
(2006) 07 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 12206 of 2004

Saurashtra Cement Ltd. and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Companies Act, 1956 — Section 203, 205A, 205C, 274, 274(1)

Companies Rules, 2003 — Rule 3

Constitution of India, 1950 — Article 14, 19(1), 21

Citation : (2007) 2 GLR 1384 : (2007) 75 SCL 375

Hon'ble Judges : R.S. Garg, J;M.R. Shah, J

Bench : Division Bench

Advocate : Mihir Thakore, for Spp Banaji, for Petitioners 1 and 2, for the Appellant; Jitendra Malkan, for Respondent(s) 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J.—The petitioners have challenged the constitutional validity of Section 274(1)(g) of the Companies Act, 1956 as amended by the Companies (Amendment) Act, 2000 with effect from December 13, 2000 [hereinafter referred to as the said "Act"]. The petitioners have also prayed for a declaration that the said provisions are ultra vires the Constitution of India more particularly Article 14 thereof.

2. The petitioner No. 1 is a Company incorporated and registered under the Companies Act, 1956, and petitioner No. 2 is a shareholder of the petitioner No. 1 Company. Petitioner No. 1 Company is incurring losses and is unable to redeem debentures on due date, i.e., 30th September 2003 (1st installment). Considering the provision of Section 274(1)(g) of the Act, the Directors of the petitioner company would stand disqualified for being appointed as Directors in another companies after 29th September 2004 and therefore the Company has preferred the present Special Civil Application challenging the vires of Section 274(1)(g) of the Companies Act. Section 274 of the Companies Act reads as

under;

Section 274. Disqualification of directors (1) A person shall not be capable of being appointed director of a company, if -

(a) He has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force.

(b) He is an undischarged insolvent;

(c) He has applied to be adjudicated as an insolvent and his application is pending;

(d) He has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence;

(e) He has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(f) An order disqualifying him for appointment as a director has been passed by a Court in pursuance of Section 203 and is in force, unless the leave of the Court has been obtained for his appointment in pursuance of that Section; or

(g) such person is already a director of a public company which,-

(A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April 1999; or

(B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more.

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company, in which he is a director failed to file annual accounts and annual returns under sub-clause (a) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in clause (B).

3. It is submitted that Section 274(1)(g) of the Act is violative of fundamental rights guaranteed to the petitioners under Constitution of India and is not in consonance with the objects and purpose of the said Act, and ultra vires thereof. It is submitted that Section 274(1)(g) of the Act was inserted by the Companies (Amendment) Act, 2000 with effect from 13.12.2000 and the Statement of Objects and Reasons while introducing the said amendment was as a measure of good corporate governance and management and as a measure for protection for investors. The Statement of Objects and Reason, while introducing the above amendment to the extent it is relevant for the purpose of petition, according to the petitioners, reads as under;

The Government introduced a comprehensive Companies Bill, 1997 in Rajya Sabha on 14.8.1997 and the same was referred to Standing Committee of Parliament for examination and report thereon. The process of examination, however, is not yet over and is till to take some more time. The passing of this Bill is thus likely to be delayed further. It is however considered desirable by the Government that some more important changes in the Companies Act, 1956 are brought out in order to provided immediately certain measure for good corporate governance and for protection of investors. These measure are as follows;

...(xiv) to provide that in case of a public company which does not file annual accounts and annual returns continuously for last three years, the directors of such companies will be debarred from becoming the director of other public companies for five years. Similarly, in case of any public company which fails to repay its depositors on maturity of deposit amount/debentures, dividend and interest on deposits/debentures on due dates. The whole-time directors of defaulting companies as on such date will be debarred from becoming a director of any other public company for a period of five years.

It is the contention on behalf of the petitioners that the object of the provision is to protect investors from Directors of companies which have either not filed any annual accounts and annual returns continuously for last 3 years, of companies which have failed to repay the deposits on maturity or redeem debentures or pay interest thereon. It is submitted that what intended was that the full-time Directors of such defaulting companies should be debarred from becoming Directors of other public companies for a period of 5 years. It is submitted that though the object refers to full-time directors, the provision enacted refers to all Directors whether they are full-time directors or otherwise. It is submitted that the provision seeks to classify companies into 2 classes, namely those companies which have not been able to repay the deposits and/or redeem the debentures and/or interest thereon and the companies which are able to do so. It is submitted that the object of such classification is claimed to be good corporate governance and protection of investors. It is submitted that such a classification has no relevance to the companies' inability of making profit. It is submitted that corporate governance, if at all, could have relevance only with regard to the companies regularly not filing annual accounts and annual returns. It is submitted that the Company which is very well managed can also suffer loss for the reason which had nothing to do with the management of the Company. It is submitted that profit making by the Company therefore has absolutely no nexus to good corporate governance. It is submitted that in so far as protection of investors is concerned, it is quite likely that the same group of directors managing large number of companies which may be making huge profits could also be directors in one or two companies which due to very many reason may be making losses. It is submitted that in the corporate sector, large business houses are running innumerable companies while most of them are very successful ventures making substantial profits, some companies within group may make losses. It is, therefore, submitted that in such a situation the same

set of Directors should not be blamed. It is further submitted that multi facet factors are responsible for the companies' inability to repay the deposits or redeem debentures but to say or suggest that the inability on the part of the company to repay its depositors or redeem its debentures is because of fault of directors is directly ill-placed. Thus, it is submitted that there is no reasonable nexus between the objects sought to be achieved, namely protection of investors and classifying the companies into 2 classes, one which is able to repay its deposits and redeem its debentures and the other which is unable to do so and on such classification to disqualify the directors of the company, which is unable to repay its deposits. It is submitted that in many cases it would be only those directors who are at the helm of affairs of the company and managing the company for years would be in a position to revive the company by taking appropriate action. It is further submitted that considering the danger of disqualification those directors may resign from the company and the resultant effect would be to hand over the companies in the hands of persons who would know nothing about the business, operation and management of the company and would not be even interested in reviving the company. It is further submitted that the said provision which has no nexus to the objects sought to be achieved namely good corporate governance and protection of investors would also result in the investors being deprived of having good professional directors on the Board of the Company. It is further submitted that a professional director if he is likely to be disqualified from being appointed as a director in other companies, would not be interested in remaining a director of the company which has suffered losses and has not been able to repay its depositors and/or redeem debentures and he will walk out just before the disqualifying date. It is therefore submitted that since classification has no reasonable nexus to the objects sought to be achieved, the classification is per se bad.

4. It is further submitted that the provisions u/s 274(1)(g) of the Act rule discrimination amongst those similarly situated, by classifying companies into two classes without there being any real basis for such classification and the so-called basis has no nexus with the objects sought to be achieved and therefore the same is ultra vires Article 14 of the Constitution of India.

5. It is further submitted that the aforesaid provisions seek to classify the debts of the company into two separate classes, namely debts in the form of deposits and debentures, and other debts. It is submitted that the said provision does not in any manner disqualify Directors of the company which is unable to pay its term-lenders or working capital lenders due to loss suffered by it. It is submitted that such lending by financial institutions and banks is ultimately an investment of the public. Thus, the provision is, therefore, ultra vires the Article 14 of the Constitution of India. It is further submitted that such discrimination between the companies which are unable to pay other debts and companies which are unable to pay its deposits and debentures, has no reasonable nexus with the objects sought to be achieved namely good governance and investor protection.

6. It is further submitted that the impugned provision otherwise will never subserve its object since all the persons who are directors of the company which is unable to repay its deposits or redeem its debentures on due dates, would be aware of the financial position of the company well in advance and would necessarily resign as directors before the disqualifying date to avoid getting disqualified from office of director of the company. It is further submitted that disqualification envisaged u/s 274(1)(a) to (f) of the Act pertains to tainted Directors, i.e., a Director who has committed some wrong as mentioned in the said provision which disqualifies him. It is submitted that such Director can be termed as "a tarnished Director" for the reasons mentioned in clauses (a) to (f) of Section 274(1). However, as compared to the said provision, Section 274(1) (g) of the Act disqualifies the whole Board of Directors irrespective of any fault on the part of the Directors, merely because the company has failed to pay its depositors or interest thereon, on due date or redeem its debentures on due dates. It is therefore submitted that unequals are treated equally and therefore the said provision is ultra vires to Article 14 of the Constitution of India. It is further submitted that the said provision suffers from the vice of not providing for reasonable classification and/or a criteria to arrive at a reasonable classification in distinguishing errant and non-errant Directors and distinguishing between persons who are guilty or non-guilty of management.

7. It is further submitted that the provision of Section 274(1)(g) is ultra vires the Article 14 of the Constitution of India inasmuch as it disqualifies the whole Board, the moment the Company is unable to pay its deposit-holders and redeem its debentures irrespective of whether the Directors have been responsible for such inability to pay or not and thus to disqualify them without determining their responsibility for company's reversal is against the basic tenet of the Article 14 of the Constitution of India.

8. Shri Thakore, learned Senior Advocate, appearing on behalf of the petitioners, has relied upon the following decisions of the Hon''ble Supreme Court;

1. Kathi Raning Rawat Vs. The State of Saurashtra,
2. The State of West Bengal v. Anwar Ali Sarkar and Anr. reported in AIR 1957 S.C. 75.
3. Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others,
4. K. Thimmappa and Ors. v. Chairman Central Bd. of Dirs., SBI and Anr. reported in AIR 2001 S.C. 467.

Relying upon the aforesaid decisions, it is submitted by Shri Thakore that the classification must have a rational relation to the object sought to be achieved by the Statute in question and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

9. The petition is opposed by Shri PJ Malkan, learned Additional Central Government Standing Counsel appearing on behalf of the respondents. He has

relied upon the Judgment of Division Bench of the Bombay High Court in the case of Snowcem India Ltd. and Others Vs. Union of India (UOI) and Others, and has submitted that the very amendment to Section 274(1)(g) was challenged as "ultra vires" and the vires of the said Section has been upheld by the Bombay High Court. He has further submitted that the provision of Section 274(1)(g) of the Act is neither unreasonable nor arbitrary nor violative of Article 14 of the Constitution of India. It is further submitted that the said provision is not contrary to the Statement of Objects and as such it is in consonance with the Statement of Objects and Reasons of enactment of Section 274(1)(g) of the Act. It is submitted that the said provision has been enacted to protect the interests of the investors and depositors and for better corporate governance. While relying upon the decision of the Hon"ble Supreme Court in the case of Bakhtawar Trust and Others Vs. M.D. Narayan and Others, , it is submitted that provision of a Statute cannot be declared ultra vires to the Statement of Objects and Reason. Relying upon the said decision, it is submitted that when validity of a particular statute is brought into question, a limited reference, but not reliance, may be made to the Statement of Objects and Reasons. It is submitted that as held by the Hon"ble Supreme Court, the Statement of Objects and Reasons cannot, therefore, be the exclusive footing upon which a Statute is made a nullity through the decision of a Court of law.

10. It is further submitted by the Learned Counsel appearing on behalf of Union of India that the debts due to financial institutions cannot be equated with the default on the part of the Company to repay the deposits and/or to redeem the debentures on due date. It is submitted that so far as the investors are concerned, they are not concerned with the debts/dues of the other financial companies against their own interest. It is submitted that the Legislature wanted to protect the interests of the investors/depositors specifically and for that purpose there is an amendment to Section 274. Therefore, it is submitted that the said Section is not ultra vires the provision of Article 14 on that ground.

11. It is further submitted that even the said Section is also not ultra vires the Article 14 of the Constitution of India on the ground that Section 274(1)(a) to (f) provides for disqualification of a Director who himself has committed some wrong and Section 274(1)(g) provides for disqualification of a Director merely on the ground that the Company has not been able to repay the deposits and/or redeem the debentures on due dates. It is submitted that the intention of the Legislature is to create a separate class and to disqualify a Director from becoming a Director and/or continuing as a Director for the eventuality not occurring in Section 274(1)(a) to (f) of the Act. It is further submitted that the contention on behalf of the petitioners that the Directors of a Company which is unable to pay its deposit-holders or redeem its debentures on due dates would resign before the disqualification date to avoid getting disqualified from being Directors of other Companies, the Learned Counsel appearing on behalf of the Union of India has relied upon Companies [Disqualification of Directors u/s 274(1)(g) of the Companies Act, 1956] Rules, 2003, [hereinafter referred to as the Rules of 2003]

more particularly Rule 3 and has submitted that even if a Director resigns before the disqualification date will be disqualified if he has been the Director in the relevant year from the due date upto the expiry of one year after the due date and even the disqualification on account of the reason mentioned in Section 274(1)(g) of the Act and the Rules shall also apply to reappointment as a Director. Therefore, it is requested to dismiss the present Special Civil Application.

12. Heard the learned advocates appearing on behalf of the parties. Section 274 of the Act reads as under;

Section 274. Disqualification of directors (1) A person shall not be capable of being appointed director of a company, if -

(a) He has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force.

(b) He is an undischarged insolvent;

(c) He has applied to be adjudicated as an insolvent and his application is pending;

(d) He has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence;

(e) He has not paid any call in respect of public company which,-

(A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April 1999; or

(B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more.

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company, in which he is a director failed to file annual accounts and annual returns under sub-clause (a) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in clause (B).

The Statement of Objects and Reason for enactment of Section 274(1)(g) reads as under;

The Government introduced a comprehensive Companies Bill, 1997 in Rajya Sabha on 14.8.1997 and the same was referred to Standing Committee of Parliament for examination and report thereon. The process of examination, however, is not yet over and is till to take some more time. The passing of this Bill is thus likely to be delayed further. It is however considered desirable by the Government that some more important changes in the Companies Act, 1956 are brought out in order to provided immediately certain measure for good corporate

governance and for protection of investors. These measure are as follows;...

...(xiv) to provide that in case of a public company which does not file annual accounts and annual returns continuously for last three years, the directors of such companies will be debarred from becoming the director of other public companies for five years. Similarly, in case of any public company which fails to repay its depositors on maturity of deposit amount/debentures, dividend and interest on deposits/debentures on due dates. The whole-time directors of defaulting companies as on such date will be debarred from becoming a director of any other public company for a period of five years.

13. According to newly Amended Act, a person shall not be capable of being appointed "Director" of a Company, if such person is already a Director of a Public Company which has not filed annual accounts and annual returns for any continuous 3 financial years commencing on and after the first date of April 1998 or has failed to repay its deposits or interest thereon or redeem its debentures on due date or pay dividend and such failure continue for one year or more and such person shall not be eligible to be appointed as a Director of any other Public Company for a period of 5 years from the date on which such Public Company, in which he is a Director, failed to file annual accounts and annual returns under Sub-clause (a) or has failed to repay its deposits or interest or redeem its debentures on due date or pay dividend referred to in clause (b). The purpose of the amendment is to disqualify certain person from Directorship in Public Companies. The intention and the purpose of the above amendment is to disqualify errant Directors, protect the investors from mismanagement, ensure compliance in filing of annual accounts and annual returns. The purpose of the said provision is as such not to punish those who are disqualified but to save the community from the consequences of mismanagement and also to prescribe some standards of corporate managership. It appears that the primary purpose of the disqualification is not to punish the individual but to protect the public against future conduct by person whose past record as directors shows a great danger to creditors and others. Failure is often a sign of incompetence from which the community should be protected. Thus, considering the Statement of Objects and Reason, what emerges is that the above amendment will ensure proper governance of companies, transparency in working of companies and also ensure more effective enforcement. The said provision has been enacted with the intention and purpose of,

(i) disqualifying errant directors;

(ii) protecting the investors from mismanagement;

(iii) ensuring compliance and filing of annual accounts and annual returns

which are the means of disclosure to all stakeholders;

(iv) increasing compliance rate of filing statutory documents; and

(v) infusing good corporate governance in the regulations of corporate affairs and

to protect the interest of the investors.

14. The vires of very Section 274(1)(g) of the Companies Act came to be considered by the Division Bench of Bombay High Court in the case of Snowcem India Ltd., (supra) and the Division Bench of the High Court has upheld the vires of Section 274(1)(g) of the Companies Act by holding that;

(1) The Statement of Objects and Reason for enactment of Section 274(1)(g) is for better corporate governance and protection of investment of the depositors. Such amendment would ensure transparency in the functioning of the company and would lead to the protection of investment and investors for better corporate governance. According to the wisdom of the legislature, this can be achieved by enhancing penalty/punishment for contribution so as to ensure better compliance with the provision of the Act;

(2) Article 21 of the Constitution is not at all attracted;

(3) Section 274(1)(g) of the Act does not violate the Directors' fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. The amendment does not debar the petitioners from carrying on any business, trade or occupation, only that the person have been rendered incapable of becoming Directors in other companies and the said amendment became imperative in view of a large number of companies becoming defaulters.

(4) The said amendment does not violate the rules of natural justice;

(5) Section 274(1)(g) does not penalize the Company. It is only the Directors who are rendered incapable of functioning as Directors for certain period. The amendment has been carried out primarily to ensure that Directors of the Company discharge their obligation properly. They should be more vigilant and careful and ensure that investors do not lose their life time savings.

(6) Once a person becomes a Director, it is his primary duty to ensure that there is proper governance and investors' money is protected.

(7) The amendment is not violative of Article 14.

(8) Amendment to Section 274(1)(g) has been made primarily in larger public interest to protect large number of investors, particularly small and poor investors who had invested their life time savings with these companies and in majority of the case neither principal amount nor interest is paid.

14.A. We are in complete agreement with the reasoning of the Bombay High Court while upholding the vires of Section 274(1)(g) of the Companies Act. However, certain submissions which are made before this Court were not before the Bombay High Court and, therefore in addition to the above, we are considering the said submissions also.

15. It is the contention on behalf of the petitioners that amendment to Section 274(1)(g) of the Act is violative of Article 14 of the Constitution of India

inasmuch as it seeks to classify the debts of the company into two separate classes namely debts in the form of deposits and debentures and other debts. It is contended on behalf of the petitioners that the provision does not provide for disqualification of a Director of a Company which is unable to pay its term-lenders or working capital lenders due and payable to the financial institutions. However, the Director of a Company who is unable to pay his unsecured deposit-holders or redeem its debentures would be disqualified. It is required to be noted that the primary object of the enactment of Section 274(1)(g) is to protect the interests of the investors and good governance and with a view to achieve the said object, Section 274(1)(g) provides disqualification of a director of a company which is unable to pay its unsecured deposit-holders or redeem its debentures. Therefore, the provision of Section 274(1)(g) is in consonance with the object sought to be achieved for such an enactment. Merely because the said Section does not provide for disqualification of a Director of a Company which is unable to pay its term-lenders or working capital lenders due to the financial institutions, Section 274(1)(g) would not become ultra vires Article 14 of the Constitution of India. The Directors of the Company who are unable to repay its deposits or redeem the debentures are treated as "separate class".

16. It is also the contention on behalf of the petitioners that Section 274(1)(g) of the Act is also ultra vires the Article 14 of the Constitution of India inasmuch as Section 274(1)(a) to (f) provides for disqualification of a Director who himself has committed some wrong and who can be said to be a tainted Director, however, Section 274(1)(g) provides for disqualification of a Director for no fault of his and merely because the Company is unable to pay the interest on the deposits and/or repay the depositors and/or redeem the debentures and therefore unequals are treated equally. It is required to be noted and it appears that Legislature wanted to create a separate class and to see that a Director of a Company who is unable to pay his unsecured deposit-holders or redeem its debentures and who are not in a position to protect the interest of the investors cannot be continued as Directors, and with a view to see that those Directors may not also manage the affairs of the Companies, Section 274(1)(g) has been enacted and therefore it cannot be said that Section 274(1)(g) is ultra vires the Constitution of India and unequals are treated equally. The Directors of the Company who are disqualified u/s 274(1)(a) to (f) and the Directors of the Company who are disqualified u/s 274(1)(g) are both belonging to different class and they are class by themselves. Therefore, the contention on behalf of the petitioners that unequals are treated equally cannot be accepted.

17. It is also the contention on behalf of the petitioners that Section 274(1)(g) will never subserve its object, since all the persons who are Directors of the Company which is unable to pay its deposit-holders or redeem its debentures on due dates, would be aware of the financial position of the Company well in advance and would necessarily resign as Directors before the disqualification date to avoid getting disqualified from other Directors of the other Company has no substance. At this stage, Rule 3 of the said Rules 2003 is required to be

referred to which reads as under;

3. Disqualification under clause (g) of Sub-section (1) of Section 274 of the Companies Act, 1956.

(a) Whenever a company fails to file the annual accounts and annual returns, as described in Sub-clause (A) of clause (g) of Sub-section (1) of Section 274, persons who are directors on the last due date for filing the annual accounts and the annual returns for any continuous three financial years commencing on and after the first day of April, 1999, shall be disqualified.

(b) If a company has failed to repay any deposit, irrespective of the enactment, rules or regulations under which the deposits have been accepted by the companies, or interest thereon, or redeem its debentures, or pay any dividend declared on the respective due dates, and if such failure continues for one year, as described in Sub-clause (B) of clause (g) of Sub-section (1) of Section 274, then the directors of that company shall stand disqualified immediately on expiry of that one year from the respective due dates:

Provided that all the directors who have been directors in the relevant year, from the due date to the expiry of one year after the due date, will be disqualified:

Provided further that disqualification on account of the reasons cited under this Rule shall also apply to the reappointment as a director.

Explanation-For the purpose of this rule, it is clarified that non-payment of dividend referred to in Sub-clause (B) of clause (g) of Sub-section (1) of Section 274 due to the reason of dividend not being claimed or kept in separate bank account as required u/s 205A of Companies Act, 1956 or paid into Investors Education & Protection Fund as required u/s 205C of that Act shall not be deemed to be a failure to make payment of dividend.

Considering Rule 3 of the Rules of 2003 and Proviso to Rule 3, all the Directors who have been directors in the relevant year, from the due date to the expiry of one year after the due date, will be disqualified. Therefore, even if a Director resigns before the disqualification date in that case also the said Director who has been a Director in the relevant year from the due date to the expiry of one year after the due date will also be rendered disqualified. Disqualification date would be one year after the due date of repayment of deposits and/or payment to be made on redeeming the debentures. Under the circumstances, the submission on behalf of the petitioners that Section 274(1)(g) will not subserve its objects, has no substance. If a Director resigns before the due date, then it may be an act of prudence on his part but such act on his part cannot make the law invalid. If the law provides some respite to a person, then he certainly can have the benefit.

18. It is the submission on behalf of the petitioners that Directors will be disqualified for no fault of theirs and there may be so many reasons for the inability of the Company in making repayment of deposits and/or redeeming the

debentures and the said fault may not be relatable to the Directors. It is required to be noted that a Company, though a legal entity, cannot act by itself, and it can act only through its Directors. All the powers and the management of the affairs of the Company are vested in the Board of Directors. The Board, thus, becomes the working organ of the Company. The Directors, as a Board, are exclusively empowered to manage and/or exclusively responsible for that management. Thus, it cannot be said that for no fault of the individual Directors they will be disqualified. It is also required to be noted that Section 274(1)(g) of the Act provides for disqualification of a Director of a Company which has failed to repay any deposit or interest thereon, or redeem its debentures on the respective due dates, and if such failure continues for one year then the Directors of that Company shall stand disqualified immediately on expiry of that one year from the respective due dates. Thus, it is not that immediately on expiry of due date of repayment of any deposit or interest thereon or redeeming its debentures there is automatic disqualification. The Legislature has thought it fit to give one year to the company and the directors to improve their financial position and to see to it that within one year of respective due dates the deposit are repaid and/or the debentures are redeemed. Even after lapse of one year of due date of repayment of deposit or redeeming the debentures still the company still is not in a position to repay the deposits or redeem the debentures, then and then only the disqualification is provided. Thus, it cannot be said that the said provision is arbitrary and/or irrational. As stated above, the Legislature has thought it fit to give sufficient time, i.e., one year for improving the financial position and making the repayment. Under the circumstances, it cannot be said that Section 274(1)(g) is arbitrary and/or irrational and/or does not take care of the Directors of such Company. It is not unknown in the corporate world especially the matters of companies that the public before investing or depositing looks to the names of the directors and finding them reliable starts investing. When the depositors and debenture-holders repose confidence in directors that these directors will take care of their interest then the management should redeem that confidence. Cases falling under Sec. 274(1)(a) to (f) relate to individual lapses which may or may not adversely affect the company's financial position, therefore such individual lapses are small wrongs in comparison to bad financial management and corporate governance because that strikes on the back-bone of the company. It is joint liability and some one cannot avoid it by saying that he is not responsible. The liability is constructive and to be shared and suffered by all.

19. It is also the submission on behalf of the petitioners that Section 274(1)(g) is ultra vires the Statement of Objects and Reasons and/or the above provision has no nexus to the objects sought to be achieved, namely good corporate governance and protection of the investors. Section 274(1)(g), is reproduced hereinabove and the Statement of Objects and Reason is also reproduced hereinabove. The primary object of enactment of Section 274(1)(g) is better corporate governance as well as protection of investment of the depositors. The intention and purpose of the above amendment is to disqualify the errant

directors and to protect the investors from mismanagement. The amendment becomes absolutely imperative to protect large number of investors, particularly small and poor investors who had invested their life time savings with such companies and in majority of the cases neither the principal amount nor the interest is paid back. It is an admitted position that so far as the petitioner No. 1 company is concerned, the said company is unable to redeem the debentures which fell due on 30th September 2003. Thus, it cannot be said that Section 274(1)(g) has no nexus to the objects sought to be achieved, namely good corporate governance and protection of investors.

20. At this stage, the decision of the Hon''ble Supreme Court, in the case of Bhaktavar Trust and Ors. (Supra) is required to be referred to. It is observed and held by the Hon''ble Supreme court in the said decision that when validity of a particular Statute is brought into question a limited reference, but not reliance, may be made to the Statement of Objects and Reasons. The Statement of Objects and Reason may, therefore, be employed for the purposes of comprehending the factual background, the prior state of legal affairs, the surrounding circumstances in respect of the statute and the evil which the statute has sought to remedy. The Statement of Objects and Reasons cannot, therefore, be the exclusive footing upon which a statute is made a nullity through the decision of a court of law. It is also observed by the Hon''ble Supreme Court in the said decision that the intention of the legislature in enacting a particular statute is immaterial in terms of the question relating to its validity. The intention of the legislature in passing of a particular statute is beyond the pale of judicial review. In the present matter, as stated above, with a view to protect the interest of the investors and unsecured depositors and for that purpose to create a class of those Directors of a Company which is unable to repay the deposits or redeem the debentures and to disqualify them after a period of one year of due date, Section 274(1)(g) is enacted. Therefore, considering the intention and the plain language of Section 274(1)(g), the submission on behalf of the petitioners that provision of Section 274(1)(g) of the Act be declared as "ultra vires" to Statement of Objects and Reason and/or ultra vires the Constitution of India, has no substance.

21. So far as the submission on behalf of the petitioners that a person may be a Director in many companies and some companies may be profit making company and some company may be loss making company and therefore to disqualify a director to be a director of other profit making companies or becoming a director of a company which is unable to repay the deposits or redeem the debentures, has no nexus with the Statement of Objects and Reason, i.e., to protect the interest of investors and/or it will not be in the interest of a loss making company and such directors either will be disqualified and/or prior thereto they will resign and therefore the management of the loss making company will be in the hands of those person who know nothing about the business, operation and management of the Company. It is required to be noted that on the aforesaid ground a provision of a Statute cannot be declared "ultra vires". One has to

consider the very provision of the statute and the purpose for the said provision. The purpose is to see that under the threat of the aforesaid provision, the whole Board of Directors may act vigilantly and may see to it that the company is revived and the affairs of the company are managed in such a manner that ultimately deposits are repaid and/or debentures are redeemed. Otherwise, no company would try to improve their affairs and ultimately try to protect the interest of the investors. The purpose of the provision is not to punish those who are so disqualified only but to save the community from the consequences of mismanagement and to protect the public against future conduct of persons whose past records as Directors shows them to be a danger to creditors and others. The Hon'ble Supreme Court in *Venkateshwara Theatre Vs. State of Andhra Pradesh and Others*, has held as under;

...laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particular true in case of legislation dealing with economic matters, where having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved.

The court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; that exact wisdom and nice adaptation of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts, cannot, as pointed out by the United States Supreme Court in *Secretary of Agriculture v. Central Roig Refining Co.*, be converted into tribunals for relief from such crudities and inequities.... If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

22. Considering the above, it cannot be said that the provision of Section 274(1) (g) is ultra vires the Constitution of India, more particularly when Section 274(1) (g) has been enacted primarily in larger public interest.

23. For the reason stated hereinabove, we find no merit in any of the submissions and the present Special Civil Application is required to be dismissed and it is dismissed. Rule is discharged. However, there will be no order as to costs.