

(2016) 03 AP CK 0020

In the Andhra Pradesh High Court

Case No : Company Application Nos. 295, 311, 312, 313, 322 and 323 of 2016
in Company Application No. 1776 of 2015.

Photon Infotech Private Limited and Others

APPELLANT

Vs

Sri Infrastructure Finance Limited

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Companies Act, 1956 — Section 391

Citation : (2016) 3 ALT 350

Hon'ble Judges : S.V. Bhatt, J.

Bench : Single Bench

Advocate : Gorantla Sri Ranga Pujitha, Raghunandan Rao, Senior Counsel for Shireen Sethna Baria, A. Sudershan Reddy, Senior Counsel for S. Srinivasa Iyengar, and S. Niranjan Reddy, for K.V. Rusheek Reddy, Advocates, for the Appellant; S. Ravi, Senior Counsel, for th

Final Decision : Disposed Off

Judgement

S.V. Bhatt, J. - Heard Mr. Raghunandan Rao and Mr. A. Sudershan Reddy, learned senior counsel, Mr. S. Niranjan Reddy, learned counsel for applicants and Mr. S. Ravi, learned senior counsel for SREII/respondent.

2. These applications are filed under Rule 9 of the Companies (Court) Rules, 1959.

3. Company application No. 295 of 2016 is filed by M/s. Photon Infotech Private Limited, Chennai to implead the applicant herein as party respondent in Company Application No. 1776 of 2015.

4. Tata Capital Financial Services Limited is the applicant in Company Application Nos. 311 and 312 of 2016. Applicant prays for directions to SREI Infrastructure Finance Limited (for short "SREII") (respondent herein), to prepare proper list of secured creditors firstly as on 22-1-2016 and secondly falling under various categories as set out in the application for conducting separate meetings for each

of the categories of the secured creditors to consider the scheme of compromise and arrangement (for short "the Scheme") taken up by SREII/respondent. The applicant prays for stay of meeting of secured creditors scheduled to be held on 19-3-2016.

5. Company Application No. 313 of 2016 is filed by Adoniss Limited and seeks leave of the Court to apply for dismissing Company Application No. 1776 of 2015 filed by SREII/respondent.

6. M/s. India Bulls Housing Finance Limited, Hyderabad, who is the applicant in Company Application Nos. 322 and 323 of 2016, prays for recalling the order dated 22-1-2016 in Company Application No. 1776 of 2015 and for dismissing the same, and granting ad-interim stay of the meeting scheduled to be held on 19-3-2016.

7. The circumstances relevant for disposal of Company Application Nos. 312 and 323 of 2016 are as follows :

SREII/respondent filed application under Sections 391 to 394 of the Companies Act, 1956 (for short "the Act") read with Rule 67 of the Companies (Court) Rules, 1959 (for short "the Rules") in the matter of the Scheme between Deccan Chronicle Holdings Limited (for short "the Company") and its creditors and prayed for the following prayers :

"a. direct the convening of the meeting of the Equity Shareholders of the Company to be held at such place as determined by this Hon"ble Court on such date and time as this Hon"ble Court may direct for the purpose of considering the Scheme.

b. direct the convening of the meeting of the Secured Creditors of the Company to be held at such place as determined by this Hon"ble Court on such date and time as this Hon"ble Court may direct for the purpose of considering the Scheme :

c. direct the convening of the meeting of the Unsecured Creditors of the Company to be held at such place as determined by this Hon"ble Court on such date and time as this Hon"ble Court may direct for the purpose of considering the Scheme;

d. appoint Chairpersons for conducting the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Company and who shall report the result thereof to this Hon"ble Court.

e. direct that the Chairpersons so appointed shall issue the notice of the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Company along with the Explanatory Statement and Form of Proxy;

f. direct publication of the notice of the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Company in the English daily, Times of India (All India Edition), Andhra Jyothi, Telugu Daily and a Hindi Daily

as per the discretion of this Hon"ble Court;

g. prescribe the quorum for the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Company;"

8. On 22-1-2016, Company Application No. 1776 of 2015 was ordered with the following directions :

"1. Sri D. Krishna Murthy, Advocate, is appointed as Chairman for convening the meeting of the Equity Shareholders of the Company at Basera Hotel, Hyderabad on 19.03 at 11.00 a.m. for the purpose of considering the proposed scheme of arrangement and his fee is fixed at Rs. 50,000/- (rupees fifty thousand only)

Quorum for the said meeting shall be 50.

2. Sri T.S. Rayalu, Advocate, is appointed as Chairman for convening meeting of the Secured Creditors of the Company at Basera Hotel, Hyderabad on 19-3-2016 at 01.00 p.m. for the purpose of considering the proposed scheme of arrangement and his fee is fixed at Rs. 50,000/- (rupees fifty thousand only).

Quorum for the said meeting shall be 12.

3. Sri M. Brahma Reddy, Advocate, is appointed as Chairman for convening meeting of the Unsecured Creditors of the Company at Basera Hotel, Hyderabad on 19-3-2016 at 03.00 p.m. for the purpose of considering the proposed scheme of arrangement and his fee is fixed at Rs. 50,000/- (rupees fifty thousand only)."

9. SREII/respondent is one of the secured creditors of the Company. The Company's operations have been adversely affected for the past couple of years and the scope of revival of the Company with the current state of operations is very bleak. The Company in these adverse circumstances is denied normal banking/lending channels for its operational/capital requirements. The company has continuously defaulted in servicing its debt. On the rolls of Company, there were 1400 direct and indirect employees. The efforts of the Company to get a case registered under the provisions of the Sick Industrial (Special Provisions) Act, 1985 failed with the order dated 24-4-2014 passed by BIFR. SREII/respondent, it is averred in Company Application No. 1776 of 2015, has taken pro-active steps by propounding the Scheme with the intent of reviving and rehabilitating the Company. As per the details set out in Annexure "D" filed along with Company Application No. 1776 of 2015, the aggregate principal amount outstanding of the Company as on 30-9-2012 was INR 39,87,50,59,883 (Indian Rupees three thousand nine hundred eight seven crores fifty lakhs fifty nine thousand eight hundred eighty three). The amount outstanding to secured creditors is INR 31,55,50,59,883 (Indian rupees thousand one hundred fifty five crores fifty lakhs fifty nine thousand eight hundred eighty three)and unsecured creditors is Rs. 832 crores. It is contextual to refer to Clause 5.2.1 of (he Scheme between share holders and creditors of the Company to appreciate the grievances of applicants herein. Clause 5.2.1 reads thus :

"As an integral part of this Scheme, the Secured Creditors and Unsecured Creditors of the company irrevocably agree to sacrifice 75% of their Total Outstanding Amount as set forth in Schedule 6A and Schedule 7A, without any further claims against such amounts, subject to successful implementation of the Scheme and consummation of all actions contemplated under this Scheme. Upon the effectiveness of this Scheme, 75% of the Total Outstanding Amount as set forth in Schedule 6A and Schedule 7A shall stand automatically reduced/waived from the amounts owned by the Company to the Secured Creditors and Unsecured Creditors, and the balance 25% of the Total Outstanding Amount, in aggregate, amounting to INR 9,96,87,64,971 (Indian rupees nine hundred ninety six crores eighty seven lakhs sixty four thousand nine hundred seventy one) ("Total Settlement Amount") shall be settled/discharged by the Company in the manner provided in this Clause 5. The details of the amounts payable by the Company from the Total Settlement Amount to each Secured Creditor and Unsecured Creditor is set forth in Schedule 6B and Schedule 7B respectively. It is hereby clarified that all other dues in favour of the secured and unsecured creditors of the Company such as interest (including default interest), indemnities, liquidated damages, costs, charges, expenses, fees etc. as of the Effective Date shall be deemed to have been waived by them and the settlement/discharge in terms of this Scheme shall only be of the principal amounts of the secured and unsecured loans disbursed by them."

10. With the above background, SREII/respondent as one of the secured creditors of the company filed Company Application No. 1776 of 2015 to convene the meetings of equity share holders and the creditors of the Company for taking a decision on "the Scheme". As already noted, the prayers for convening the meeting were accepted vide order dated 22-1-2016. Now, the applicants seek recalling of order dated 22-1-2016 and hear Company Application No. 1776 of 2015 to protect the interest of secured and unsecured creditors.

11. The applicant in Company Application No. 295 of 2016 alleges that it is an unsecured creditor of the Company. As on ,15-10-2012, the Company owes the applicant a sum of Rs. 5 crores. The applicant served statutory notice on the Company for paying the admitted amount and in reply the Company admitted the liability of applicant but did not pay the admitted sum. The applicant, therefore, filed C.P.No. 178 of 2012 in this Court for winding up and the petition is pending till date. To point out that the details furnished by SREII/respondent in Company Application No. 1776 of 2015 are incorrect, it is shown that the name of applicant herein is not shown in the unsecured creditors list attached to "the Scheme". The applicant prays for impleading the applicant as proper and necessary party in Company Application No. 1776 of 2015 to oppose the scheme.

12. The applicant in Company Application No. 311 and 312 of 2016 avers that on the request of the Company, the applicant herein on 13-4-2011, sanctioned working capital of an amount of Rs. 100 crores to the company. The loan amount is secured by mortgage of immovable property at C.S.No. 242, Mathurdas Mill

Compound, NM Joshi Marg, Lower Parel, Mumbai and in favour of Rs. and T Finance Limited, pari passu is created for a sum of Rs. 25 crores. The applicant due to default committed by the Company invoked Arbitration clause and filed a petition under Section 9 of the Arbitration and Conciliation Act, 1986 in the High Court of Bombay. The High Court of Bombay, appointed Receiver, who on 16-7-2013 took possession of mortgaged property of the Company. It is further averred that the classification of creditors for the purpose of convening meeting is to ensure that the meetings of same class of creditors are held in a proper manner and creditors having dissimilar interests are not clubbed together. This may result in taking undue advantage by creditors with least possible hope of recovery. According to the applicant, it falls within the first category of secured creditors and such secured creditors could not be interested in supporting or approving the proposed scheme of arrangement. The applicant under the Scheme is asked to give up its claim on principal amount at Rs. 75 crores and had to agree for a highly contingent and speculative repayment of Rs. 25 crores of the remaining principal amount. According to applicant, the classification of secured creditors will have to be as under.

"(i) Fully secured Creditors : having tangible/immovable property with market value equal or higher than current outstanding dues to the creditor;

(ii) Partly Secured Creditors : having tangible/immovable property with market value less than current outstanding dues to the creditor;

(iii) Partly Secured Creditors : having movable property with floating or a pari-passu charge on current assets with realizable value less than current outstanding dues to the Creditor;

(iv) partly Secured Creditors : having tangible and tangible security, i.e., charge on brand names (being Deccan Charge, Deccan Chronicle, Andhra Bhoomi etc.);

(v) Debenture Holders : having security over immovable and movable assets of the Company."

13. The applicant submits that it is opposed to the proposed Scheme. Therefore, in this background, the applicant submits that without proper directives by the Company Court on the mode and manner of convening meeting of secured creditors, the applicant will be subjected to prejudice and prays for dismissal of Company Application No. 1776 of 2015.

14. The applicant in Company Application No. 313 of 2016 claims to be an unsecured creditor of the Company. Company Petition No. 3 of 2014 is filed against the Company by the Union of India under Section 383-B read with Section 398 and 402 of the Act and the petition is pending before the Company Law Board. The pendency of this litigation has not been disclosed by SREII/respondent. It refers to various complaints pending before the Economic Offence Wing, the Central Bureau of Investigation, Bank Securities and Fraud Cell, Serious Fraud Investigation Office for committing fraud, submitting false and

fabricated financial statements and by suppressing the borrowings taken from other Bank. The applicant herein filed C.P.No. 173 of 2012 in this Court and the same is pending. On 10-8-2013, the Company entered into Memorandum of Understanding with the applicant herein and according to the understanding, the Company agreed to pay the admitted sum of Rs. 143.70 crores. Company Application No. 1776 of 2015, according to applicant, is an attempt to play fraud on this Court and does not disclose the material facts. The applicant opposes the proposed scheme of arrangement with the unsecured creditors. The applicant submits that the prayers in Company Application No. 1776 of 2015 are illegal and against the public policy. The scheme fails due to suppression of material facts as it is against public policy and is fraught by abuse of process of law and attempt to play fraud on this Court.

15. The applicant in Company Application No. 322 and 323 of 2016 states that under various finance/debt services provided by the applicant, the applicant in all, had lent about Rs. 100 crores to the Company. The company defaulted in repayment. Therefore, the applicant has initiated action under the SARFAESI Act, 2002 and has taken symbolic possession of mortgaged properties on 29-5-2013. The applicant refers to various legal proceedings and opposes the Scheme and contends that the order of this Court convening the meeting of equity share holders/creditors is required to be stayed for the present. The applicant was heard and appropriate orders were passed after hearing the parties.

16. Mr. Raghunandan Rao, counsel for the applicant submits that the direction issued by this Court for convening the meeting of secured creditors prima facie does not satisfy the requirement of Section 391 of the Act, for SREII/respondent filed Company Application No. 1776 of 2015 with reference to the financial status of Company as on 31-3-2012 and on such basis meeting of secured creditors is convened. According to him, the details of securities, the time of security and the nature of right created under deeds etc., are all matters of importance in a situation like this and issuing general direction to convene meeting of secured creditors is required to be reconsidered by this Court. He places on record the orders of High Court of Delhi in O.M.P. (I) 427 of 2015 etc. to contend that prohibitory orders. He relies upon decisions in *In re Maneckchowk and Ahmedabad Manufacturing Co. Ltd.*, (1970 Company Cases Volume 40 page 819), *D.A. Swamy v. India Meters Ltd.*, 1994 Company Cases, Madras page 27) and *Miheer H. Mafatlal v. Mafatlal Industries Ltd.*, (AIR 1997 SC 506).

17. Mr. S. Niranjan Reddy draws the attention of this Court to SEBI Regulations and contends that the very scheme for which the order to convene meeting is obtained from this Court is contrary to statutory regulations and he adopts the submissions of Mr. Raghunandan Rao and prays for staying the scheduled meeting on 19-3-2016.

18. Mr. A. Sudershan Reddy and other counsel appearing for the applicants contends that the application for convening the meeting could not and ought not to have been passed without proper directions on the mode and manner of

conducting the meetings and if the meetings are allowed to proceed, the applicants will suffer irreparable loss and injury in a matter involving several thousands of cores of rupees.

19. Mr. S. Ravi, counsel for SREII/respondent submits that the scope of enquiry in an application filed under Section 391 of the Act is no more *res integra* and that the applicants have wasted substantial time from the date of order in Company Application No. 1776 of 2015, from the date of publication in newspapers and these applications are filed at eleventh hour to unnecessarily stay the meeting, there are no reasons for staying the meeting scheduled on 19-3-2016. According to him, the applicants can certainly raise the objections in the class or classes of creditors meetings and subject to the outcome of the meeting, the applicants can also participate at the stage of consideration of the application by this Court under Section 391(1) of the Act. He relies upon the following four decisions :

Landesbank Badenwurttemberg v. Nova Petrochemicals Ltd., (2009) 1 Comp.L.J. 155 (Guj.), Rainbow Denim Ltd. v. Rama Petrochemicals Ltd., (2002) 10 SCC 498, Kotak Mahindra Bank Ltd. v. Balaram Cements Ltd., (2008) 146 CompCas 1 (Guj.) and Muralidhar Ratanlal Exports Limited v. Gujarat Rao and Infrastructure Company Limited in Company Application No. 23 of 2008 in Company Petition No. 131 of 2005 in Company Application No. 162 of 2005 (Guj.).

20. At the outset, this Court observes that the learned counsel appearing for all parties have primarily made submissions on the prayer to stay the meeting scheduled on 19-3-2016, but have suggestively made submissions on the nature of order passed by this Court under Section 391 of the Act, the scope of enquiry while passing an *ex parte* order and the need for and against sub-classification of secured creditors etc. Though several submissions have been made, this Court at this stage is considering, having regard to the peculiar facts and circumstances, the stakes involved in the scheme, whether the scheduled meeting ought to be stayed or not and refraining to make reference to submissions on merits and not recording any finding at the stage of the matter.

21. The Court, while exercising its power under Section 391 of the Act, passes an *ex parte* order enabling the applicant before the Court either to convene the meeting of share holders/creditors or considers dispensing with convening of meeting under Section 394 of the Act. The circumstances in the case on hand are not normal and the application is not at the instance of transferor company. Company Application No. 1776 of 2015 is at the instance of one of the secured creditors of the Company which is coming forward to revive the Company subject to the acceptance of terms and conditions set out in the Scheme. In this background, the prayers in Company Application Nos. 312 and 323 of 2016 are considered. At the cost of repetition, the operative portion of the order dated 22-1-2016 is excerpted.

"1. Sri D. Krishna Murthy, Advocate, is appointed as Chairman for convening the

meeting of the Equity Shareholders of the Company at Basera Hotel, Hyderabad on 19.03 at 11.00 a.m. for the purpose of considering the proposed scheme of arrangement and his fee is fixed at Rs. 50,000/- (rupees fifty thousand only)

Quorum for the said meeting shall be 50.

2. Sri T.S. Rayalu, Advocate, is appointed as Chairman for convening meeting of the Secured Creditors of the Company at Basera Hotel, Hyderabad on 19-3-2016 at 01.00 p.m. for the purpose of considering the proposed scheme of arrangement and his fee is fixed at Rs. 50,000/- (Rupees fifty thousand only)

Quorum for the said meeting shall be 12.

3. Sri M. Brahma Reddy, Advocate, is appointed as Chairman for convening meeting of the Unsecured Creditors of the Company at Basera Hotel, Hyderabad on 19-3-2016 at 03.00 p.m. for the purpose of considering the proposed scheme of arrangement and his fee is fixed at Rs. 50,000/- (rupees fifty thousand only).

22. Section 391(1) and (2) of the Act reads as follows :

"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 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 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 under Section 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 Section 235 to 251, and the like"

23. It is no doubt true that any person interested in the affairs of the company can make an application under Section 391 of the Act. Section 391 provides that an application can be made by the Company, any creditor, member of the company or at the instance of Liquidator of a company (in liquidation). In the application filed under Section 391, the Court orders a meeting of creditors or class of creditor or all the members or class of members as the case may be to be called, held and conducted in such a manner as the Court directs. Under subsection (2) of Section 391 of the Act, if a majority in number representing 75% 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 and agreed to such arrangement and such arrangement if sanctioned by the Court is binding on all the creditors etc. The learned counsel appearing for both the parties have drawn my attention to the ratio laid down by the Hon'ble Supreme Court in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* (8) AIR 1997 SC 506. As at present, this Court is not considering whether the Scheme is to be accepted or not.

24. Assuming that the consideration at this stage is ex parte and reasons ought not and need not be recorded, still one crucial requirement of Section 391 of the Act cannot be ignored. The requirement is - once a scheme is set in motion by filing a petition, the further steps are to be undertaken and carried out as the Court directs. Therefore, the convening of meeting causes with it the presumption of consideration of data and details to the extent required by law. Proviso to Section 391 insists placing on record latest financial position. The words "latest financial position" are of wide amplitude and the Parliament by choice and in wisdom has not used the words "balance sheet". Further, this can also mean comprehensive data and details. The Section mandates that the Court directs calling, holding and conducting a mechanical meeting but a meeting where there is proper classification of all the stake holders. The power on the Court though is not adjudicatory at this stage, but yet cannot be converted to mere post-office.

25. What is important in the present fact scenario is that SREII/secured creditor is the applicant in Company Application No. 1776 of 2015. It claims to have taken initiative to get a scheme approved by the equity share holders and the creditors for revival of the company. The order convening a meeting was passed with reference to the details made available by SREII from the balance sheet dated 31-3-2012. The order dated 22-1-2016 in Company Application No. 1776 of 2015 does not refer to issuing specific directions on the classification of creditors and mode and manner of conducting meetings etc., by SREII. Had the application for convening the meeting been at the instance of the Company, the Company could have disclosed latest financial position and details and the Court would have had opportunity to issue appropriate directions for the mode and

manner of convening meeting of creditors. From the details set out in various applications, this Court is of the view that all details did not and could not be placed, by SREII/respondent in Company Application No. 1776 of 2015, and as noted an order for convening the meeting of share holders and creditors was passed. No doubt, the applicants herein can attend the meeting and place their objections on the scheme in the meeting dated 19-3-2016. But the issue for consideration is whether the scheduled meeting is in accordance with Section 391(1) of the Act or not. If the objections raised by the applicants are considered and appropriate further directions are issued, the loss suffered to the SREII/respondent is the amount spent for initiating the advertisements etc., till date. On the other hand, if the meetings are allowed to be held and decisions are taken, based on the financial details as on 31-3-2012, the possibility of inchoate consideration, nondisclosure or non-participation of secured/ unsecured creditors cannot be ruled out. After going through non-disclosure of a few vital details, this Court is of the view that conducting the meeting at this stage is not in the interest of the Company, the stake/share holders/creditors and the public interest at large.

26. Learned senior counsel appearing for SREII/respondent herein did not object to the maintainability of the instant applications for stay of the meeting scheduled on 19-3-2016. However, on merits he tried to convince this Court that there is no necessity to stay the holding of meetings scheduled to be held on 19-3-2016. Therefore, this Court has to consider whether in the fact situation presented by the applicants, this Court ought to consider staying the meeting scheduled on 19-3-2016 or not. Further, the decisions relied upon by the learned counsel appearing for both parties are not referred to as they are on the substantial prayers made in the Company Application Nos. 1776 of 2015, 312, 313 and 322 of 2016 and the effect of these decisions will be considered at appropriate stage of hearing of Company Application No. 1776 of 2015.

27. Further, I am of the view that the company has accumulated loss to the extent of 600 crores (approximately) and the principal amount payable to secured/ unsecured creditors is Rs. 39,87,50,59,883 (Indian Rupees three thousand nine hundred eight seven crores fifty lakhs fifty nine thousand eight hundred eighty three). That being the case, while issuing directions for convening the meeting of creditors in a situation like this when the process for acceptance of Scheme is set in motion, firstly the Court is posted with all the details as on the date of issuing directions for convening the meeting and secondly no secured creditor or unsecured creditor shall have a feeling that the discretion of these creditors is hijacked for any reason whatsoever. Therefore, to consider each one of the circumstances carefully, it is desirable to stay the meeting scheduled on 19-3-2016, than proceeding with the same and later on consider the objections of parties.

28. From the above analysis, the following reasons/points are recorded.

(A) On 26-10-2015, SREII/respondent had set in motion the procedure for

sanction of the Scheme for revival of the Company by reference to Annual Report 2011-12, but not by reference to the latest financial position of the Company. From the material available on record, these details are incorrect and/or do not disclose correct and latest details of stake holders.

(B) The details of principal amounts of secured and unsecured loans of the company as on 30-9-2012 are stated as INR 39,87,50,59,883/- (Indian Rupees three thousand nine hundred eight seven crores fifty lakhs fifty nine thousand eight hundred eighty three)

(C) SREII/respondent herein, under bona fide circumstances could not and did not place on record the details of pending investigation into the affairs of the Company by Economic Offence Wing, the Central Bureau of Investigation, Bank Securities and Fraud Cell, Serious Fraud Investigation Office and the Company Petitions filed or pending against the Company.

(D) The procedure for sanction of a scheme by the Court is set in motion by filing an application under Sections 391 to 393 of the Act. The requirement of Section 391 is that the Court orders a meeting of the creditors, or class of creditors, or of the members or class of members to be called, held and conducted in such manner as the Court directs. The order dated 22-1-2016 merely directs convening a meeting but does not refer to the manner of conducting the meeting. In other words, this Court, while ordering the prayer for conducting meeting, did not issue specific direction for calling, holding and conducting meetings of share holders/creditors, as the case may be, but merely directed convening of meetings. There is no consideration of creditors' issues in any manner in the order dated 22-1-2016.

(E) As rightly pointed out by the applicants/secured creditors, had the details now brought on record were made available, the Court would have certainly considered each one of these circumstances as required by law and if necessary, issued appropriate directions for convening meeting of class or classes of stake holders. The convening of meeting for consideration of Scheme, in a situation like the present, without directions from the Court, exposes the secured creditors to great risk and disadvantage.

(F) There was no occasion to consider the effect and fall out of orders of Delhi High Court and the Company law Board.

(G) This Court considers it apt to examine the objections stated by the applicants herein and issue appropriate orders/directions in Company Application No. 1776 of 2015.

(H) The balance of convenience is more in favour of recalling the order dated 22-1-2016 and staying the proposed meetings scheduled on 19-03-2016, for by travelling this far SREII/respondent had incurred expenditure and to balance the convenience, the applicants herein can be directed to defray a portion of the expenses incurred by SREII/respondent. On the contrary, if the prayers are

refused merely because these applications are filed at the eleventh hour, this Court is of the view that the convening of meetings is not conducive for any purpose and may go against public interest. Hence, the following order :

(1) Applicants in Company Application No. 311 and 312 of 2016 and Company Application No. 323 of 2016 are directed to deposit Rs. 10,00,000/- (Rupees ten lakhs only) each with the Registrar (Judicial) to the credit of Company Application No. 1776 of 2015, within fifteen days from today, for the entire process so far initiated and taken up is recalled to give opportunity to the applicants herein and other similarly situated creditors.

(2) The order dated 22-1-2016 in Company Application No. 1776 of 2015 is recalled and the scheduled meetings of share holders/creditors on 19-3-2016 is stayed. Though the prayer is confined to stay the meeting of creditors, having regard to the material placed on record, the order dated 22-1-2016 in its entirety is recalled.

(3) The prayers in Company Application Nos. 312 and 323 of 2016 are allowed subject to condition as referred above.

(4) Sri S. Ravi, learned senior counsel appearing for SREII/respondent, requests ten days time to file counter-affidavits in the applications filed with substantive prayers opposing the steps taken by the respondent in Company Application No. 1776 of 2015. The request is accepted. Learned senior counsel brings to the notice of this Court a genuine and practical difficulty with the order of stay now granted by this Court while disposing of Company Application Nos. 312 and 323 of 2016 i.e., the shareholders, unsecured creditors, willing secured creditors etc. if are not informed about the stay granted by this Court, there is every possibility of those persons incurring expenditure and undertaking avoidable journey. He requests the Court to direct the applicants in Company Application Nos. 312 and 323 of 2016 to forthwith issue a press release on he stay granted by this Court in the company applications filed by them. This Court is in agreement with the request made by the senior counsel and consequently the applicants in Company Application Nos. 312 and 323 of 2016 are directed to issue press release of stay of scheduled meeting dated 19-3-2016 in the same newspapers in which the respondent has taken steps for convening the meeting. The counsel appearing for the applicants are permitted to go through the order and issue press release.

(5) Post Company Application Nos. 1776 of 2015, 295, 311, 313, and 322 of 2016 on 28-3-2016.