
(1975) 02 DEL CK 0019

In the Delhi High Court

Case No : Company Appeal No. 18 of 1975

Ved Mitra

APPELLANT

Vs

Globe Motors Limited

RESPONDENT

Date of Decision : 17-02-1975

Acts Referred:

Citation : (1978) 48 CompCas 64 : (1975) ILR Delhi 123

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : Ved Vyas, A.N. Khanna, B.P. Singh, K.K. Bhatia, G.L. Sanghvi, Vineet Kumar, V.K. Mundhra, K.K. Jain, D.K. Aggarwal, Raj Sawhney, J.D. Chandhiokk and A.N. Radhakrishnan, for the Appellant;

Judgement

S. Rangarajan, J.

(1) Further to the Scheme, which had been approved by the creditors and sanctioned by this Court on 31-5-1969 in the matter of Globe Motors Limited, the question, what further steps should be taken and directions, if any, given u/s 392(2) of the Companies Act, 1956 (hereinafter called the Act), has now arisen for consideration. It will be necessary to read Section 392(1) and (2) of the Act :

"392.(1) Where a High Court makes an order u/s 391 sanctioning a compromise or an arrangement in respect of a company, it-

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

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

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned u/s 391 cannot be worked satisfactorily with or without modifications,

it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made u/s 433 of this Act.

(3)XXXXXXXXXXXXXXXXXXXX

(2) It will also be necessary to read Rules 86 and 87 of the Companies (Court) Rules, 1959, framed by the Supreme Court of India under powers conferred by sub-sections (1) and (2) of Section. 643 of the Act:

"86.Report on working of compromise or arrangement At any time after the passing of the order sanctioning the compromise or arrangement, the Court may, either of its own motion or on the application of any person interested, make an order directing the Company, or, where the company is wound up, the liquidator, to submit to the Court within such time as the Court, may fix, a report on the working of the said compromise or arrangement. On a consideration of the report, the Court may pass such orders or give such directions as it may think fit.

87.Liberty to apply.-(1) The Company or any creditor or member thereof, or, in case of a company which is being wound-up. the liquidator may, at any time after the passing of the order sanctioning the compromise or arrangement, apply to the Court for the determination of any question relating to the working of the compromise or arrangement.

(2)The application shall in the first instance be posted before the Court for directions as to the notices and the advertisement, if any, to issue, as the Court may direct.

(3)The Court, may, on such application, pass such orders and give such directions as it may think fit in regard to the matter, and may make such modifications in the compromise or arrangement as it may consider necessary for the proper working thereof, or pass such other orders as it may think fit in the circumstances of the case."

(3) The Scheme dated 24-2-69 was sanctioned by Hardyal Hardy, J. (as he then was) on 31-5-1969. and modified to some extent on 3-2-1970 by S. N. Andley, J. (as he then was). The Scheme, itself provided that it may be approved by the Court in the form in which it was presented after being approved by the creditors and members with such modifications thereof or conditions as may be approved or imposed by the Court, a model which had been recommended by Palmer (Company Precedents, p. 844 Ed. 16th) even in the absence of a statutory provision corresponding to present Section 392 of the Indian Act. Clause 3 (Preliminary) provided as follows :

"3.The Depositors shall be paid the amount due to them on account of the principal sum of their deposits in six Installments spread over a period of four years as detailed here under together with interest at the rate of six per cent per annum to be calculated from the effective date until payment of each Installment on the balance of the amount due to a Depositor :

(I) 10 per cent of the amount within 60 days from the effective date; (ii) 10 per cent of the amount within 180 days from the effective date; (iii) 15 per cent of the amount within one year from the effective date; (iv) 15 per cent of the amount within two years from the effective date; (v) 25 per cent of the amount within three years from the effective date; (vi) Balance of the amount within four years from the effective date." etc.

(4) According to the said Scheme the last (sixth) Installment should have been paid to the creditors on or before 22-3-1974. The first Installment was itself due on 22-4-1970, but the time was extended up to 15-5-1970 by order dated 24-4-1970 with directions to complete payment by 22-5-1970. The second Installment was due on 22-8-1970, but the time was extended up to 22-9-1970 by order dated 4-9-1970; by the same order there was a consequential extension of one month for payment of third and fourth Installments. The third Installment was due on 22-3-1971, but the time was extended up to 31-7-1971 by order dated 18-3-1971. The fourth Installment was due on 22-3-1972; no extension of time was sought for the fourth Installment. The fifth Installment was due on 22-3-1973. C. A. 175 of 1973 was filed on 20-3-1973 seeking extension of time by one year in view of acute power cut; owing to temporary improvement in the power supply position the company started making payment from 1-11-1973 with permission of the Court; Rs. 17 lakhs is said to have been paid to the creditors and depositors and approximately Rs. 11 lakhs was stated to be payable. C. A. 172 of 1974 was filed on 21-3-1974 for extension of time for payment of the sixth Installment, which was due on 22-3-1974, and an interim order was passed on 22-3-1974 extending the time.

IT is stated that about 75 per cent of the capital amount, not interest, has been paid. Statements have also been filed by Globe Motors Ltd., as directed by me, showing the payments made towards old liabilities during the period of the Scheme from 22-2-1970 to 30-9-1974 as well as payments made outside the Scheme inclusive of trade liabilities which were due for payments as on 25-11-1974.

IT is stated that in view of the failure of the monsoon during the months of June and August, 1974 the power was cut which gravely reduced the operational working of the Globe Steels Division. The current trading liabilities of Globe Steels Division were said to be about Rs. 28 lakhs in the affidavit (dated 12-11-1974) of Shri V. K. Mundhra, the proponent of this Scheme. He had been directed to give a guarantee of Rs. 20 lakhs which he had deposited, but the Scheme had not made any provision for financing capital. It is explained by V. K. Mundhra in the aforesaid affidavit that after the Scheme was sanctioned by this Court the Managing Committee, which took steps to ascertain the real state of affairs of the Company, discovered that the accounts of the Company had not been brought up to date by the previous management, the previous accounts had been published in the year ending 30-9-1966 which had been placed before the Annual General Meeting on 6-8-1968. The Managing Committee ascertained to

be Rs. 72,19,101.86 P. as on 30-9-1967 and 30-9-1968. As a result of the audit the accumulated losses were ascertained to be Rs. 72,19,101.86 P. as on 30-9-1967 and Rs. 1,80,05,933.17 P. on 30-9-1968, respectively. The accumulated losses of Globe Steels Division, which was a unit of the Globe Motors limited, as on 30-9-1968, included in. the above figure, was R.S. 85,27,133.49 P. It was also discovered that the company had lost its valuable selling agency of buses and trucks as well as of batteries. The Highway Motors, Jullundur, a partnership in which the Company had a 13 anna share and which had selling agency rights of Fiat cars in the State of Punjab and Himachal Pradesh, had also ceased, the agency having been lost. When the Scheme came into effect the Managing Committee found that the company had to clear unsecured liabilities totalling Rs. 1,72,24,136.00 on account of repayment to depositors payments to unsecured creditors, compensation to employees, statutory liabilities, such as, arrears of sales tax, income tax, provident fund etc. In addition, a sum of Rs. 83,05,425.00 was due to secured creditors, namely, the Haryana Financial Corporation and National & Grindlays Bank Limited, Connaught Circus, now Grindlays Bank Ltd. The total liability thus amounted to Rs. 2,55,29,571.00 on the date when the Scheme came into effect.

IT is claimed that the Managing Committee had obtained reductions from unsecured creditors to the extent of Rs. 37,70,267.00. There were disputes and/or appeals and other proceeding in respect of unsecured liabilities totalling Rs. 10,67,874.00. The undisputed liability ; under the Scheme, to depositors, unsecured creditors, employee", and statutory bodies amounted to Rs. 1,23,83,995.00 out of which sums totalling Rs. 84,56,962.00 were paid leaving a balance of Rs. 40,14,033 to be paid under the Scheme, excluding interest payable under the Scheme.

IT is clear that the total pre-scheme liabilities (excluding the overdraft allowed by the National & Grindlays Bank Ltd. of Rs. 30 lakhs to Globe Steels Division, a continuing facility) which amounted to Rs. 2,25,29,571.00 were claimed to have been reduced to R.S. 22,53,401.00. The total of the payments made and other reductions achieved are said to be 68 per cent of the effective liabilities. It is explained that there was no provision made for additional working capital under this Scheme due to the expectation that a large part of the debts due to the company, to the tune of about Rs. 75 lakhs, would be recovered in the course of the implementation of the Scheme. But most of those debts are stated to have been found by the Managing Committee to be doubtful irrecoverable.

While paying the first, second and third Installments under the sanctioned Scheme the company took recourse to the guarantee furnished by V. K. Mundhra and his associates by which the entire sum of Rs. 20 lakhs provided as guarantee was utilised by the Company for meeting its liabilities under the Scheme. Andley, J. by his order dated 24-10-1969 found that V. K. Mundhra's liability to provide bank guarantee for Rs. 20 lakhs was already reduced to Rs. 15 lakhs after paying the first Installment. V. K. Mundhra now states that he did not object to the

utilisation of the full guaranteed amount of Rs. 20 lakhs for making payments under the Scheme as he was desirous of facilitating the implementation of this Scheme. Passing over several details to some of which I shall revert later, to the extent needed, the present position is that it is conceded on all hands that lineless more capital is forthcoming it would not be feasible to run the Globe Steels Division quite independently of the power position. In the same affidavit of V. K. Mundhra he had made a proposal that he would provide a sum of Rs. 10 lakhs to the company by subscribing to the issue of equity shares on the terms and conditions as decided by the Managing Committee meeting held on 21-9-1974 which course, it is explained, would have the advantage of not burdening the company of interest charges or even of providing a second charge on the assets which any borrowing may involve. While the Managing Committee had, at the said meeting, decided to issue equity shares of the face value of Rs. 15 lakhs V. K. Mundhra suggested that it may be done for Rs. 20 lakhs through shares issued pro rata to existing share holders ; if all of them subscribed to the share capital thus issued, it is stated, that the company will receive Rs. 10 lakhs immediately. This has been suggested by way of finding the additional working capital needed. V. K. Mundhra also made the offer that, in the event of the shareholders renouncing, he was also willing to subscribe additional capital by underwriting the entire issue of Rs. 20 lakhs, as above. He also stated that he and his associates had advanced loans to the Company in the sum of Rs. 21,30,532.88P for which the interest alone amounted to Rs. 12,79,765.16P (at the rate of 12 per cent per annum). The question whether interest is payable on these advances is a separate question which it is needless to discuss here. In the said affidavit V. K. Mundhra also asserted that the sanctioned Scheme was being implemented successfully, it was fully capable of being completed satisfactorily provided normal working conditions are available and that no occasion had arisen for the consideration of any alternative proposal after a substantial part of the liabilities had been either paid or otherwise settled by the Managing Committee in the course of the implementation of the Scheme etc. It is further pointed out that while the Scheme, as sanctioned, provided for an effective working period of four years the full period had not been available to the Managing Committee on account of the acute power cut during the last two years at the Globe Steels Division of the company, which is its only earning unit. It is claimed that had availability of full power as it was available during the period from May 1970 to July 1973 continued, as it was expected when the Scheme was approved, the payment to the depositors and creditors would have been completed by now as contemplated in the Scheme. A reasonable extension of time to provide for the working period for the sanctioned Scheme was, Therefore, prayed for. It is necessary to mention at this stage that while pursuing the 7th quarterly report for the quarter ending 30-6-1972, I detected, on 15-9-1972, that repayments of loans and advances including interest up to 30-6-1972 had been shown to have been made to the tune of Rs. 11,64,922.60P without giving any details. Deprecating the practice or making such statements without giving any details in the report I directed the Managing Committee to present full details of the said

amounts within a week. It turned out that the above included certain loans, advanced by V. K. Mundhra and his associates, which had been repaid; but this fact had not been brought to the notice of the Court or permission taken for doing so.

(5) Passing over the orders which I had passed in the meantime reference may be made to my having, on 12-4-1973, come to the conclusion, in the presence of Mr. A. N. Pareekh (learned counsel for the Company), Mr. I. D. Khanna for Mr. Ved Vyas (for certain members of the Managing Committee), Mr. Jai Dev Chandhok and Mr. N. D. Kapur (members of the Managing Committee) that it was necessary to have an Internal Auditor of high standing, one who had held a top position in the Government with knowledge of accounts. An Air Commodore, who had retired as the accounts Chief of the Air Force, was found by my Lord the Chief Justice Mr. S. N. Andley, out of those who had applied in response to an advertisement made in this behalf, to be the most suitable and was appointed the Internal Auditor. He was to be paid remuneration according to what was applicable to such officials who had retired from Government--a course which was felt to be cheaper than appointing a private Chartered Accountants of standing and may not yet ensure such whole-time and competent attention to the accounts side of the working of Globe Steels Division.

I referred this question, of the above-said loans by and repayments to V. K. Mudhra and his associates to the Internal Auditor. He reported that some loans had been advanced by V. K. Mundhra and his associates and they had been repaid. He pointed out that this was due to the lacuna in the Scheme which omitted to provide for needed working capital.

There is, however, no need to be detained about this aspect because in the affidavit of V. K. Mundhra dated 28-11-1974 he finally agreed that he will unconditionally pay to the Company Rs. 6,50,000.00 within such time as the Court may be pleased to direct and that the same will be adjusted against the proposed issue of equity shares as per his proposals dated 10-11-1974. He also further agreed that on his proposals dated 12-11-1974 being approved he and his associates would subscribe to the extent of Rs. 3,50,000.00 such of the shares as may be renounced by the shareholders raising such subscription to Rs. 10 lakhs. It was explained to me by his counsel Mr. G. L. Sanghi, on 3-12-1974, [hat the said sum of Rs. 6,50,000.00 alone represents the same taken back by V. K. Mundhra out of the sums (described by him as advance by way of loan) which he had advanced to the company on his own-accord. On his representation that V. K. Mundhra and his associates required 6 weeks time to pay back the amount to the Company he was by order dated 3-12-1974 permitted to do so.

(6) A further affidavit dated 11-12-1974 was filed by V. K. Mundhra making some further proposals concerning the time within which he had originally agreed to pay the entire amount to the depositors. The net result, as per the final proposal, is that the last of the Installments (6th Installment) due to the depositors and unsecured creditors would be paid to the Company within two years from the

payment of the balance of the 5th Installment. The interest due to the depositors would be paid by the Company within two years from the date of the payment of the 6th Installment and that the above-said payments would be made "notwithstanding the non-availability of adequate power supply to Globe Steels Division of the Company." He had also further stated that the Company had to pay this amount from its own resources and in the event of any shortfall the same shall be arranged by him either by himself or through his associates or from other sources. The amounts so arranged by way of loan will be subject to such terms and conditions relating to interest and security as may be decided by this Court keeping in view the prevailing bank rate of interest and the market rate of interest etc. He had agreed that in the event of his being in default, of his undertaking as per the proposals made by him, it would be obligatory for him including his associates, to convert equity share capital of Globe Motors Ltd., a sum of Rs. 10 lakhs out of Rs. 20 lakhs provided by him and by his associates by way of guarantee unless and until the court relieves I him of this obligation, for sufficient cause shown.

(7) At a time when Mr. Ved Vyasa was endeavoring to show that the Company was not in a position to obtain ever) institutional finance because of the association of V. K. Mundhra with the management, other sources of raising of capital not being found to be feasible, V. K. Mundhra came out with the. above-said proposal of not only providing further finance and to repay the above said sum of Rs. 6, 50,000.00 When the question of finding sufficient financial resources were being discussed the Punjab National Bank Ltd., through its counsel Mr. K. K. Jain, had also intervened with proposals that they would be able to finance the running of the Company subject to certain terms. Such a proposal had been made earlier by Mr. Ved Vyas but this dormant proposal was revived as a result of discussions in public Court regarding this. V. K. Mundhra's offer to come forward with the above proposals, as they have finally emerged (which were improved by him from time to time) may in a sense be said to have been provoked not only by the accusations against him but also by the intervention by the Punjab National Bank Ltd.

(8) It is needless to be detained about the allegations and counter allegations which Mr. Ved Vyasa and Mr. Sanghi were hurling at each other's clients. It does not appear necessary, at least at present, to go into such accusations. Such attacks seem to have become part of the current business ethic! They are freely restored to when business interests are believed to be promoted by such technique; there does not even appear to be any hesitation to extend this technique even to others who are charged with the duty of having to deal with them.

(9) When the proposals made by Mundhra and the above Bank were being discussed the question was finally debated, whether further proposals, by any other except what have been made by V. K. Mundhra by way of making the working of the existing scheme were feasible, could at all be considered.

Meantime it was considered necessary to explore whether the Luk Auto Ancillaries Ltd., of which the Globe Motors Ltd. is the holding company (holding 51 per cent shares) and the Malleable Castings Foundry, a unit of the Globe Steels Division which had been defunct, could be put to any productive use. Feasibility reports were asked for concerning them. It was ultimately found that it was better to advertise for sale of shares of Globe Motors Ltd. in the Luk Auto Ancillaries Ltd. The question of feasibility of the running of the Malleable Castings Foundry of the Globe Steels Division, which according to the report given by Jai Dev Chandhok (a member of the managing committee), requires further finance of Rs. 14 lacs to make it productive, is still under consideration. In response to the advertisement to sell the shares of the holding company in Luk Auto Ancillaries India Ltd. there have been several bids received and after they were received there have been higher bids offered, than already offered, by those who have sent their bids to this Court in time -that is under consideration. The question whether the Punjab National Bank Ltd. would be interested in financing the Malleable Casting Foundry of the Globe Steels Division and/or of the Luk Auto Ancillaries (India) Ltd. (if it should become necessary) is being explored, if these result in sizable amounts of money coming in the future time required to be taken to repay the creditors of the company may be still further reduced. The position regarding two secured creditors, namely, Punjab and Haryana Industrial Corporation and the National and Grindlays Bank Ltd. seems manageable.

(10) Mr. Veda Vyasa, however, tried to show that judging by certain photostat copies concerning certain heats of certain debts, there was none to respect fraudulent concealment of "heats" in the Globe Steels Division with a view to making private and illegitimate profit. The Internal Auditor, whom I had directed to make an informal enquiry into this matter and submit a report, did not find anything wrong as alleged. Mr. Veda Vyasa was taking me through some further aspects which, according to him, required further investigation. I am not, however, going into the details of these allegations at this stage except to notice that the arguments of Mr. Veda Vyasa on this question were not completed when other issues became more pressing as set out above. It seemed that orders were needed urgently concerning whether the scheme could be worked, with or without modification, or whether there had to be a winding up. It was urged by Mr. Sanghi that the proposals made by the Punjab National Bank Ltd. could not be considered because the only consideration before the Court now is whether the Scheme, which was approved by this Court, could be continued for any further period with or without modifications.

The relevant provisions of the Scheme only some of which have been extracted above, do show that the depositors had to be paid the amount due to them on account of the principal sum of the depositors in six Installments spread over a period of four years as detailed therein (vide clause 3 Preliminary) ; this has not been done.

(11) In order to appreciate the legal position it is necessary to notice the change

brought about in this respect by the Companies Act, 1956 after the introduction of Section 391 instead of the old Section 53 of the Act of 1913. The position under the old Act was explained by the Judicial Committee in AIR 1938 284 (Privy Council) . Any scheme of arrangement which had become operative by virtue of the sanction given by the Court u/s 153 of the old Act (of 1913) became binding on the creditors and shareholders of the company whose terms could thereafter be varied by the Court only after the variation had been approved at a meeting of the creditors and shareholders. The Judicial Committee repelled the argument that it was possible for a company and its Directors to vary the Scheme under the guise of a compromise with the creditors and shareholders; there could be no validation by mere acquiescence of the shareholders and creditors. In *In Re: Natore Kamala Bank Ltd.*, , Lord Williams, J. had held that powers of the Court u/s 153 of the old Act were strictly limited; the Court may either sanction or refuse to sanction a scheme approved by a company and its creditors or members and the Court has no power upon an application, to alter the scheme which has been sanctioned by the. Court after having been approved by the creditors and member without giving them a fresh opportunity for considering the scheme in the way the Court proposed. Since this result was found extremely inconvenient in practice the Legislature brought in a new provision, namely, Section 392, giving the Court power to sanction modification of the scheme, already approved by it, without directing a fresh meeting of the creditors and members. Since there was nothing more in the old Act than the said provision (section 153) corresponding to present Section 391, and there was no further provision corresponding to present section 392, the legislature thus clearly intended to clothe the Court with such special powers in the larger interest of over-seeing whether the scheme was being worked satisfactorily or with some modifications; the Court could, even without giving an opportunity to the shareholders and creditors to consider those modifications, order the existing arrangement to continue instead of winding up the Company. It is a permissible manner of gathering legislative intent by seeking to find out the mischief to be avoided and the remedy to be promoted. On the language of Section 392 and in the above context, it appears that an alternative has now been given to the Court to order winding up in the event of a scheme already approved by the Court not being possible to work, with or without modifications". It may be noticed that the power u/s 392 to do so has been conferred on the Court in a manner that will permit the exercise of the said power not only on any application made to it but even suo motu. The Supreme Court also, in order to carry out the legislative intent, has drawn up the aforesaid Rules 86 and 87. The said Section 392 as well as the above said Rules clearly indicate the Court's power to modify the Scheme, lo which sanction had already been given without directing, a fresh meeting, if the same was necessary and without resorting to winding up.

A similar view appears to have been taken by Rajindar Sachar, J. in *The New Bank of India Ltd. v. Messrs Anand Finance (P) Ltd. & Others* (C.A. 596 of 1973

and C.A. 128/68 and C.P. 95 of 1973, decided on 7-2-1974. The contention before Sachar, J. was that the scheme of arrangement in that case, sanctioned on 29-7-1968, lapsed automatically on 21-1-1971 when 2-1/2 years, mentioned in the scheme, ran out. The contention was put forward before Sachar, J. that unless the Court was clearly satisfied that the scheme could not be worked on the expiry of the period fixed the scheme would automatically lapse; this contention was repelled. It was pointed out by Sachar, J. that the decision of the Supreme Court in J.K. (Bombay) P. Ltd. Vs. New Kaiser-I-Hind Spg. and Wvg. Co. Ltd. and Others, did not lay down anything to suggest that a scheme lapsed on the expiry of the period mentioned in it. After the above (and on many other points arising in that case) decision by Sachar, J. there was an appeal against his decision in Company Appeal No. 11 of 1974. My Lord the Chief Justice and V. S. Deshpande, J., while dismissing the appeal, summarised (speaking through Deshpande, J.) Sachar, J.'s finding on the above said point as follows :

"The arrangement sanctioned on July 29, 1968 had not come to an end even though the time specified therein for the payment of the debts by the holding company had expired."

(12) My attention has been drawn by Mr. Sanghi to an un-reported judgment of the Calcutta High Court in C.A. 32 of 1970 (Re : Bangodaya Cotton Mills Ltd.), decided by A. N. Sen, J. on 22-5-1973 in which the aspects and the cases referred to by me have been discussed. The learned Judge also held that the contention, which was put forward to the effect, namely, that the Court had no power to accord any sanction to modification of the scheme which already has been sanctioned without directing a fresh meeting, was not sound and that the Court enjoyed such a power under the Companies Act of 1956 and the rules framed there under, as noticed above. It may also be noticed that A. N. Sen, J. was inclined to place reliance upon the fact that though there was opposition by some to the modification, which in that case was by way of extending the time for payment in terms of the scheme, the majority of the creditors had not appeared from which fact A. N. Sen, J. inferred : "Therefore I can reasonably infer that the majority of the creditors do not have any objection to this particular modification." In granting the extension, which was the modification asked for by the company, A. N. Sen, J. took into consideration the industrial climate of the State when the order was passed.

I am now fortified in the view I am taking now not only by the observations made by Sachar, J. (which do not appear to have been dissented from in any manner by the Division Bench) and by the decision of A. N. Sen, J., but also by the fact that, even on grounds of propriety, nearly 67 per cent of the creditors (in terms of amounts due to them) have informed V. K. Mundhra that they wish the existing scheme to be continued for a further period as proposed by V. K. Mundhra, to which I shall refer presently.

(13) What is now contended before me by Messrs K- K. Jain and Ved Vyasa is not that I should wind up the company but that I should convene another meeting of

the creditors and shareholders for the purpose of seeking their approval to the modification and while doing so may also place before them the proposals made by the Punjab National Bank Ltd., Having given this contention my earnest consideration it does not appear to be tenable. As at present advised it seems to me that when a scheme has been approved already by the Court it is in duty bound to find out, even when the scheme has not worked as expected, and when the creditors have not been paid within the time originally provided for, whether with any modification, which expression obviously includes extension of time, the existing scheme can be worked. This power, it is worth emphasising by way of repetition, could be exercised even suo motu by the Court. The shows not only the ambit of the power conferred on the Court but also the responsibility placed on it in this regard. In a situation like this the Court is really concerned with those who will be primarily affected--- In this case they are the creditors who are yet to be fully paid and as early as circumstances may permit. Such further directions, by way of safeguards, which the Court would like to make in a situation this, would however, depend upon the facts and circumstances of each case. In which V. K. Mundhra had to repay the creditors and depositors a substantial period, nearly two years, has been affected by the power position. It is needless to refer to the manner in which the production, which originally was as high as nearly 1500 M tons per month when power supply was available dropped to a few hundred tons lately.

(14) This is something over which no body had any control the power position is expected to improve shortly in view of a new thermal station. V. K. Mundhra has also stated that regardless of the power position he would honour his commitment to repay the creditors within the time specified by him.

(15) When V. K. Mundhra's new proposals were being discussed on 19-12-1974 a request was made to me by Mr. G. L. Sanghi that in view of the fact that the case was going to be adjourned beyond the X'mas vacation his client might ascertain the views of the depositors and creditors and report to the Court. At this stage Mr. Ved Vyasa was only suggesting that even if it was not obligatory on the courts part to consult the creditors it may be necessary to ascertain their views regarding whether they agreed to the time being extended for payment of the amounts due to them. In this light I agreed to V. K. Mundhra finding out from the depositors and creditors what they had to say. By affidavit dated 20-1-1975 V. K. Mundhra informed this Court that he had sent a printed circular dated 23-12-74 (as per Annexure A to the said affidavit) explaining the position that the approval of those proposals could be communicated. The affidavit mentions that 954 depositors and unsecured creditors representing Rs. 57,26,229.18 in value of fixed deposits and liabilities owned to them by the company (nearly 67 per cent) had communicated to him in writing their consent; their names, addresses and value of deposits- and the liabilities were also disclosed in Annexure C to the said affidavit. Some more creditors are stated to have written to V. K. Mundhra subsequently expressing their consent to the continuance of the existing Scheme for the above mentioned period. While V. K. Mundhra had, it was mentioned at

the bar, subsequently received letters of consent from some more creditors and depositors, it is important that as the question was discussed, spread over a month even later, no further opposition to the extension of the period of the Scheme with modification, than what is urged by the clients of Mr. Ved Vyas, has been received in this Court.

Certain objections were raised by Mr. Ved Vyasa as well as by the Punjab National Bank Ltd. to V. K. Mundhra having sent the above circular letter to the depositors and creditors without pointing out that another proposal by the Punjab National Bank Ltd. had been made. In this connection it may also be noticed that N. D. Kapur, on behalf of Globe Motors Creditors Association, had sent out yet another notice to not only the creditors who are members of the Association but also to some others (creditors over a certain sum of money) explaining the circumstances in which it had become necessary to extend the existing Scheme for a further period (as stated above) and also making reference to the proposals given by the Punjab National Bank Ltd. (said to represent the Sahu Jain Group). Mr. Ved Vyasa points out that the proposal of the Punjab National Bank Ltd. had not been correctly represented because it did not incorporate the further amendment made by the Punjab National Bank Ltd. (to its original proposal) concerning the possibilities of appeal against the sanctioning of a new Scheme and about the provision of a second charge.

(16) It is needless to be detained by these considerations because the essential question, which arises for consideration, is whether the already existing Scheme in operation is to be extended for a further period subject to the modifications discussed above. In this view there is no need to be detained by the consideration whether the Punjab National Bank Ltd., is willing to pay the creditors in full within the identical or nearly equal period, as proposed by V. K. Mundhra. What is more material is that whether this proposal of V. K. Mundhra or of anybody else, like the Punjab National Bank Ltd., is to be adopted, the payment to creditors is going to take some more time. In other words, the necessity of this Court having to exercise control over the Globe Motors Ltd., whatever course is adopted, is going to spread over a further period. This being so the sole question for consideration is whether it will be more in the interest of the creditors and shareholders (or even in the national interest) to wind up the Globe Motors Ltd. and along with it the Globe Steels Division, which is now functioning and has the potentiality of paying the creditors and preserving it as a going concern for the members also or the existing Scheme should be continued for a further period by granting an extension of time for this purpose and also provide such further safeguards as may ensure proper working of the Scheme without allowing any one to exploit the situation for his own private ends. It seems obvious that the latter course would be best to adopt in the circumstances. As I have already indicated the question of whether any private profit has been made already by V. K. Mundhra, as alleged on the basis of certain heats (photostat copies of which were made available to the Internal Auditor as well as to this Court) is a matter which requires further consideration than what

lias yet been possible. This need for such investigation could only be considered by having the services, as I shall presently explain, of a technical person on the Managing Committee. I wish to make it clear that if anything results from such investigation indicating that private advantage has been taken by V. K. Mundhra and those with whose assistance he is working the Scheme than, on this sole ground, V. K. Mundhra would be removed forthwith from the Management, regardless of the course that is now being taken; what turner and consequential steps have to be taken would then be considered. I am now v proceeding further with the proposal of V. K. Mundbra on the materials placed before me and the report submitted by the Internal Auditor on this question, nothing having been yet placed before me which should induce me to go more fully into this question even now, i.e., before extending the period fixed h the original Scheme.

(17) Regarding the contention pertaining to suggestions for improvement made by the technical body, namely, the technical aspects pertaining to performance-improvement of the Globe Steels Divisions, it does not seem possible to enter into them right now, especially when power supply is not adequate. The direction, which I will be giving presently, that there should be a person having the needed technical expertise to serve on the Committee would, I trust, take sufficient care of this aspect.

(18) The narration of facts and the discussion of the legal position do not warrant the winding up of the Globe Motors Ltd", and along with it the Globe Steels Division, which has been working fairly successfully in the past (production of which has lessened appreciably because of reduction in power supply would come to a grinding halt and would no longer be the potential source that it has been for repaying the creditors). If any further safeguards have to be taken in order to ensure that there will be no possibility of any misuse, as it has been apprehended, by the clients of Mr. Ved Vyasa, these could well be taken.

(19) There are at present two vacancies to be filled up : one in place of Saluja who has resigned and the second in place of P. N. Handa. In the place of one of them, namely, that of Saluja, I appoint the Internal Auditor as a member of the Managing Committee. This is to ensure that he would promptly bring to the notice of the Court anything happening at the Committee meetings and would thus be a more effective watch-dog of the interests of the depositors and creditors than even what he could be at present; it would also be possible for him to take even greater initiative, in the matter of making his suggestions for the better performance of the Globe Steels Division in particular and generally towards the payment to the creditors in full within as short a time as may be possible. He will continue to be the Internal Auditor on a full-time basis, as already appointed, which would not be hundred in any manner by his being a member of the Committee, but could only be helped further. I do not propose to allow any further additional remuneration to him for this purpose except that he, like any other member of the Committee, would draw the usual sitting fee alone, for attending the meetings of the Committee.

(20) Regarding the second vacancy, the one caused by the resignation of P. N. Handa, I direct that an advertisement would be made in the Financial Express, Delhi. Statesman Calcutta and the Economic Times of Bombay calling for applications from one who has had experience in running any public sector unit of a similar kind. The relevant qualifications etc. concerning applicants will be fixed by me, when a draft form of advertisement is put up before me by the Company. The intention is that if such a person who has retired from a public sector unit, suitably qualified, is available and is willing to be so appointed he would not only serve on the Managing Committee and be present at its meetings but would also act as a "full-time technical adviser to supervise all day to day matters and direct all technical operations. it would be only fair to pay that person also the emoluments (plus the usual sitting fee for attending meetings of the Managing Committee) that will be available to any retired officer from the public sector when he is re-employed. The appointment will be for such time as shall be approved by Court from time to time. If no such person is available for being appointed I shall revert to the question of filling up this vacancy in the Managing Committee later. It seems to me that the cost of having such a person also on the Committee and to generally supervise the Globe Steels Division would more than offset by the gains that may ensure to the Company, which I mean to include the depositors and creditors, provisionally. I expect that the presence of the Internal Auditor, who is already familiar with the working of the Company and has expertise in accounts, coupled with a person having the requisite technical knowledge will ensure a kind of performance of the Globe Steels Division that may be desired as well as ensure fidelity of accountability etc.

I also direct that everyone of the meters which would register the electric energy consumed by each of the furnaces will be maintained efficiently and without break of continuity so that it may be possible to check from the energy consumed the number of heats cut of each furnace, and this may itself act as a possible check on abuse.

(21) Liberty to give such further directions, in the matter of such further safeguards as may be necessary in the light of the further working of the Globe Steels Division, particularly in the light of such reports as may be forthcoming from not only the Internal Auditor but also from the person with technical, competence whom I propose to appoint to serve on the Managing Committee and to rearrange the schedule and time of payments, if necessary, is hereby reserved.

(22) Subject to the above conditions the further proposals of V. K. Mundhra are accepted and the working of the Scheme extended accordingly. The proposals made by V. K. Mundhra from time to time will be consolidated by him in one compact affidavit to be filed before the registry within a week from today, and will, after being seen and approved by me be made an annexure to this Order.