

(2012) 11 DEL CK 0048
In the Delhi High Court
Case No : CO. APP. 8 of 2006

Reserve Bank of India

APPELLANT

Vs

CRB Capital Markets Ltd.

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239
Income Tax Act, 1961 — Section 139, 147, 148, 149, 150
Negotiable Instruments Act, 1881 (NI) — Section 138
Reserve Bank of India Act, 1934 — Section 45(1A), 45IA, 45K, 45K(4), 45MB
Securities and Exchange Board of India Act, 1992 — Section 11B, 15, 15T, 20, 20A

Citation : (2013) 112 CLA 18 : (2012) 195 DLT 204 : (2013) 117 SCL 427

Hon'ble Judges : Veena Birbal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Parag Tripathi, ASG with Mr. Ramesh Babu, Ms. Manisha Nair, Mr. Srinjoy Banerjee, Ms. Swati Setia and Mr. Anuj Bhandari, for RBI, Mr. Bhavanishankar V. Gadnis, for Madgaun Urban Co-Operative Bank Ltd. in CM Nos. 12452-12453/2009. Mr. Sanjeev Rajpal, for I.T. Department in CM No. 8021/2011, Ms. Meenakshi Ogra with Mr. Rajpal Singh and Ms. Kanika Sharma in CM No. 10739/2011 and Mr. Vijay Kumar for Karur Vysya Bank in CO. app. 8/2006, Mr. Diwakar Maheshwari, With Ms. Abhisar Bawagi in CO. app. 9/2006, Mr. Neeraj Malhotra, With Mr. Shourjya Mukherjee, in CO. app. 15/2006 and Mr. R.P. Bhatt with Mr. Ishaan Madaan and Mr. Chirag M. Shroff, CO. app. 18/2006, for the Appellant; Sudhanshu Batra with Mr. Bhuvan Gugnani, for CRB Capital Markets Ltd. and Mr. Rajiv Bahl, for Official Liquidator, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—In all these appeals the judgment dated 24.01.2006 delivered by the learned company Judge is under challenge. The appellants are aggrieved by the fact that the learned company Judge allowed the company petition No. 251/2002 filed on behalf of CRB Capital Markets Limited (the common respondent in all these appeals). CRB Capital Markets Limited (hereinafter referred to as "CRB Capital") had filed the said company petition No. 251/2002 seeking sanction of a scheme under sections 391/392 of the

Companies Act, 1956. That scheme of compromise and arrangement as put forth in the said company petition No. 251/2002 has been sanctioned by the learned company Judge, subject to certain modifications. In view of the fact that the scheme had been sanctioned, the winding up petition filed by the Reserve Bank of India (RBI) being C.P. No. 191/1997 u/s 45MC(1)(d) of the Reserve Bank of India Act, 1934 (hereinafter referred to as the "RBI Act") was, along with all other pending applications, "disposed of". However, the learned company Judge directed that in case the Administrator reports that the scheme cannot be successfully implemented then the winding up petition filed by RBI would get revived and the company (CRB Capital) would be liable to be wound up. The appellants in these four appeals are the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), Gujarat Industrial Investment Corporation Limited (GIIC) and Malanpur Steel Limited (earlier known as Hindustan Development Corporation Limited). All the appellants, including the Official Liquidator, had objected to the scheme. However, the learned company Judge sanctioned the scheme with certain modifications primarily because the learned company Judge felt that the public interest would be met inasmuch as the small depositors would be paid. However, the appellants feel that the scheme as propounded and sanctioned is contrary to public interest as also contrary to statutory provisions and is opposed to public policy. In fact, the learned counsel for the RBI had submitted that during the pendency of a winding up petition filed by the RBI u/s 45MC(1)(d) of the RBI Act no scheme under sections 391/392 of the Companies Act could, at all, have been entertained by the company court.

Background facts:

2. We shall examine the submissions of the parties but, before we do that, it would be necessary to set out the sequence of events. According to the RBI, CRB capital was originally incorporated on 16.05.1985 as CRB Consultancy Private Limited which got converted into a public limited company on 04.03.1991 and the name was changed to its present form (CRB Capital Markets Limited) on 18.11.1991. CRB capital is a Non-Banking Financial Company (NBFC). Consequently, it would be, inter alia, governed by the provisions set out in Chapter IIIB of the RBI Act. The chapter heading itself reads as under:-

Provisions relating to Non-Banking Institutions receiving deposits and Financial Institutions.

CRB Capital was provisionally classified as a loan company on 04.05.1993 and the classification status was changed to that of Equipment Leasing Company on 16.06.1993.

3. It is pointed out by the RBI that on 12.04.1993, based on the Shah Committee recommendations on the role of NBFCs a circular was issued to all the NBFCs advising them to get themselves registered with RBI if their net owned funds were more than Rs. 50 Lakhs. It is alleged that CRB Capital, although it had net owned funds of more than Rs. 50 Lakhs, did not apply for registration till

the year 1996. CRB Capital made an application to RBI for registration only on 24.10.1996 and on receipt of the application RBI decided to inspect the company before registration. Inspections were carried out between November 13, 1996 and November 18, 1996 with reference to CRB Capital's financial position as on 31.03.1996. However, the inspection extended to the Mumbai office of CRB Capital and therefore the inspection was completed in its entirety only in January 1997.

4. During the inspection, according to RBI, several illegalities and irregularities came to light. RBI had also received complaints from the Tourism Finance Corporation of India Limited regarding non-payment of deposits. Consequently, a show cause notice was issued by RBI to CRB Capital on 24.02.1997 as to why CRB Capital should not be prohibited from accepting deposits. A reply was submitted by CRB Capital. But, according to the RBI, the same was not found to be satisfactory. RBI also received information that CRB Capital was trying to mobilize further deposits by offering incentives etc. Consequently, RBI issued a prohibitory order u/s 45K read with Section 45MB(1) and 45MB(2) of the RBI Act and served the same in the corporate office of CRB Capital on 09.04.1997. By virtue of the said order, RBI prohibited CRB Capital from accepting deposits with immediate effect and CRB Capital was also precluded from accepting deposits from any person in any form whether by way of fresh deposits or renewal or otherwise. Furthermore, RBI directed CRB Capital not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of RBI for a period of six months from the date of the order. Attention of CRB Capital was also drawn to the provisions of Section 58B(5) read with Section 58C of the RBI Act with regard to the liability of penalty in case there was any contravention of the order passed by the RBI.

5. It is also the case of RBI that it had received information from State Bank of India (SBI) through its letter dated 09.04.1997 regarding the alleged large scale misuse of the "at par" discounting facility by CRB Capital. A complaint had been lodged by SBI with the Central Bureau of Investigation (CBI). A civil suit for recovery of an amount of Rs. 60 crore had also been filed. The CBI, after investigation had filed the charge-sheet in the competent court of law at Mumbai and the case is pending trial.

6. It is further the case of RBI that CRB Capital made a representation for the lifting of the prohibitory order. RBI, however, decided not to rescind the order passed u/s 45MB(1) and advised CRB Capital to propose a plan delineating the maturity profile of the existing deposits and proposed source of funds to re-pay the same. RBI also sent a letter dated 26.04.1997 requiring CRB Capital to submit a schedule of assets which could be used for discharging its obligations and liabilities. According to RBI, the reply submitted by CRB Capital made no mention of its assets and only spoke of its liability.

7. According to RBI, CRB Capital was also advised to prepare a plan indicating the month-wise maturity pattern of public deposits, month-wise cash flow as also

sale of assets (if any) for the purpose of re-payment of deposits by virtue of a letter dated 15.05.1997. CRB Capital did not respond to the said letter. It is also alleged that the efforts of the RBI to contact the Managing Director/Directors and Officers of CRB Capital were in vain. And that, all the offices of CRB Capital remained closed since 1997. It is further alleged that the Chairman of CRB Capital (C.R. Bansali) was not traceable and no other official of the company was available. Two of the Directors had informed RBI that they had resigned from the board of directors of the company with effect from 06.03.1997. In the meanwhile, RBI had also allegedly received a complaint from the Government of Gujarat informing it that a number of co-operative banks in the State of Gujarat had placed funds aggregating Rs. 50 crores with CRB Capital and they had received a severe jolt because of the non-payment of those deposits. That complaint was contained in a letter dated 09.05.1997.

8. It is alleged that in these circumstances, RBI was satisfied that the continuance of CRB Capital, a Non-Banking Financial Company, was detrimental to public interest and also detrimental to the interest of depositors of the company. Consequently, RBI decided to apply for winding up of CRB Capital by invoking the provisions of Section 45MC(1)(d) of the RBI Act. Accordingly, company petition No. 191/1997 was filed before the learned company Judge in this court.

9. On 22.05.1997 when the said company petition No. 191/1997 came up for hearing before the learned company Judge, notice was issued to the respondent to show cause as to why the petition be not admitted. In C.A. No. 552/1997, which was filed along with the said company petition, the learned company Judge noted that he was satisfied that there were sufficient grounds for the appointment of a Provisional Liquidator and consequently the Official Liquidator attached to the company court was appointed as a Provisional Liquidator and he was directed to take charge of all the assets and properties of the company along with books of accounts and other records of the company. It was also directed that till the next date, CRB Capital, its directors, servants and agents be restrained from disposing of, alienating and/or parting with possession of any of the assets of the CRB Capital.

10. It is submitted on behalf of RBI that in terms of the orders passed by the company court, the Provisional Liquidator had sealed all the premises of CRB Capital and had taken possession of the available assets and that the Provisional Liquidator had so far been able to recover an amount of Rs. 17.58 crore as on 30.09.2002 which was lying deposited with the Provisional Liquidator.

11. We may also point out that, in the meanwhile, an application had been filed by RBI before the company court seeking permission to file a criminal complaint against CRB Capital and its Board of Directors. The company court granted the permission and thereafter RBI filed a criminal complaint case No. 288/1/2000 on 02.06.2000 u/s 58E(1) read with Section 58B(5) and 58C of RBI Act. The said criminal case is pending before the Metropolitan Magistrate, New Delhi.

12. While proceedings in the winding up petition (company petition No. 191/1997) filed by RBI, were going on, CRB Capital filed an application being C.A. No. 1416/1998 in the said company petition seeking approval for the scheme of re-arrangement formulated by them. By an order dated 23.02.2002, the company court directed the consideration of the scheme propounded by CRB Capital by the creditors of the company. Pending consideration of the scheme, the company court had also directed that no further step including publication be taken pursuant to the admission of the company petition No. 191/1997. The company court also directed the scheme to be considered by the secured creditors, unsecured creditors and shareholders of CRB Capital and, accordingly, meetings were held. A modified scheme of compromise and an arrangement was filed by CRB Capital for approval of the company court. On 01.07.2002 a meeting of the secured creditors was held. It was attended by 28 secured creditors. On 02.07.2002 a meeting of unsecured creditors was held at Talkatora Stadium and out of the 1,34,000 depositors, 14,461 attended the meeting either personally or through proxy.

13. Thereafter, CRB Capital filed the modified scheme, approved in the meetings, before the company court and sought sanction of the same. The same was numbered as company petition No. 251/2002. RBI filed detailed objections to the scheme. The scheme was also objected to by the Official Liquidator, CBI, SEBI as also Malanpur Steel Limited and GIIC. We feel that it would be appropriate at this juncture itself to set out the relevant provisions of the said modified scheme. With regard to unsecured creditors the scheme entailed as under:-

(A) DEPOSIT & BOND HOLDERS

i) DEPOSIT/BOND HOLDERS UPTO Rs. . 5,000/-

Payment equivalent to 100% of the deposit to deposit holders/Bond holders who have invested upto Rs. . 5,000/- and to widows/retired Govt. servants/disabled/ persons above 65 years not exceeding Rs. . 10 crores, in aggregate, shall be made within one year from the date of sanctioning of the scheme of Arrangement/Compromise.

ii) DEPOSITORS & BOND HOLDERS ABOVE Rs. . 5,000/-

a) The Payment equivalent to 50% of the principal amount deposited/invested shall be made in 5 equal yearly installments commencing immediately upon expiry of twelve months from the date of sanctioning of the scheme by the Hon"ble Delhi High Court.

b) Payment equivalent to balance 50% of the principal amount deposited/invested shall be discharged in the form of allotment of shares of CRB Capital Markets Ltd of Rs. . 10/- each at par immediately upon receipt of approval from the competent authority.

Considering the fact that the depositors of the various Co-Operative Banks are small and needy, payment to the Co-Operative Banks shall be made as follows:

i) Payment equivalent to 25% of the principal amount shall be made within 3 months from (sic) the date of sanctioning of the scheme of Arrangement/Compromise by the Hon"ble Delhi High Court.

ii) Payment of balance 75% of the principal amount shall be made in 16 equal quarterly installments commencing from the month following the expiry of six months from the date of sanction of the scheme of Arrangement/Compromise by the Hon"ble Delhi High Court.

iii) In view of the fact that two of the Co-Operative Banks namely The Gozaria Nagrik Sahkari Bank Ltd. and Boriavi Peoples Co-Operative Bank Ltd. who have been declared as "weak Banks" by their Apex Body, payment shall be made to the said Banks as follows:

a) Payment equivalent to 25% of the principal amount shall be made within 3 months from the date of sanctioning of the scheme by the Hon"ble Delhi High Court.

b) Payment of balance 75% of the principal amount shall be made in eight equal quarterly installments commencing from the month following the expiry of six months from the date of sanctioning of the scheme of Arrangement/Compromise by Hon"ble Delhi High Court.

STATE BANK OF INDIA (Unsecured Creditor)

Since the charge over the securities held by State Bank of India have not been registered with the Register of Companies, State Bank of India is considered as an unsecured creditor. All the assets whether moveable or immovable held by the State Bank of India except asset owned by CRB Corporation Ltd. shall be liquidated by the Bank in private negotiations in consultation with the propounder of the scheme for recovery of the principal amount.

Any shortfall and/or deficiency in discharge of the dues of the Bank against recovery from the various assets held by SBI, the same shall be paid and/or discharged by the company at par in terms of the payment of schedule as applicable to other unsecured creditors. No interest, however, shall be payable to the Bank on the principal amount determined.

OTHER UNSECURED CREDITORS

i) Payment equivalent to 50% of the principal amount shall be made in 5 equal yearly installments commencing immediately upon expiry of 12 months from the date of Sanction of the scheme by the Hon"ble Delhi High Court.

ii) Payment equivalent to balance 50% of the principal amount shall be discharged in the form of allotment of shares of CRB Capital Markets Ltd. at the rate of Rs. . 10/- each at par immediately upon receipt of approval from the competent authority.

FURTHER RESOLVED THAT upon sanction of the scheme of Arrangement by the

Hon"ble High Court as modified in terms contained herein above, all cases whether civil or criminal pending before any Court/Tribunal/Authority shall be kept in abeyance and shall be withdrawn simultaneously upon receipt of last installment of the dues by the Creditors in terms of the above schedule of payment.

FURTHER RESOLVED THAT the original scheme filed by the propounder of the scheme shall be suitably modified to the extent indicated above.

Importantly, for a "fair and proper" implementation of the modified scheme of compromise or arrangement, the propounder of the scheme sought certain concessions and reliefs for approval by the company court. The reliefs and concessions which were sought were set out in part Chapter IV of the modified scheme. The same were as under:-

PART IV RELIEF AND CONCESSIONS SOUGHT BY THE PROPOUNDER OF THE SCHEME FOR REVIVAL OF THE COMPANY

For a fair and proper implementation of the modified scheme of Compromise and or Arrangements as passed by the Secured Creditors, Unsecured Creditors and Shareholders of the company, the Propounder of the scheme has sought certain concessions and relief for approval by this Hon"ble Court having regard to the fact that the Company has been out of business for a period of about 5 years and for the reason of the business activities of not only the Company but all its Group Companies came to a grinding halt on account of prohibitory order issued by the Reserve Bank of India on 9/4/1997 and the appointed of Official Liquidator as Provisional Liquidator of the Company.

RELIEF AND CONCESSIONS SOUGHT

1. The orders passed by this Hon"ble Court restraining the Company as well as other Group Companies from disposing of their assets and properties particularly the order passed on 4/11/97 in CA No. 1536/97 in C.P. No. 191/97 and for freezing the Bank accounts of these Companies be vacated.

2. The Official Liquidator be directed to hand over the Books of Accounts, records documents, assets & properties of the Company as well as the other Group Companies including the Cash balance lying with him and/or deposited in any Bank to the Propounder of the Scheme.

3. SEBI & Stock Exchanges

(a) The Registrations and Licences, granted by Securities and Exchange Board of India (SEBI) for carrying out different activities by the Company and other Group Companies, which were suspended as a consequence to the appointment of Provisional Liquidator by this Hon"ble Court be restored and SEBI and the Stock exchanges where the shares of the Company as well its Group Companies were listed be directed to revoke its various orders passed u/s. 11B of Securities and Exchange Board of India Act (SEBI Act) and or any other provisions of SEBI Act

and other Laws, Regulations, & bye-laws of SEBI and Stock Exchanges.

The details of such Registrations and Licences given to the Company and its Group Companies are as under:-

- i) Category-I Merchant Banking Registration granted by SEBI to the Company.
 - ii) Registration Certificate granted to the Company by SEBI for setting up Mutual Fund.
 - iii) Registration Certificate granted by SEBI to CRB Shares Custodian Services Ltd to act as Registrar and Share Transfer Agent and as Debenture Trustee.
 - iv) Registration Certificate granted by SEBI to CRB Share Broking Ltd to act as Corporate Member of Mumbai Stock Exchange and OTCEI.
 - v) Revocation of suspension orders for trading in shares of the Company as well as its other Group Companies in all Stock Exchange.
 - vi) Revocation of suspension order passed by SEBI and other Stock Exchanges suspending their membership rights of the ex-Directors of the Company and to allowed them to resume security trading business at Stock Exchanges.
 - vii) Stock Exchanges to hand over the share certificates along with Transfer Deeds which have been received by them as "bad delivery" with the directions to resubmit these Shares Certificates along with rectified Transfer Deeds.
- b) SEBI & Stock Exchanges be directed to give its approval for issue of fresh shares to the unsecured Creditors (including Deposit holders) by way of preferential allotment as envisaged in the scheme under its relevant guidelines and such shares be listed at various Exchanges.

4. The Companies which have withheld shares lodged for transfer by the Company and its Group Companies be directed to register the transfer of such shares in favour of the Company and its Group Companies as the case may be and deliver the same to them.

RESERVE BANK OF INDIA

(i) All the Bank accounts of the Company as well as its Group Companies and its ex-Directors & Officers which have been freezed be defreezed and Reserve Bank of India be directed to give necessary instructions to the Banks for making such accounts operative.

(ii) Reserve Bank of India be directed to revoke its prohibitory orders passed u/s. 45K(4) read with section 45MB(1) of RBI Act 1934.

(iii) Reserve Bank of India be directed to accept the Application for Registration as NBFC u/s. 45(1A) of Reserve Bank of India Act, 1934 on being filed by the Company.

(iv) Reserve Bank of India be directed to restore its suspension order against "in

principal approval" for setting up CRB Global Bank Ltd.

(v) Reserve Bank of India be directed to restore the Licences granted to the Company to act as authorized dealer in foreign exchange.

5. Trust petition No. 3 filed by SEBI before the Hon"ble Mumbai High Court be transferred to this Hon"ble Court and after such transfer the assets, books of accounts, records etc of CRB Asset Management Company Ltd, CRB Trustee Limited and CRB Mutual Fund Ltd. be handed over to the Propounder of the Scheme.

6. INCOME TAX AUTHORITIES

The income tax Department be directed to stay the demands and vacate the ex-parte orders and to allow the Company to file Appeal/s. Revision Applications and any other proceedings before the appropriate authorities and or Court and any delay in filing such proceedings be condoned and interest & penalties be waived.

7. CIVIL/CRIMINAL CASES

All the cases, civil as well as criminal, filed against the Company, its ex-Directors & Officers, particularly the following cases filed against the Company and its Directors be vacated or stayed sine-die. Details of such cases, inter-alia, are as under:

a) All the Complaint cases filed u/s. 138 of Negotiable Instruments Act against the Company and its Directors and/or its Officers.

b) Case No. 42/97 filed by CBI in Session Court at Mumbai on the Complaint of State Bank of India against the Directors and Officers of the Company.

c) Case No. 1/98 filed by CBI in Session Court at Mumbai on complaint of Bank of Baroda against the Directors and Officers of the Company.

d) Complaint case No. 37/97 registered by G.B.C.B. CID Mumbai in the Court of Metropolitan Magistrate, Esplanade Court at the Mumbai on complaint of Depositors.

e) Complaint case No. 253/97 registered by CID Pune on the complaint of Govind Warran Paranjape and other depositors.

f) Complaint case No. 6/97 filed by CID, Gandhinagar, Ahmedabad on Complaint of Jaitaram Hathi Bhai Choudhary on behalf of Mansa Cooperative Bank and others before the Metropolitan Magistrate Court, Ahmedabad.

g) Complaint Case No. 1-82/97 registered by Sangamner Sahar Police Station Sangamner on the complaint of Dr Rajendra Kedarnath Malpani and pending before Court at Sangamner.

h) Complaint case No. 288/1/2000 filed by Reserve Bank of India in the Court of Metropolitan Magistrate, New Delhi against the Company and its Directors.

i) All other cases civil or criminal filed by any depositor or any other institution or person against the company and/or its Directors and pending before any Court in India.

j) All the cases filed by Provident Fund, Sales Tax, ESI and any other authorities against the Company and its Directors be stayed.

k) Any other proceedings filed in any Court in India by any person, Company and or Institutions including Public Interest Litigation, cases filed by GHC Ahmedabad etc. be vacated or stayed sine-die.

8. All the cases filed by the Company in various Courts for recovery of dues including Complaint cases against Debtors filed u/s. 138 of Negotiable Instruments Act before the appointment of Provisional Liquidator by the Hon''ble Court be transferred to the jurisdiction of this Hon''ble Court and the various Courts where such cases are pending be directed to restore such cases before transfer in the event any such cases have been dismissed for any reasons including for non-appearance by the Provisional Liquidator.

9. CBI

(i) Necessary directions be given to CBI to release the passports of Propounder of the Scheme and ex-Directors of the Company so as to enable the Company to resume dialogue with the Joint Venture collaborators in Mutual Fund and Security trading business and re-establish these collaborations.

(ii) Necessary directions be given to CBI to hand over all the records and documents of the Company as well as its Group companies including records of Fixed Deposits etc.

10. All the cases filed by the Official Liquidator before this Hon''ble Court for recovery of dues from the debtors and other parties be decided and decrees passed.

11. The liabilities in respect of employees of the Company as well as its Group Companies be limited to their dues upto 21.5.97 and the services of the employees be treated as terminated on payment of their terminal benefits and arrears or dues if any upto the said date.

12. The following companies with whom the Company had entered into bought out deals be directed to pay the amounts due from them along with accrued interest till the date of payment-

The Hon''ble Justice Dalbir Bhandari was pleased to appoint Official Liquidator on the Board of Directors of the above mentioned companies.

13. State Bank of India be directed to hand over various assets and properties in respect of which charge has not been created in ROC.

14. The Leased premises held by the Company prior to the Order dated 22/5/97 passed in CP No. 191/97 be permitted to be released to the respective Landlords

after paying the rent due to them till 22/5/97 subject to the Landlords depositing the security amount, if any deposited with them by the Company at the inception of tenancy. The rent for the period subsequent to 22/5/97 may kindly be waived.

15. The Propounder of the Scheme/Company be permitted to diversify the activities of the Company in other fields such as Infotech, Media, Biotech and any other activities and the Registrar of the Companies be directed to register alterations in the main object clause of the Memorandum of Association after filing of such resolutions passed by the Shareholders of the Company.

16. The Propounder of the scheme be permitted to raise his share of contribution to the modified scheme of Arrangement/Compromise by utilizing the funds which were lying in any Bank accounts in the account of the Propounder of the scheme, his family members and by liquidating the shares, securities or any other assets and necessary directions be given to the Banks allowing operation of the accounts to the Companies, allowing transfer of shares, securities etc. and to the Stock Exchanges for accepting such shares, securities etc. and the proceeds from such sales be permitted to use as Propounder's contribution to the scheme.

17. All the personal guarantees executed by the Directors of the Company to the Banks, Institutions and other parties be discharged.

18. The Bank accounts of various companies/firms which had dealings with the Company in the ordinary course of business be defreezed.

Before the learned company Judge, RBI, SEBI, the Official Liquidator, Malanpur Steel Limited and GIIC had objected to the scheme, the main objector being the RBI. The RBI had contended that once an application u/s 45MC(1)(d) of the RBI Act had been admitted it is only in extraordinary circumstances that an order of winding up ought not to be passed. And, that no such circumstances have been shown to exist by CRB Capital. It was also contended that during the pendency of a winding up petition u/s 45MC(1)(d) of the RBI Act no scheme under sections 391/392 of the Companies Act could be propounded or considered. It was urged that CRB Capital had lost its substratum and deserved to be wound up and that winding up would be in the interest of depositors as also in general public interest. It was also urged by RBI that the scheme was contrary to statutory provisions and as such approval ought not to be granted as that would be opposed to law as also public policy. A similar set of objections was made by the other objectors.

14. On behalf of CRB Capital it was submitted before the learned company Judge that the secured creditors, unsecured creditors and shareholders had accepted the modified scheme by an overwhelming 3/4th majority in value as well as by simple majority. It was submitted that winding up of a company is a step which results in the civil death of the company and would be contrary to public interest as lakhs of depositors and shareholders all over the country would find that their funds and investments have dissipated. It was contended that RBI, while balancing the general public interest, has also to take into account the interest of

the Bank and financial institutions as well as secured and unsecured creditors and that revival of a financial company ought not to be objected to merely because of certain alleged irregularities inasmuch as the implication of closure of a company not only has an impact on the financial institution and its customers but also on the future of the financial services in that region. It was also contended that section 45MC(1)(d) of RBI Act is akin to section 433(1)(f) of the Companies Act and therefore the winding up of a company should be ordered only in the rarest of rare case as it amounts to the civil death of a financial company and that the filing of a petition for winding up should not be resorted to as a matter of right.

15. RBI had also urged that the resolution of creditors of a scheme of arrangement could not annul statutory provisions nor could it take away the statutory powers of RBI under the RBI Act and therefore the scheme ought not to be accepted/sanctioned by the court. It was also urged that the scheme contained multiple reliefs and concessions which had been sought, the effect of which would be the taking away of statutory powers not only of RBI but also of other statutory bodies. That would be contrary to law.

16. From the impugned judgment dated 24.01.2006, we find that the learned company Judge was of the view that public interest inherent in the scheme was evident from the fact that it seeks to benefit 1,34,000 deposit holders and about 36 co-operative banks and that many of the deposit holders were retired government personnel and senior citizens including widows and several other similarly situated deposit holders who were needy and depending on recurring income from the deposits made with CRB Capital. According to the learned company Judge the scheme contemplated a recovery plan for recovering arrears of dues, hire-purchase installments, loans and advances, re-organisation of share capital of the company by issuing shares of Rs. 10/- each at par with discharge of the dues of unsecured creditors including deposit holders and bond holders and engagement in non-fund based business activity. The scheme also contemplated diversification of company business in areas such as information and technology, bio-tech and the growing market of media. The learned company Judge also noted that the scheme involved induction of funds by the propounders of the scheme to the extent of Rs. 10 crore. Although the scheme as propounded contemplated payment of 100% of the deposit to the deposit holders who had invested up to Rs. 5000/-, there was a cap put on it to the extent of Rs. 10 crore to be paid within the year. The learned company Judge, however, felt that the upper limit of Rs. 10 crore for such depositors was not in public interest. Consequently, he directed that the limit of Rs. 10 crore to the payment of deposits up to Rs. 5000/- be removed and the scheme was modified to that extent. It was also modified by directing that widows, disabled persons, retired government servants and persons above 55 years of age would get the entire deposit re-paid without any limit within one year after the sanction of the scheme. Insofar as the other unsecured creditors were concerned such as the deposit holders and bond holders above the value of Rs. 5000/-, they were to be

paid an amount equivalent to 50% of the principal amount in five annual installments commencing from the date of sanctioning of the scheme and the balance 50% of the principal amount was to be discharged in the form of allotment of shares of CRB Capital of Rs. 10/- each at par as soon as the approvals from the competent authority (SEBI) were received.

17. Finally, the learned company Judge felt that there was inherent public interest in the scheme and sanctioned the same as under:-

49. I am, therefore, of the view that the following factors indicate the public interest inherent in the sanction of the scheme:-

(a) The payment to small depositors under the scheme upto Rs. 5,000/- in toto within 9 months as per the modified period of one year to 9 months by this Court.

(b) Payments in full to the weaker sections of society such as widows, government servants, disabled and senior citizens within one year of the sanctioning of the scheme.

(c) 50% cash payment of the principal to even the unsecured creditors in 4 yearly installments as per the scheme modified by this Court and the securing of balance by allotment of shares in their favour.

(d) The approval of the scheme of the shareholders, creditors (secured) and unsecured, by the majority stipulated in Section 391 of the Act.

(e) The benefit which is to accrue to 1,34,000 small deposit holders.

(f) The benefit accruing to 36 co-operative Banks.

(g) The fact that already Rs. 17 crores have been realized and deposited in the accounts of the company in a nationalized bank during the pendency of this petition in this Court and realization of substantial interest on such Fixed Deposits of Rs. 17 crores.

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52. Accordingly, while approving the scheme it is necessary to give the following directions for supervision and modification of the scheme:-

(I) The condition with regard to the Deposit/Bond holders upto Rs. 5,000/- is modified and the term for repayment is thus reduced from the period of one year to a period of 9 months. Further the words "not exceeding Rs. 10 crores in aggregate" is deleted as such a limit may hurt the small depositors. Furthermore, the scheme is modified and widows, retired government servants, disabled persons and senior citizens above 65 years shall be paid their entire principal amount deposited within one year from the date of sanctioning of the scheme.

(II) With regard to the unsecured creditors including deposit and bond holders above Rs. 5000/-, (except the categories of widows, retired government servants and persons above 65 years) whose period of repayment as per the scheme is 5

annual equal installments commencing from 12 months from the date of sanction of the scheme is modified and now reduced to 4 annual equal installments constituting 50% of the principal amount beginning from the expiry of 12 months from the date of sanction of the scheme.

(III) With regard to the relief and concession sought in part IV of the scheme under the heading Reserve Bank of India i.e. (i) to (v) from the Reserve Bank of India the petitioners have during the course of hearing given up the reliefs/concessions sought in clauses (ii) to (v) under the heading Reserve Bank of India and are not been pressed and accordingly the said clauses (ii) to (v) shall stand deleted from the Scheme. In so far as relief (i) is concerned directions have already been given in para 37 above.

(IV) As regard para 5 of part IV of the scheme which related to the Trust Petition filed by SEBI before the Bombay High Court it is contended by the parties that Trust Petition No. 3 filed by SEBI before the Hon"ble Mumbai High Court is presently pending before the Supreme Court of India for transferring the same and accordingly the said para 5 shall stand deleted from the scheme.

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(VI) That the propounder of this scheme shall within 15 days from the date of sanction of the scheme file an affidavit in the Court accepting the modifications made to the scheme in this order and undertaking to be bound by the same.

(VII) The propounder shall also file the projected balance sheet for five years from the cut-off date annexure-A and the projected fund for statement 5 years from the cut-off date Annexure-B in view of the modifications made in this judgment.

The learned company Judge ordered as under:-

a. The company petition No. 251 of 2002 along with Company application No. 1416 of 1998 is allowed subject to the terms and conditions mentioned above.

b. The scheme of compromise and arrangement as put forth in company petition No. 251 of 2002 along with Company application No. 1416 of 1998 is sanctioned subject to the above modifications/orders so as to be binding on the petitioner/company and its members creditors.

c. In view of the fact that the scheme has been sanctioned subject to the above modifications/orders as above, the winding up petition No. C.P. No. 191/1997 filed by RBI against the company along with all other pending application shall stand disposed of accordingly. However, if the administrator reports that the scheme cannot be successfully implemented, then the winding up petition shall revive and the company would be liable to be wound up.

d. The petitioner shall file a certified copy of this order with the Registrar of Companies, Delhi Punjab & Haryana within 30 days of the date of the receipt of the order.

e. The office is directed to draw up the order in the prescribed form by incorporating the modifications postulated as per this judgment.

18. Initially these appeals were heard by a Division Bench of this Court and the same were disposed of by a judgment and/or order dated 29.02.2008. The Division Bench set aside the impugned judgment dated 24.01.2006 and remanded the matter to the company court for a fresh disposal in the following manner:-

We accordingly set aside the impugned order passed by the Company Court and remit the matter back for a fresh disposal in accordance with law after addressing in particular following, among other, issues if any raised before it.

i) Whether a scheme u/s 391-392 of the Companies Act is maintainable in a winding up petition filed by the RBI u/s 45MC(1) of the RBI Act?

ii) Whether a scheme under Sections 391-392 of the Companies Act could set aside quasi judicial orders passed by a statutory authority like the SEBI constituted under the Securities and Exchange Board of India Act, 1992?

iii) Whether criminal and income tax proceedings pending against the company and its Directors could be stayed by the Company Court while sanctioning a scheme u/s 391-392 of the Companies Act?

iv) Depending upon the answers of questions 1 to 4 above whether the scheme formulated in the instant case is bonafide, feasible and fair?

v) Whether grounds for winding up of the company u/s 45MC (1) of the RBI as made out in the winding up petition exist. If so, to what effect?

19. Being aggrieved by the said order dated 29.02.2008 passed by the said Division Bench in the said appeals, CRB Capital preferred Special Leave Petitions before the Supreme Court which got converted into Civil Appeal Nos. 2733-2736/2009 (CRB Capital Markets Limited v. Reserve Bank of India & Ors.). Those civil appeals were disposed of by the Supreme Court by an order dated 22.04.2009 in the following manner:-

23. We are, accordingly, of the view that since the Division Bench has not considered on merits the findings of the Company Judge, it would be in the fitness of things for the Division Bench itself to consider all the points, including those which had not been considered by the Company Judge, as raised at the time of hearing of the Appeals, and decide the same.

24. We, accordingly, allow the Appeals and set aside the order of the Division Bench impugned therein and direct the Division Bench of the Delhi High Court to rehear the Appeals, out of which the order impugned in these appeals arise, on all questions which had been raised before the Company Judge and the Division Bench and also as formulated by the Division Bench, in accordance with law within six months from the date of communication of this Order. During the pendency of the appeals, the order of the learned Single Judge dated 24th

January, 2008, shall remain stayed.

20. That is how the matter is once again before a Division Bench of this court.

Q.1 Whether a scheme u/s 391-392 of the Companies Act is maintainable in a winding up petition filed by the Reserve Bank of India u/s 45MC(1) of the Reserve Bank of India Act, 1934?

The first question which we have to examine is whether an application for sanctioning a scheme under sections 391/392 of the Companies Act is maintainable in a winding up petition filed by Reserve Bank of India u/s 45MC(1) of the RBI Act. Mr. Parag Tripathi, appearing on behalf of the RBI submitted that CRB Capital was a defaulting NBFC and as a consequence was liable to be wound up u/s 45MC of the RBI Act. He further submitted that Chapter III B of the RBI Act was specially introduced to control NBFCs and to deal with defaulting NBFCs when they committed defaults or violations. It was also contended that by virtue of Section 45Q, the provisions of Chapter III B would override all other laws including the Companies Act. It was, therefore, contended that when RBI had filed the winding up petition alleging serious defaults on the part of CRB Capital, the company Judge ought to have considered the winding up petition on merits and that sanctioning of a scheme without considering the winding up petition on merits was unsustainable. It was also submitted that the scheme propounded by CRB Capital and sanctioned by the learned company Judge with certain modifications is contrary to the provisions of Chapter III B of the RBI Act and therefore the same cannot be sustained in law. It was also submitted that the learned company Judge was only impressed by the fact that the majority of creditors (secured and unsecured) and shareholders had passed the scheme and therefore the same ought to be sanctioned. The learned counsel referred to the decision of the Supreme Court in the case of *Miheer H. Mafatlal Vs. Mafatlal Industries Ltd.*, wherein, according to the learned counsel, the Supreme Court held that a scheme could not be sanctioned if it violated any law. According to the learned counsel, the Supreme Court also held that the court sanctioning a scheme had to consider the pros and cons of the scheme with a view to finding out whether it was fair, just and reasonable and was not contrary to any provisions of law and did not violate any public policy. It was also contended that the concessions sought by CRB Capital were contrary to the statutory provisions and could not be granted in law. It was submitted that in the absence of such concessions the scheme was not workable. Importantly, the learned counsel for RBI drew our attention to the fact that the proposal to discharge part of the liability towards the depositors by issuance of shares of the very same company in liquidation was unacceptable.

21. The learned counsel also sought to distinguish the decision of the Karnataka High Court in the case of *In Re: Maharashtra Apex Corporation Limited: (2005) 124 Company Cases 637 (Karnataka)* by submitting that in that case no winding up petition had been filed by RBI u/s 45MC and the question of non-application of section 391 of the Companies Act in a winding up petition u/s 45MC of the RBI

Act did not at all arise. Therefore, the reliance placed by the company Judge on the said decision of Karnataka High Court was misplaced. It was submitted that in any event the Supreme Court decision in *Miheer H Mafatlal (supra)* made it clear that a scheme cannot be sanctioned if it violated any law. Mr. Tripathi submitted that Section 45QA(1) provided that every deposit accepted by the NBFC shall be re-paid in accordance with the terms and conditions of the deposits. Thus, there was an absolute requirement of re-payment of the entire deposits in accordance with the terms and conditions of the deposits. It is only the Company Law Board, u/s 45QA(2), which had jurisdiction to frame a scheme of re-payment in case an NBFC made a default in re-payment. He submitted that section 58B(4)(AAA) provided for penalty in case of non-compliance of an order made by the Company Law Board u/s 45QA and this clearly implies that the provisions of section 45QA were mandatory and not directory. It was contended that a conjoint reading of Section 45QA(1), 45QA(2) and 58B(4)(AAA) made it incumbent upon an NBFC to re-pay the entire amount and these provisions make it clear that the liability is not merely a contractual liability but a statutory liability and therefore CRB Capital cannot be heard to submit that they had settled with the depositors for part-payment.

22. It was also submitted that any scheme u/s 391 of the Companies Act has to be in compliance with the provisions of Chapter III B which includes section 45QA of the RBI Act and a petition for winding up u/s 45MC(1)(d) of the RBI Act cannot be defeated by allowing a scheme u/s 391 of the Companies Act which is in violation of the statutory provision contained in Section 45QA of the RBI Act.

23. Mr. Sudhanshu Batra appearing on behalf of CRB Capital submitted that there is no prohibition on considering a scheme under Sections 391/392 of the companies Act during the pendency of a winding up petition filed by RBI u/s 45MC of the RBI Act. In fact, according to him, Section 45MC(4) makes all the provisions of the Companies Act, 1956 "relating to winding up of a company" applicable to a winding-up proceeding initiated on the application made by RBI u/s 45MC of the RBI Act. He then submitted that Part VII of the Companies Act dealt with winding up. Chapter I thereof contained preliminary provisions dealing with modes of winding up and contributories. Chapter II of Part VII dealt with the cases of winding up by the Court/Tribunal. Section 433 which stipulated the circumstances in which a company could be wound up fell within this chapter. And, so did Section 446, which provided for stay of suit on the passing of a winding up order. Section 446(2)(c), according to Mr. Batra, empowered the Court/Tribunal, notwithstanding anything contained in any other law for the time being in force, to have jurisdiction to entertain or dispose of any application made u/s 391 by or in respect of the company. Therefore, according to Mr. Batra, a scheme u/s 391 of the Companies Act can be entertained even in the case of a winding up proceeding u/s 45MC of the RBI Act. He referred to the decision of the Supreme Court in the case of *Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors*, , in order to explain the meaning of the expression "in relation to". According to him, the Supreme Court held that the said expression was one

of expansion and not of contraction. He submitted that even in Tamil Nadu Kalyana Mandapam am Assn. Vs. Union of India (UOI) and Others, , the Supreme Court had recognized that the expression "in relation to" ought to be given an expansive or wide meaning and should not be construed narrowly. Consequently, Mr. Batra, submitted that a scheme under Sections 391/392 could very well be considered by the company court even in a case of winding up u/s 45MC of the RBI Act inasmuch as Section 45MC(4) of the RBI Act itself makes it clear that all the provisions of the Companies Act "relating to" winding up of a company shall apply to a winding up proceeding initiated on the application made by RBI u/s 45MC of the RBI Act. With regard to the alternative arguments raised by Mr. Parag Tripathi that even if it is assumed that a scheme u/s 391 can be maintained in the backdrop of a winding petition u/s 45MC of the RBI Act, such a scheme would not be maintainable if it was contrary to the provisions of Chapter III B of the RBI Act, the learned counsel for CRB Capital submitted that the scheme sanctioned by the learned company Judge was not contrary to the provisions of Chapter III B of the RBI Act.

24. It was also contended on behalf of CRB Capital that disbursements have been made to the depositors and other investors under the scheme and in terms of an order dated 15.12.2010 passed by this court in these appeals, as a result of which, unsecured creditors have been given priority over the dues of the secured creditors as provided u/s 529A and 530 of the Companies Act, 1956. It was, therefore, contended that the clock cannot be put back when a large number of unsecured creditors have already been paid.

25. Reliance was placed by the learned counsel for CRB Capital on a decision of a learned single Judge of the Karnataka High Court in the case of Maharashtra Apex Corporation Limited (supra). On the basis of the said decision it was contended that a scheme u/s 391 of the Companies Act could be sanctioned by the company court even if it were contrary to the statutory provisions.

26. In essence, insofar as the first question is concerned, the learned counsel for the CRB Capital submitted that a scheme u/s 391/392 of the Companies Act, 1956 was maintainable even in a winding up petition filed by RBI u/s 45MC(1) of the RBI Act. It was also submitted that a scheme could be sanctioned even if it were contrary to the provisions of the RBI Act.

27. The learned counsel appearing on behalf of SEBI, adopted the arguments of Mr. Parag Tripathi. He submitted that a scheme could not be contrary to statutory provisions and, in any event, could not contain any terms or conditions which trench upon the power of SEBI under the Securities & Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act). The other submissions of the learned counsel for SEBI were essentially centred on the next question and we shall refer to them when we deal with that question.

28. The learned counsel appearing on behalf of the Official Liquidator submitted that a scheme u/s 391 of the Companies Act could be filed at any stage. He

submitted that sanction for a scheme u/s 391 could be applied for even if there was no winding up petition against the company. It can be filed during the pendency of a winding up petition as well as after winding up orders have been made by the company court. It was contended that this is apparent from Section 391(1) of the Companies Act which clearly mentions that the application could be made by the company or any creditor or member of the company or in the case of a company which is being wound up, by the liquidator. Thus, it was submitted, that there is no bar under the Companies Act that an application for sanction of a scheme u/s 391 of the Companies Act cannot be filed if a winding up petition is pending under the Companies Act, 1956. It was submitted that such an application would be maintainable before a company is dissolved u/s 481 of the Companies Act, 1956. The learned counsel for the Official Liquidator, further submitted that there is no provision under the RBI Act which prohibited the filing of any application seeking sanction of a scheme u/s 391 of the Companies Act, 1956, even where an order has been passed by the RBI u/s 45MB or where a winding up petition has been filed by the RBI u/s 45MC of the RBI Act. It was also contended that where a winding up order is made against a company u/s 433 of the Companies Act, 1956 or on a petition of RBI u/s 45MC of RBI Act, an application for sanction of a scheme can still be filed till such time the company in question is directed to be dissolved u/s 481 of the Companies Act. Consequently, according to the learned counsel, an application for sanctioning of a scheme u/s 391 of the Companies Act, 1956 is maintainable even when RBI has filed a winding up petition u/s 45MC of the RBI Act read with Section 433 of the Companies Act, 1956. However, the learned counsel submitted that no scheme u/s 391 of the Companies Act, 1956 can be allowed contrary to the statutory provisions including Section 45QA of the RBI Act, as otherwise, such a scheme would be against the law of the land and that would be against public policy. It was contended that a scheme u/s 391 of the Companies Act, 1956 could be approved by the company court only when an NBFC complies with the provisions of Section 45QA of the RBI Act and re-pays the entire amount due to the depositors as per terms of the deposits. It was also contended that in case the NBFC in question does not comply with the requirement of section 45QA of the RBI Act such a company would be liable to be wound up and dissolved.

29. The learned counsel for the Official Liquidator then sought to draw a distinction between a secured and unsecured creditor. It was submitted that depositors are not secured creditors. It was contended that under the provisions of Section 529 of the Companies Act, after the passing of a winding-up order, the security of every secured creditor is deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion. Furthermore, u/s 421 of the Companies Act, 1956, notwithstanding anything contained in any other provision of the said Act or any other law for the time being in the winding up of a company, dues of workmen and debts due to secured creditors are to be paid in priority to all other debts. Section 530 of the Companies Act also speaks of payment of dues of preferential creditors which includes statutory dues like

taxes etc. It was, therefore, submitted that a depositor cannot be treated as a secured creditor under the Companies Act, 1956 and particularly so after the passing of a winding-up order. It was, therefore, submitted that the provisions of Section 45Q and 45MC of the RBI Act should be read with the provisions of Sections 430, 529, 529A of the Companies Act, 1956.

Section 45MC of the RBI Act reads as under:-

45-MC. Power of Bank to file winding-up petition.-- (1) The bank, on being satisfied that a non-banking financial company-

(a) Is unable to pay its debt; or

(b) Has by virtue of the provisions of section 45-IA become disqualified to carry on the business of a non-banking financial institution; or

(c) Has been prohibited by the bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or

(d) The continuance of the non-banking financial company is detrimental to the public interest or to the interest of depositors of the company,

May file an application for winding up of such non-banking financial company under the Companies Act, 1956 (1 of 1956).

(2) A non-banking financial company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any of its offices or branches and the bank certifies in writing that such company is unable to pay its debt.

(3) A copy of every application made by the bank under subsection (1) shall be sent to the Registrar of Companies.

(4) All the provisions of the Companies Act, 1956 (1 of 1956) relating to winding up of a company shall apply to a winding up proceeding initiated on the application, made by the bank under this provision.

It is apparent that the RBI has been given the power to file an application for winding-up of a Non-Banking Financial Company under the Companies Act, 1956 on being satisfied that any one or more of the four eventualities specified in Section 45MC of the RBI Act exist(s). In these appeals we are concerned with Section 45MC(1)(d). Thus, if RBI is satisfied that continuance of an NBFC is detrimental to the public interest or to the interest of the depositors of the company, it may file an application for winding up of such a NBFC under the Companies Act, 1956. Sub-section (4) of 45MC makes it clear that all the provisions of the Companies Act, 1956 relating to winding up of a company shall apply to a winding-up proceeding initiated on the application, made by RBI u/s 45MC of the RBI Act. At the same time we must also notice Section 45Q of the RBI which reads as under:-

The provisions of this Chapter shall have effect notwithstanding anything

inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

This provision makes it abundantly clear that the provisions of Chapter III-B shall take effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. The argument of the learned counsel for the RBI was that because of Section 45Q, the provisions of Chapter III-B of the RBI Act had precedence over the provisions of the Companies Act and therefore during the pendency of a winding-up petition u/s 45MC no application for sanctioning of a scheme u/s 391/392 of the Companies Act, could be entertained by the company court. We are unable to read-in such a prohibition or restraint in the powers of the company court under Sections 391/392 of the Companies Act, 1956. All that Section 45Q says is that the provisions of Chapter III-B of the RBI Act shall have effect notwithstanding anything "inconsistent therewith" contained in any other law for the time being in force. There is nothing inconsistent in the provision of Section 391 of the Companies Act with the provisions of Chapter III-B of the RBI Act and therefore it cannot be said that in a winding-up petition u/s 45MC of the RBI Act an application u/s 391 of the Companies Act, 1956 for sanctioning a scheme cannot be made to and entertained by the company court. It is another matter that while considering the scheme the company court has to ensure that no statutory provisions including the provisions of Chapter III-B of the RBI Act are contravened. The reliance placed by the learned company Judge and the learned counsel for CRB Capital on a single Bench decision of the Karnataka High court in the case of Maharashtra Apex Corporation Limited (*supra*) is entirely misplaced. We may point out that Maharashtra Apex Corporation Limited (*supra*) is, first of all, not binding on us. Secondly, the said decision as would be clear shortly, is contrary to the Supreme Court decision in the case of *Miheer H. Mafatlal* (*supra*).

30. In Maharashtra Apex Corporation Limited (*supra*) a learned single Judge of the Karnataka High Court was, inter alia, considering an argument that if the scheme entailed violation of statutory provisions contained in the RBI Act, it could not be sanctioned u/s 391 of the Companies Act. Repelling this contention, the learned single Judge in Maharashtra Apex Corporation Limited (*supra*) held as under:-

Therefore, in the aforesaid provisions there is no specific provision which prohibits the court from according sanction if the terms of the scheme is contrary to any of the statutory provisions contained in the Companies Act or Reserve Bank of India Act or any other law which is applicable to the company. In the absence of a specific provision if the terms of the scheme runs counter to the statutory provisions or would have the effect of violating those statutory provisions can the court accord sanction?

xxx 50. From the aforesaid provisions and the Judgments relied on, it is clear that the powers of the court under sections 391 to 394 of the Companies Act is

unhindered by any of those provisions. The only two circumstances under which the company court is prevented from according sanction is contained in proviso to sections 391 and 394 where the official liquidator or the Registrar of Companies files a report stating that the affairs of the company is conducted in a manner prejudicial to the members of the company and the company. Insofar as the power of the court to accord sanction, proviso to section 392 is concerned, once the conditions are fulfilled, there is no impediment for the court to accord sanction. Once these statutory requirements are complied with, though the provisions of the scheme contravene the legislative mandate, it is permissible to make provisions in the scheme contrary to the other statutory provisions. The order of the company court, according sanction, will have the affect of overriding those other statutory provisions.

It was held by the learned single Judge of the Karnataka High Court that it was permissible to make provisions in the scheme contrary to statutory provisions other than those contained in Sections 391/392 of the Companies Act. Thus, according to the said decision, a scheme could contain provisions which were violative of, inter alia, the RBI Act, the SEBI Act, etc and such a scheme could still be validly sanctioned by the company court. This view is in direct conflict with what has been stated by the Supreme Court *Miheer H Mafatlal* (supra). In that case the Supreme Court 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.

(underlining added)

It is clear that the Supreme Court had categorically held that the proposed scheme of compromise/arrangement should not be found to be violative of any provision of law nor should it be contrary to public policy. Therefore, the reliance placed by the learned company Judge as also by the learned counsel for CRB Capital on the decision in the case of Maharashtra Apex Corporation Limited (supra) is clearly misplaced. The law declared by the Supreme Court would obviously hold the field and that is that the proposed scheme of compromise/arrangement should not be violative of any provision of law nor should it be contrary to public policy.

31. This makes it clear that although an application for sanction of a scheme could be made u/s 391 of the Companies Act, 1956 even during the pendency of a winding up petition filed by the RBI u/s 45MC of the RBI Act, the terms of the scheme cannot violate or contravene any of the provisions of law including the provisions of Chapter III-B of the RBI Act, and, if the scheme contains any term or condition which is in derogation of any statutory provision, the same cannot be sanctioned. Furthermore, it is a part of public policy itself that statutory

provisions are to be followed and are not to be disregarded or contravened. Therefore, a scheme which ignores or side-steps statutory provisions would clearly be opposed to public policy.

32. Therefore, the answer to the first question is that while a scheme under Sections 391/392 of the Companies Act could be considered by the company court even during the pendency of the winding up petition filed by RBI u/s 45MMC of the RBI Act, such a scheme cannot be sanctioned if it is in violation of any of the statutory provisions including the provisions of Chapter III-B of RBI Act.

Q.2 Whether a scheme under Sections 391-392 of the Companies Act could set aside quasi judicial orders passed by a statutory authority like SEBI constituted under the Securities and Exchange Board of India Act, 1992?

Q.3 Whether the criminal and income tax proceedings pending against the company and its directors could be stayed by the company court while sanctioning a scheme under Sections 391-392 of the Companies Act, 1956?

33. These questions have overlapping considerations and, therefore, are being dealt with together. It was contended by Mr. Parag Tripathi, on behalf of the RBI, that the scheme could not be sanctioned as the concessions sought were beyond the scope of Section 391 of the Companies Act. First of all, the scheme envisaged a direction to the Income Tax Department to stay its demands and vacate ex-parte orders. The scheme also envisaged that the company be permitted to file appropriate petitions before the appropriate Court and get any delay in filing the same condoned. It was contended that income tax proceedings could not be the subject matter of a scheme u/s 391 of the Companies Act. Reliance was placed on the Supreme Court decision in the case of S.V. Kondaskar, Official Liquidator and Liquidator of the Colaba Land and Mills Co. Ltd. Vs. V.M. Deshpande, Income Tax Officer, Companies Circle I(8), Bombay and Another, . Insofar as the criminal cases were concerned, it was contended that the scheme envisaged that all civil and criminal cases be "vacated or stayed sine die". It was contended that the learned company Judge erred in law in sanctioning this part of the scheme. It was submitted that a Division Bench of this court in D.K. Kapur v. R.B.I.: 2001 (105) Company Cases 643 (Del), had clearly held that the expression "suit or other legal proceedings" used in Section 446(1) of the Companies Act and the expression "suit or proceeding" used in Section 446(2) of the Companies Act, 1956 did not include criminal proceedings and therefore the company Judge could not have sanctioned the scheme as it required the "vacation or stay sine die" of the criminal cases against CRB Capital. This was clearly beyond the jurisdiction of the company court u/s 391/392 of the Companies Act, 1956. It was further contended that the acts committed by CRB Capital or its directors were allegedly in violation of the law and guidelines laid down in various Acts including the RBI Act, SEBI Act and Income Tax Act. It was, therefore, submitted that by moving an application for sanction of a scheme of re-payment/compromise u/s 391 of the Companies Act 1956, CRB Capital could

not, in law, ask for the concessions/reliefs or vacation/stay of the proceedings for such violation allegedly committed. The scheme could not take away the right of the prosecuting agency of going after the persons who were in clear contravention of the statutory provisions. It was contended that the intention/object behind Section 391 of the Companies Act is to provide a mechanism for restructuring or for a financial re-arrangement but it could not be used as an instrument for getting away from the penal consequence of violation of a law. As such it was contended that a scheme u/s 391/392 of the Companies Act could not set aside or quash quasi-judicial orders passed by statutory authorities like SEBI, Income Tax Department or the RBI in exercise of the powers conferred on them by the relevant statute. It was also contended that criminal and income tax proceedings pending against CRB Capital and/or its directors could not be stayed by the company court while sanctioning a scheme under Sections 391/392 of the Companies Act, 1956.

34. Insofar as SEBI was concerned, the learned counsel appearing on its behalf submitted that SEBI has been entrusted by the SEBI Act with the duty of regulating the entire security market. The SEBI Act is a special Act whereas the Companies Act is a general Act. Moreover, the SEBI Act is a later Act and the Companies Act is a prior Act. It was, therefore, submitted that, being a special Act, the SEBI Act would override the provisions of the Companies Act, which is a general Act, to the extent there is inconsistency between the provisions of two Acts. It was submitted that the reliefs and concessions sought by CRB Capital under the scheme required the revocation of various suspensions and cancellations granted against CRB Capital and also the revocation and setting aside of various orders passed by SEBI which cannot be allowed under the provisions of Section 391 of the Companies Act inasmuch as the SEBI Act is a complete code and a complete procedure is prescribed thereunder for challenging and assailing the orders passed by SEBI under the said Act. A reference was made to Section 15-T and Section 20 of the SEBI Act which read as under:-

15-T. Appeal to the Securities Appellate Tribunal.-

(1) Save as provided in sub-section (2), any person aggrieved-

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act,

may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made-

(a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999;

(b) by an adjudicating officer, with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by 3 [the Board or the Adjudicating Officer, as the case may be,] is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to 4 [the Board,] the parties to the appeal and to the Adjudicating Officer concerned.

(6) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

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20. Appeals.--(1) Any person aggrieved by an order of the Board made, before the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder, may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

35. It was contended that several reliefs and concessions were sought under the scheme and one set of such reliefs and concessions entailed directions being given to SEBI to revoke its various orders passed u/s 11B of the SEBI Act. SEBI

had passed orders, inter alia, suspending the trading in shares of CRB Capital as well as its other group of companies in all Stock Exchanges. A suspension order had also been passed by SEBI and other Stock Exchanges suspending the membership rights of the Ex-Directors of CRB Capital. It was, therefore, contended that the reliefs and concessions sought by CRB Capital against SEBI were totally inconsistent with the provisions of Section 15T and Section 20 of SEBI Act and thus the said provisions would override the scheme propounded by CRB Capital to the extent it sought the setting aside of the orders suspending and cancelling various registrations etc. granted to CRB Capital. The learned counsel for SEBI placed reliance on the Supreme Court decision in the case of *Tata Motors Ltd. Vs. Pharmaceutical Products of India Ltd. and Another*, for the proposition that the SEBI Act being a complete code in itself, could not be interfered with under a scheme by the company court. Of course, the case in *Tata Motors* (supra) was under the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to as the SICA Act. However, the principles enunciated therein would, according to the learned counsel, be applicable even insofar as the provisions under the SEBI Act are concerned.

36. The learned counsel appearing on behalf of CRB Capital submitted that the concessions granted in the sanctioned scheme were within the scope of Section 391 of the Companies Act, 1956. Insofar as the concessions with regard to the Income Tax liability were concerned it was submitted that an ex-parte order passed by Income Tax Department had to be vacated so as to bring CRB Capital to a position as it existed prior to 22.05.1997 i.e., the date of passing of the order whereby the Provisional Liquidator had been appointed in respect of CRB Capital. It was submitted that the ex-parte orders which had been passed were subsequent to 22.05.1997 and CRB Capital, which ought to have been represented by the Official Liquidator, was not so represented. In this backdrop, it was submitted that the company court was not wrong in allowing the concessions. It was also contended that the decision of the Supreme Court in *S.V. Kandeekar* (supra) was inapplicable to the facts of the present case. Insofar as the stay of civil and criminal cases were concerned, it was contended that this was in exercise of the power u/s 391(6) of the Companies Act, 1956. Furthermore, it was contended that most of the criminal cases had been stayed on account of the consent letters obtained from the complainants. Reliance was placed once again on, inter alia, *Maharashtra Apex Corporation Limited* (supra). It was contended that the company court had power to stay the criminal proceedings if the complainants themselves had consented for the same. Consequently, it was submitted that it was within the powers of the company court u/s 391/392 of the Companies Act to set aside even quasi-judicial orders passed by statutory authorities like SEBI, RBI and the Income Tax Department. It was also contended that the criminal and income tax proceedings could be stayed by the company court while sanctioning the scheme under Sections 391/392 of the Companies Act, 1956.

Section 391 of the Companies Act reads as under:-

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.

Section 446 of the Companies Act reads as under:-

446. Suits stayed on winding up order.--When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose.

(2) The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made u/s 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or rise in course of the winding up of the company,

whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.

(3) xxx

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

37. It is clear that u/s 391(1), the company court could, at any time after an application is made to it u/s 391, stay the commencement or continuation of any "suit or proceeding" against the company on such terms as it thinks fit until the application is finally disposed of. In this provision, two things are to be noted. First of all, the expression used is "suit or proceeding" and secondly, that the stay is only until the application is finally disposed of. Therefore, whatever the stay that may be granted under this provision, the same would apply only till the application u/s 391 is finally disposed of. Such an application gets finally disposed of when it is either rejected or when the scheme is sanctioned. While sanctioning the scheme, there is no power to stay proceedings any further, that is, after the application is disposed of. Insofar as Section 446 is concerned, that falls under the heading consequences of winding-up orders and relates to a situation where a winding-up order has already been made. It also relates to a situation where the Official Liquidator has been appointed as a Provisional Liquidator. It may be remembered that in this case, the Official Liquidator had been appointed as a Provisional Liquidator. Here again, the expression used in Section 446(1) is "no suit or other legal proceeding". A similar expression ("suit or proceeding") is used in Section 446(2). Therefore, the two kinds of expressions used in 391(6) and 446 are "suit or other legal proceedings" and

"suit or proceeding".

38. In D.K. Kapur (supra) a Division Bench of this court while construing these expressions in the context of Section 391(6) and 446 of the Companies Act, 1956 clearly held:-

The expression "other legal proceedings" must be read in ejusdem generis with the expression "suit" in section 446 of the Act. If so read it can only refer to any civil proceedings and criminal proceedings have to be excluded. Therefore, no permission was required to be taken from Company Court for filing criminal complaint either against the company or against its directors.

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As we have held that the expression "suit" or "other legal proceedings" in section 446(1) and expression "suit or proceedings" u/s 446(2) of the Companies Act, 1956 do not include a "criminal proceedings". Therefore, we need not address ourselves to the other question whether opportunity of being heard under rule 117 of the Company Court Rules 1959 ought to have been given to the appellant or not.

Earlier, the Supreme Court in S.V. Kandeakar (supra) had examined the above expressions and had observed as under:-

17. Turning now to the Income Tax Act it is noteworthy that Section 148 occurs in Chapter XIV which beginning with Section 139 prescribes the procedure for assessment and Section 147 provides for assessment or reassessment of income escaping assessment. This section empowers the Income Tax Officer concerned subject to the provisions of Sections 148 to 153 to assess or re-assess escaped income. While holding these assessment proceedings the Income Tax Officer does not, in our view, perform the functions of a Court as contemplated by Section 446(2) of the Act. Looking at the legislative history and the scheme of the Indian Companies Act, particularly the language of Section 446, read as a whole, it appears to us that the expression "other legal proceeding" in sub-section (1) and the expression "legal proceeding" in sub-section (2) convey the same sense and the proceedings in both the sub-sections must be such as can appropriately be dealt with by the winding up court. The Income Tax Act is, in our opinion, a complete code and it is particularly so with respect to the assessment and reassessment of income tax with which alone we are concerned in the present case. The fact that after the amount of tax payable by an assessee has been determined or quantified its realisation from a company in liquidation is governed by the Act because the income tax payable also being a debt has to rank pari passu with other debts due from the company does not mean that the assessment proceedings for computing the amount of tax must be held to be such other legal proceedings as can only be started or continued with the leave of the liquidation court u/s 446 of the Act. The liquidation court, in our opinion, cannot perform the functions of Income Tax Officers while assessing the amount of tax payable by the assessee even if the assessee be the company which is

being wound up by the Court. The orders made by the Income Tax Officer in the course of assessment or re-assessment proceedings are subject to appeal to the higher hierarchy under the Income Tax Act. There are also provisions for reference to the High Court and for appeals from the decisions of the High Court to the Supreme Court and then there are provisions for revision by the Commissioner of Income Tax. It would lead to anomalous consequences if the winding up court were to be held empowered to transfer the assessment proceedings to itself and assess the company to income tax. The argument on behalf of the appellant by Shri Desai is that the winding up court is empowered in its discretion to decline to transfer the assessment proceedings in a given case but the power on the plain language of Section 446 of the Act must be held to vest in that court to be exercised only if considered expedient. We are not impressed by this argument. The language of Section 446 must be so construed as to eliminate such startling consequences as investing the winding up court with the powers of an Income Tax Officer conferred on him by the Income Tax Act, because in our view the legislature could not have intended such a result.

18. The argument that the proceedings for assessment or reassessment of a company which is being wound up can only be started or continued with the leave of the liquidation court is also, on the scheme both of the Act and of the Income Tax Act, unacceptable. We have not been shown any principle on which the liquidation court should be vested with the power to stop assessment proceedings for determining the amount of tax payable by the company which is being wound up. The liquidation court would have full power to scrutinise the claim of the revenue after income tax has been determined and its payment demanded from the liquidator. It would be open to the liquidation court then to decide how far under the law the amount of income tax determined by the Department should be accepted as a lawful liability on the funds of the company in liquidation. At that stage the winding up court can fully safeguard the interests of the company and its creditors under the Act. Incidentally, it may be pointed out that at the Bar no English decision was brought to our notice under which the assessment proceedings were held to be controlled by the winding up court. On the view that we have taken, the decisions in the case of Seth Spinning Mills Ltd., (In Liquidation) and the Mysore Spun Silk Mills Ltd., (In Liquidation) do not seem to lay down the correct rule of law that the Income Tax Officers must obtain leave of the winding up court for commencing or continuing assessment or re-assessment proceedings.

(underlining added)

In a more recent decision of a Division Bench of this court in Krishna Texport Industries Ltd. v. DCM Limited: (2008) 114 Company Cases 113 (Del), the Division Bench observed as under:-

33. It can hardly be said that the object of Section 391(6) of the said Act is to prevent action against the officers of the company who may be involved in cheating, criminal breach of trust, misappropriation, forgery and for that matter

dishonour of cheque. Again the provision cannot be used to bring to an end a prosecution arising from Income Tax Act or Foreign Exchange Control Act. The proceedings are clearly not of a pecuniary nature involving recovery of money. Interestingly, even the scheme stated to be approved at the behest of the respondent company does not envisage bar to any criminal proceedings or payment of any actual amount in the given facts of the case as discussed at the inception of this judgment, but only seeks to extinguish the liability of the appellant on the ground that the respondent is liable to pay a lesser amount, the interest not running, and the claim is alleged to have been extinguished by payment to a third party at the behest of the appellant for which there is no written document.

34. We are, thus, unequivocal of the view that Section 391(6) of the said Act does not envisage either quashing or stay of criminal cases against the company or its Directors and, thus, the proceedings against the respondents u/s 138 of the NI Act instituted by the appellant could not have been stayed.

(underlining added)

39. It is noteworthy that the Supreme Court in S.V. Kandeekar (supra) observed that the Income Tax Act was a complete code and was particularly so with respect to the assessment and re-assessment of income tax. The Supreme Court also clearly observed that the liquidation court could not perform the function of an Income Tax Officer while assessing the amount of tax payable by the assessee, even if the assessee be the company which was being wound up by the court. The orders made by the Income Tax Officer in the course of assessment or re-assessment proceedings were subject to appeal to the higher hierarchy under the Income Tax Act. The Supreme Court held that it would lead to an anomalous consequence if the winding-up court were to be held empowered to transfer the assessment to itself and assess the company to income tax. By similar logic, the SEBI Act as also the RBI Act were complete codes in respect of the subject matters they dealt with. Therefore, orders passed under the SEBI Act by SEBI, would have to be decided and determined in terms of that Act and cannot be interfered with by the company court while sanctioning a scheme u/s 391 or in the course of winding up u/s 446 of the Companies Act, 1956. The same is the position with regard to the orders that have been passed by RBI under the RBI Act.

40. As would be apparent from D.K. Kapur (supra) the expression "suit or other legal proceeding" as appearing in Section 446(1) as also the expression "suit or proceeding" u/s 446(2) of the Companies Act do not include criminal proceedings. The same would be the position with regard to the expression "suit or proceeding" as appearing in Section 391(6) of the Companies Act. The consequence of this would be that a company court while examining or sanctioning a scheme u/s 391/392 of the Companies Act cannot stay any criminal proceedings as that is beyond the scope of the powers and jurisdiction of the company court. In Krishna Texport Industries Ltd (supra) a Division Bench of

this court has taken the unequivocal view that Section 391(6) of the Companies Act does not envisage either quashing or stay of criminal cases against the company or its Directors. Such criminal proceedings include those u/s 138 of the Negotiable Instruments Act, 1881. From the foregoing discussion it is clear that quasi-judicial orders passed by a statutory authority like SEBI or orders passed by RBI and the Income Tax Authorities under special enactments cannot be set aside while sanctioning a scheme u/s 391 of the Companies Act. It is also clear that no stay of any criminal or income tax proceedings can be ordered by the company court while considering an application under Sections 391/392 of the Companies Act, 1956. Therefore, the scheme which entails a direction to SEBI to revoke the orders passed u/s 11B of the SEBI Act could not have been sanctioned in law. Similarly, directions regarding "vacation or stay sine die" of all criminal cases could not have been given by the company court. Furthermore, we feel, that directions could not be given to the CBI to release the passport of the propounders of the scheme as also of the Ex-Directors of CRB Capital nor a direction could be given to CBI to hand over all records and documents of CRB Capital including records of fixed deposits, particularly, in view of the fact that the criminal cases were pending against the said Directors/Ex-Directors of CRB Capital. We may also refer to the Supreme Court decision in the case of Tata Motors (supra) on which reliance had been placed by the learned counsel for SEBI. It was held by the Supreme Court that SICA was a specially constituted Act and that it was a self contained code and therefore the jurisdiction of the company Judge in a case where a reference has been made to BIFR would be subject to the provisions of SICA. Similarly, the provisions of SEBI Act and RBI Act being special and complete codes in themselves with regard to their respective subject matters would over-ride the provisions of Companies Act in case there is any inconsistency between the said provisions.

41. A reference to Section 20A of the SEBI Act would also be appropriate. The said Section reads as under:-

20-A. Bar of jurisdiction.--No order passed by the Board or the Adjudicating Officer under this Act shall be appealable except as provided in Section 15-T or Section 20 and no civil court shall have jurisdiction in respect of any matter which the Board or the adjudicating officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board or the adjudicating officer by, or under, this Act.

The above provision, inter alia, entails that no injunction shall be granted by any court in respect of any action taken or to be taken in pursuance of any order passed by SEBI or its adjudicating officer. This provision also stipulates that no order passed by the SEBI or the Adjudicating Officer under the SEBI Act shall be appealable except as provided u/s 15 or 20. The latter provisions have already been set out above. Therefore, there cannot be any interference with the provisions of SEBI Act while a scheme is sanctioned u/s 391 of the Companies

Act.

42. The two questions have, therefore, to be answered in the negative.

Q.4 Depending on to the answer to the questions above, whether the scheme formulated in the instant case is bonafide, feasible and fair?

43. We have already noticed the submission made by the learned counsel for the parties. It is apparent that the reliefs and concessions as sought under the scheme form an integral part of the scheme. If a majority of reliefs and concessions sought in law cannot be granted, the scheme itself would be unworkable. The learned counsel for CRB Capital, in the course of arguments, submitted that he was willing to give up various parts of the reliefs and concessions but, we fail to understand as to how that would improve the position inasmuch as without the reliefs and concessions, the scheme in itself would become unworkable. For example, one of the reliefs sought is that a direction be given to SEBI to revoke its order passed u/s 11B of the SEBI Act which includes the revocation of a suspension order for trading in shares of CRB Capital as well as its further group of companies in all stock exchanges. It also includes revocation of the suspension of the order passed by SEBI suspending the membership rights of the Ex-Directors of CRB Capital and to allow them to resume security trading business at stock exchanges. A direction has also been sought that SEBI be directed to give its approval for issuing fresh shares to the unsecured creditors (including deposit holders) by way of preferential allotments as envisaged in the scheme. It is obvious that the payment to depositors having deposited in excess of Rs. 5000/- is to be made partly (50%) by issuance of fresh shares of CRB Capital. That cannot happen unless and until this concession and relief is given in the shape of a direction to the SEBI to grant approval for issuance of fresh shares to unsecured creditors. We have already seen that such a direction cannot be given. There are several other such directions which cannot be given including the direction in respect of criminal cases and stay of demands and vacation of ex-parte orders insofar as income tax authorities are concerned. We also find that the release of the passport of the propounders of the scheme would probably be contrary to the direction given by the criminal court inasmuch as that may have been a condition for grant of bail. Such a direction, once again, may be contrary to law. We are, therefore, of the view that once the reliefs and concessions are not there, the scheme itself becomes unworkable. This is apart from the fact that there are other serious concerns with regard to the paltry amount of funds proposed to be brought in by the propounders of the scheme in the context of the overall fund requirement. This is also apart from the fact that the scheme as propounded and as sanctioned by the company court, in fact, contravenes the provisions of the RBI Act particularly those of Section 45QA. We have already held that though a scheme can be envisaged in the course of a winding up petition u/s 45MC of the RBI Act it has to be in conformity with the provisions of Chapter III-B of the RBI Act and not in contravention thereof. For all these reasons we feel that the scheme as formulated in the present case is not

bonafide, feasible or fair.

Q.5 Whether grounds for winding up of the Company u/s 45MC (1) of Reserve Bank of India Act, 1934 as made out in the winding up petition exist. If so, to what effect?

44. Insofar as this question is concerned it would be pertinent to note that the impugned judgment itself notes that if the scheme cannot be successfully implemented, then the winding-up petition C.P. No. 191/1997 filed by the RBI in respect of CRB Capital would revive. It is obvious that the company court has not examined the winding-up petition of RBI on merits. Since the scheme cannot be sustained in law, the winding-up petition would, automatically get revived.

45. Therefore, we set aside the impugned judgment as also the scheme and remit the matter to the company court for consideration of the winding-up petition (C.P. No. 191/1997) in accordance with law. We make it clear that there is no bar on CRB Capital propounding another scheme during the pendency of the said winding-up petition or even thereafter, in case winding-up is ordered. However, only such a scheme may be propounded, which does not contravene any of the statutory provisions contained in the Companies Act, the RBI Act, the SEBI Act or the Income Tax Act or any other statutory provision and which is in public interest and not opposed to public policy. The appeals are allowed to the aforesaid extent.