement/scheme of reconstruction of the Company neither he was consulted nor his consent was taken and, therefore, he had refused to give his consent to his father Shri A.K. Sanghi for the said scheme/family settlement. He has also referred to the decisions of the Delhi High Court and the Apex Court with respect to the family settlement. With respect to the transfer of the properties/shares, it is pointed out that Shri R.K. Sanghi had given an undertaking before this Court that they will not transfer the properties either individually or on behalf of the company. This Court had directed the parties to maintain the status quo regarding the ownership and possession of the properties involved in dispute and not to transfer or create any third party interest in the said property.

22. In order to appreciate the respective contentions, it would be convenient to acquaint with the provisions of Section 391 which provides powers to

compromise or make arrangements with creditors and members. Section 391 of the Companies Act is extracted as follows :

"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 Court 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 Court directs.

(2) If a majority in number or 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 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 to 251, and the like.

(3) An order made by the Court 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 Court 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 Court thinks fit, until the application is finally disposed of.

(7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decisions of that Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction.

The provisions of Sub-sections (3) to (6) shall apply in relation to the appellate order and the appeal as they apply in relation to the original order and the application."

As per Sub-section (1) of Section 391 if a compromise is proposed between the company and its members or any class of them on the application either of company or any member of the company, the first step, which the Court is required to take is to direct a meeting of the creditors and the members of the company to be held and conducted in the manner provided. The second stage under Sub-section (2) is the satisfaction of the Court with the company or any other person by whom the 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 latest financial position of the company, auditor's report on account of company, pendency of any investigation proceedings in relation to the company under Sections 235 to 251 of the Act and the like.

23. A Division Bench of Bombay High Court in *J.S. Davar and Another Vs. Shankar Vishnu Marathe and Others*, after quoting the opinion of Brown L.J. in *Alabama, New Orleans, Texas & Pacific Junction Rly. Co., In re* [1891] 1 Ch. 213 made the following pertinent observation:--

"On a review of these authorities and from the provisions in Section 153(2) of the Indian Companies Act, 1913, it seems to us clear that the consent of the majority of creditors or shareholders to a scheme does not conclude the issue whether the scheme should be sanctioned. The jurisdiction of the Court which is called upon to sanction a scheme transcends the mere consideration that a majority of these affected by the scheme is willing to submit to the scheme. The creditors of a company may agree to accept a fraction of the amount due to them from the company and yet, on considerations of more lasting importance, like public or commercial morality, the Court may refuse to accept the verdict of the majority. It may also refuse to accept the scheme on the ground that it is not reasonable or that it is not feasible or that there is no chance that it will yield to a smooth and satisfactory execution. By "reasonable" is generally meant that the arrangement cannot reasonably be supposed by sensible business people to be for the benefit of the class which they represent. The Court will also not sanction the scheme if the facts which would have influenced decision of the majority were not known or disclosed to the majority, or if the sponsors of the scheme have misrepresented the true position of the company. Finally, if the acceptance of the scheme would lead to the stifling of an inquiry into the conduct of the

delinquent directors, the Court would be slow to give its sanction to the scheme. Considerations such as those mentioned above must be taken into account by a Court before a scheme is sanctioned but in the very nature of things, it is not possible to enumerate exhaustively the circumstances which a Court is entitled to take into consideration."

24. In *In Re: Sidhpur Mills Co. Ltd.*, a single Judge having examined the scheme of Section 391 of the Companies Act and number of decisions held that the requirements which have been laid down in Section 391 are the sine quo non for sanctioning the scheme. The Court held that it is the duty of the Court to see that the scheme is a fair and reasonable one, the initial burden is on the petitioner to show that prima facie, the scheme is fair and reasonable such as a prudent and reasonable share-holder would approve of and not object to it. The Court observed, thus (Para 14) :--

"The function of the Court is two fold. The first function is to determine whether the statutory requirements as laid down in Section 391 of the Companies Act have been complied with. The requirements which have been laid down in Section 391 are the sine quo non for sanctioning the scheme. However, even if the statutory requirement have been complied with, that does not mean that the Court must sanction the scheme as a matter of course. The Legislature has purposely left discretion with the Court in this respect. The Court should apply its judicial mind to the scheme and reach a conclusion of its own. It must consider whether it is in the interest of the company as a whole and of the class of persons for whom the majority acts and whether the scheme is such that it must be pushed through. Therefore, the correct approach to a case is to bear in mind that the Court is neither called upon merely to register a decision of the majority, nor is it called upon to act in such a manner that the minority will create a stalemate and thereby retard the progress which the majority has legitimately and reasonably a right to expect and make. The Court must test the scheme not from the point of view of a lawyer or an accountant or an expert, but, it must look at it from the point of view of a reasonable and a fair minded person..." (p. 305)

25. In *Patiala Starch & Chemical Works Ltd.* 27 Comp. Cas. 111 (sic) the Court has laid down the guiding principle for the Court in the matter of sanction of the scheme. The Court observed:--

"The Court ought not to substitute its discretion for that of the shareholders of a company, who should normally be permitted to manage their own affairs themselves; but in sanctioning a scheme, the Court does not simply register the wishes of the shareholders or the creditors, as the case may be, as expressed in their resolution passing the scheme. It is the duty of the Court to examine the scheme and to see whether there has been compliance with the provisions of law. The scheme must conform to the standard of reasonableness, having regard to all the information that may be available. The commercial advantage, and the parties who stand to benefit thereby, are matters which cannot be left to the

exclusive decision of the persons attending the meeting. The fact that the shareholders and creditors have approved of a scheme should normally carry great weight, but there may be equally weighty considerations of the other side. Where the shareholders have not independently guarded their interests, the Court cannot abdicate responsibility of examining the proposal in the scheme and decide whether it conforms to the standards of fairness and reasonableness. The scheme has to be examined by the Court with a view to see, whether, it is such as an independent and honest member of the company, while wisely acting in respect of his own interest, can reasonably approve."

26. In *L. Jai Kulbir Singh v. Kelly & Henderson (P.) Ltd.* [1980] 50 Comp. Cas. 646 the Bombay High Court examining the provisions of Section 391 of the Companies Act along with Order 23, Rule 3, C.P.C. held that wide powers are given to the Court to pass an order which will be in the interest of the company. The Court further observed that where petitioners ask for relief for oppression and mismanagement, any compromise which deal with the manner in which the affairs of the company will be conducted in future must be scrutinised by the Court before the Court gives sanction to the compromise. The Court has quoted from Rarnaiya's Guide to the Companies Act as follows:--

"Proceedings under Sections 397 and 398 cannot be compromised in the same way as suits between private parties. Any compromise should be acceptable to the Court whose powers are set out in this section."

The learned single Judge has also approved the following observation of the Madras High Court in *Syed Mahomed Ali v. R. Sundaramurthy* AIR 1958 Mad. 587 (Para 3):--

"Both under Sections 397 and 398 the interests of the company are of paramount importance and the proceedings should not be conceived as a mere dispute between individuals. Any compromise suggested should be acceptable to the Court whose powers are set out in Section 402.

Even accepting the argument, the compromise which has not been agreed to by Syed Mahomed Ali, one of those represented in the petition, cannot be used to stifle the enquiry of the petition in the absence of a finding that the compromise was entered into bona fide in the interest of the company as a whole...." (p. 591)

27. In view of forgoing discussion, it clearly emerges that while it is true that a scheme u/s 391 cannot be scrutinised in the way harping critic, a hairsplitting expert, a meticulous accountant or fastidious counsel, but the Court will also not act as a rubber stamp or register as a matter of course or to treat the scheme as a fait accompli to accord sanction merely upon a casual look at it. It is obligatory upon the Court to scrutinise the scheme and to see whether there has been compliance of the provisions of law and whether it conforms to the standard of reasonableness. It must also be ensured that the majority has acted bona fide and the minority is not being overridden by a majority having interests to its own clashing with those of the minority whom they seek to coerce.

28. In the instant case a bare reading of the impugned order of the learned Company Judge will show that there is total non-application of mind as to the scheme presented for sanction. For the ready reference the impugned order of the learned Company Judge is extracted as follows:--

"The petitioners Mr. R.K. Sanghi and Mrs. Pushpa Sanghi and respondent No. 2 Smt. Uma Sanghi are present in person. Shri Amrit Kumar Sanghi, Shri Akshey Kumar Sanghi and Smt. Rachna Sanghi are also present in person.

They have filed a scheme of reconstruction-cum-family settlement. It bears the signatures of all the above noted persons and the Advocates. The said scheme of reconstruction-cum-family settlement has been read over to them. They admit it to be correct.

Mr. R.K. Sanghi says that the consent of his son Nitin Sanghi and daughters Mrs. Deepa Kejriwal in respect of this family settlement will be filed within 2 weeks. Similarly, Mr. Amrit Kumar Sanghi will send the consent of his sons Vijay Kumar Sanghi and Ajay Kumar Sanghi, his wife Mrs. Mithlesh Kumari Sanghi and daughters Deepika Sanghi and Ritu Sanghi within 2 weeks.

Mr. A.K. Rajwanshi has moved an application for and on behalf of Mrs. Rajni Sanghi for being impleaded in the case and requesting that no order may be passed in the case behind her back.

Mr. M.S. Singhvi and Mr. Vincct Kothari submits that the said application moved on behalf of Mrs. Rajni Sanghi is neither accompanied by a power of attorney nor her affidavit and deserves to be rejected.

After great efforts of the learned counsel for the parties, the aforesaid family settlement has taken place and it would not be in the interest of the justice to refer the passing of the final order on the basis of the aforesaid settlement. It is said that Mrs. Rajni Sanghi has already filed a company petition and she may take necessary action in the matters as may be advised. The application moved for and on behalf of Mrs. Rajni Sanghi is rejected.

The company petition No. 6/86 is disposed of in terms of the aforesaid scheme of reconstruction-cum-family settlement. The scheme of reconstruction-cum-family settlement will form a part of this order."

It is evident that there is a non-compliance of Sub-clause (1) of Section 391 of the Companies Act, which is a pre-requisite i.e. convening meeting of the shareholders and creditors of the company. The learned Judge also did not try to satisfy about the bona fides of the persons presenting the scheme for sanction. There is an allegation that the impugned scheme is for the personal benefit of Smt. Uma Sanghi. It is not necessary to trace all the objections with respect to the sanction of the scheme for the simple reason that it does not fulfil the pre-requisites as referred to above. The scheme sanctioned by the impugned order of the learned Company Judge deserves to be set aside on this ground alone.

29. As far as the appeal filed by Smt. Rajni Sanghi is concerned, there is substance in her say that in spite of the specific direction to hear the company petition by her being No. 3 /92 and another by her daughter Miss Meenakshi u/s 433(3) read with Section 439 of the Companies Act along with the instant company petition No. 6/86, the learned Company Judge sanctioned the scheme without directing at least to place the two other petitions on board. It is submitted by Smt. Rajni Sanghi that the scheme of reconstruction was forwarded without taking signatures or without informing all the non-petitioners or the shareholders and all the creditors even the creditors in whose behalf the company petitions were pending. The scheme of reconstruction does not contain a single word regarding any meeting of shareholders or creditors or passing of the resolution by the Company for approval of the scheme of reconstruction. There is even not a word regarding satisfaction with respect to the bona fides and reasonableness of the scheme. There are serious allegations with respect to the transfer of properties inasmuch as while the lease hold land measuring 1.1 Acres with the Show Room and Workshop building situated at Station Road Opposite Khalsa Kothi, Jaipur is in the heart of Jaipur City and approximate valuation of the land alone is more than Rs. 10 crores. The property has been transferred to M/s. Burlington Trade Centre on a consideration of repayment of loan to the extent of Rs. 1.2 crores only. For these reasons we are of the view that the learned Company Judge was in error in giving sanction to the scheme.

30. Certain objections have been taken with respect to the situation to have become irreversible as major part of the scheme has been given effect to. There is a controversy on this aspect. Be that as it may as we are remitting the matter to the Judge, it will be open for the learned Company Judge to take into account all those aspects while proceeding and deciding the Company Petition.

31. We accordingly allow D.B. Civil Special Appeal No. 30/1994 (Mahendra Kumar Sanghi v. Ratan Kumar Sanghi) (non-appellant Vijay Kumar) and D.B. Civil Special Appeal No. 24/1994. (Smt. Rajni Sanghi v. Western Indian States Motors Ltd.) and set aside the order of the learned Company Judge, dated 5/6-9-1994 sanctioning the scheme. The matter is remitted to the learned Company Judge to proceed with it in accordance with law. No order as to cost.

Order accordingly.