IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2022

Pronounced on : 08.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**

and

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

O.S.A.Nos.402 to 406 of 2008
and O.S.A.No.188 of 2009 and O.S.A.Nos.356 to 360 of 2011

O.S.A.Nos.402 to 406 of 2008

T.Palanivelu ... Appellant in all O.S.A Nos.402 to 406 of 2008

Vs.

Thiruveni Travels Limited
Thiruveni Nagar, Vadakkupattu Village & PO
Singaperumal Koil, Chengelpattu 603 204.
Represented by its Director Mr.C.Muthusamy

...Respondent in all O.S.A No.402 of 2008

Rural Business Development Company Limited,
Thriveni Nagar, Vadakkupattu Village & PO
Singaperumal Koil, Chengelpattu 603 204.
Represented by its Director C.Muthusamy

...Respondent in all
O.S.A No.403 of 2008

Rural Business Development and Housing Finance
Corporation Limited,
Thriveni Nagar, Vadakkupattu Village & PO
Singaperumal Koil, Chengelpattu 603 204.
Represented by its Director C.Ganesan

...Respondent in all
O.S.A No.404 of 2008

Kodaikanal Finance Limited
Thriveni Nagar, Vadakkupattu Village & PO
Singaperumal Koil, Chengelpattu 603 204.
Represented by its Director C.Muthusamy

...Respondent in all
O.S.A No.405 of 2008

Kodaikanal Leasing Limited
Thriveni Nagar, Vadakkupattu Village & PO
Singaperumal Koil, Chengelpattu 603 204.
Represented by its Director C.Muthusamy

...Respondent in all
O.S.A No.406 of 2008

Common Prayer: Original Side Appeals are filed under Order XXXVI Rule of O.S Rules and Clause 15 of Letters Patent and U/s 483 of the

Companies Act 1953 against the order and decreetal order of this Court in C.P.Nos.73 to 77 of 2006 and dated 21.07.2006.

O.S.A.No.188 of 2009

TVS Finance & Services Ltd.
A Public Limited Company incorporated
Under the Companies Act, 1956 and having
its Registered Office at No.22, Jayalakshi
Estates, Haddows Road,
Chennai – 600 026.
Represented by its authorized signatory
Mr.G.Saikumar. ... Appellant

Vs.

1.Thiriveni Travels Limited
A Company Registered under the
Companies Act, 1956 and having its
Registered Office at:
Thirveni Nagar, Vadakkupattu Village and P.O.
Singaperumal Kovil,
Chengalpattu 603 204.
Represented by its Director
Mr.C.Muthusamy

2. M/s.Rural Development Co.Ltd.
A Company Registered under the
Companies Act, 1956 and having its
Registered Office at:
Thirveni Nagar,

Vadakkupattu Village and P.O.
Singaperumal Kovil,
Chengalpattu 603 204.
Represented by its Director
Mr.C.Muthusamy

3. M/s.Rural Dairy Development &
Housing Finance Corporation Ltd.,
A Company registered under the
Companies Act, 1956 and having its
Registered Office at:
Thirveni Nagar,
Vadakkupattu Village and P.O.
Singaperumal Kovil,
Chengalpattu 603 204.
Represented by its Director
Mr.V.Ganesan

4. M/s.Kodaikanal Finance Limited,
A Company Registered under the
Companies Act, 1956 and having its
Registered Office at:
Thirveni Nagar,
Vadakkupattu Village and P.O.
Singaperumal Kovil,
Chengalpattu 603 204.
Represented by its Director
Mr.C.Muthusamy

5. M/s.Kodaikanal Leasing Limited,
A Company Registered under the
Companies Act, 1956 and having its
Registered Office at:
Thirveni Nagar,
Vadakkupattu Village and P.O.
Singaperumal Kovil,
Chengalpattu 603 204.
Represented by its Director
Mr.C.Muthusamy

...Respondents

Prayer: Original Side Appeal is filed under Order XXXVI Rule 9 of O.S Rules and Clause 15 of Letters Patent against the order dated 14.08.2008 of this Court in Com.Appln.No.1062 of 2007 in Comp Petition Nos. 73 to 77 of 2006.

O.S.A.Nos.356 to 360 of 2011

Saalai Kadhambha Mani ... Appellant in All O.S.A.Nos.356 to 360 of 2011

Vs.

Thriveni Travels Limited
Represented by its director,
C.Muthuswamy,
Vadakkupattu Village & P.O,

Singaperumal Koil
Chengalpattu – 603 204.

...Respondent in
O.S.A.No.356 of 2011

Rural Business Development Company Limited,
Represented by its Director C.Muthusamy
Vadakkupattu Village & PO
Singaperumal Koil, Chengelpattu 603 204.

...Respondent in
O.S.A.No.357 of 2011

M/s.Rural Dairy Development &
Housing Finance Corporation Ltd.,
Represented by its DirectorMr.V.Ganesan
Thirveni Nagar,
Vadakkupattu Village and P.O.
Singaperumal Kovil,
Chengalpattu 603 204.

...Respondent in
O.S.A.No.358 of 2011

M/s.Kodaikanal Finance Limited,
Represented by its Director Mr.C.Muthusamy
Vadakkupattu Village and P.O.
Singaperumal Kovil,
Chengalpattu 603 204.

...Respondent in
O.S.A.No.359 of 2011

M/s.Kodaikanal Leasing Limited,
Represented by its Director Mr.C.Muthusamy
Vadakkupattu Village and P.O.
Singaperumal Kovil,
Chengalpattu 603 204.

...Respondent in
O.S.A.No.360 of 2011

Prayer: Original Side Appeals are filed under Order XXXVI Rule 11 of O.S Rules and Clause 15 of Letters Patent and U/s 483 of the Companies Act 1956 against the order and decreetal order of this Court in C.P.Nos.73 to 77 of 2006 and dated 21.07.2006.

For Appellant
in O.S.A.Nos.402 to 406 of 2008 : Mr.H.Karthick Seshadri

For Appellant
in O.S.A.No.188 of 2009 : Mr.Arun Pradeesh
for Mr. Anand Abdul

For Appellant
in O.S.A.Nos.356 to 360 of 211 : Mrs.E.Abirami
for Mr.V.Ragavachari

For Respondents
in O.S.A.Nos.402 & 403 of 2008
and O.S.A.Nos.356 & 357 of 2011 : Mr.P.S.Raman
Senior Advocate
assisted by
Mr.S.R.Raghunathan
Mr.V.Anil Kumar

For Respondents in O.S.A.No.188 of 2009 and O.S.A.Nos.359 & 360 of 2011 and O.S.A.Nos.405 & 406 of 2008	: Mr.S.R.Rajagopal Senior Counsel assisted by Ms.S.Vanshini
For Respondents in O.S.A.No.358 of 2011 and O.S.A.Nos.404 of 2008	: Mr.T.K.Bhaskaran assisted by Mr.P.Aravind

C O M M O N J U D G M E N T

(Common Judgment of the Court was delivered
by SUNDER MOHAN, J.)

These appeals are filed challenging the common order dated 21.07.2006 passed by the learned Single Judge in C.P.Nos.73 to 77 of 2006 approving the Scheme proposed by five sponsoring Companies, for the seventeen Companies called the Scheme Companies. The appellant in O.S.A.Nos.402 to 406 of 2008, is one T.Palanivelu and the Appellant in O.S.A.Nos.356 to 360 of 2011 is one Saalai Kadhamabha Mani. Both the appellants have preferred the above appeals in their capacity as

Ex-Director of the Company by name Madras Motor Finance and Guarantee Company Limited (MMFGL). The appellant in O.S.A.No.188 of 2009 is TVS Finance and Service Ltd.

2. The facts have been elaborately set out in the order of the learned Single Judge which is impugned in these appeals. We do not wish to state all the facts in this order. However, briefly we may state the facts leading to filing of the above appeals which are as follows:

(a) In the year 1975, a partnership by name MMFGL (Madras Motor Finance and Guarantee Company Limited) was incorporated. The partners of the Firm died and one Sivan Nair took over the affairs of the Company. The partnership thereafter became a Public Limited Company. Sivan Nair and his associates floated twenty two companies. The Companies accepted deposits from the public and funded another Company by name Santhana Dharma Gurukulam Limited (SDGL) which was one of the twenty two companies and was running a school. The companies purchased nearly 700 acres of land in Vadakapattu and Palur Village, Chengalpattu District. The companies defaulted in repayment of the deposits and they were facing financial crisis. In the year 1994, one P.Rajarathinam and Sivan Nair entered into an Agreement by which Mr.Sivan Nair handed over the management of sixteen companies to P.Rajarathinam Group (P R Group). The said group mismanaged the affairs of the companies and several companies of the twenty two companies went into liquidation.

(b) There were three public companies namely Madras Motor Finance and Guarantee Company Limited (MMFGL), Santhana Dharma Gurukulam Limited (SDGL), and Udaya Business Financiers Limited (UBFL) out of the 22 companies. In the year 1995 and 1996, Company Petitions were filed by the creditors for winding up of the above said three Public Limited Companies. A Provisional Liquidator was appointed on 19.04.1996. Since the liquidator faced difficulty in taking possession of the properties of Madras Motor Finance and Guarantee Company Limited (MMFGL), due to non-cooperation of the persons in charge of the companies, this Court by the order dated 21.07.1997 appointed one Kalavathi as Administrator. Thereafter, since she wanted to be relieved, the

Court appointed one Mr.Ayanaswamy and after him one Mr.P.N.Vedanarayanan.

(c). This Court appointed Mr.C.Harikrishnan, learned Senior Advocate on 21.06.1997 to assist the Official Liquidator to investigate into the affairs of the Companies and file a report. Mr.H.Karthik Seshadri, learned Advocate was appointed on 23.06.1999 to assist the Senior Advocate. In December 1999, the learned Senior Advocate, filed a report. Meanwhile, UBFL and SDGL were ordered to be wound up by this Court on 12.11.1996 and 10.08.1999 in C.P.Nos. 156 of 1995 and 187 of 1995 respectively. Thereafter, this Court directed winding up of Madras Motor Finance and Guarantee Company Limited (MMFGL) in C.P.No.72 of 1996 by the order dated 26.11.2001.

(d) The learned Senior Advocate in his investigation report detailed the nature of the activities of the Companies and suggested the course of action to be adopted. The learned Senior Advocate stated that in 1994, the Directors of the Companies were all the nominees of one P.Rajarathinam. The report stated that the inter-related holdings and the mixture of funds indicated that all the twenty two companies were part of a common unit.

The Companies were floated to get over the ceiling of receipts of deposits from the public. The funds of Madras Motor Finance and Guarantee Company Limited (MMFGL) and other Companies were diverted to Sanathana Dharma Gurukulam Limited, (SDGL). The learned Senior Advocate therefore suggested to declare that all the twenty two companies of Madras Motor Finance and Guarantee Company Limited (MMFGL) group as a single unit. The learned Senior counsel made several suggestions. The learned Senior Counsel castigated Mr.Rajarathinam and his nominee Directors and suggested that they should not deal with the assets of any of the Companies. According to the Chartered Accountants, the liabilities of Madras Motor Finance and Guarantee Company Limited (MMFGL) as on 31.3.1995 would be Rs.72 Crores if the interest component is eliminated. The major liabilities of Sanathana Dharma Gurukulam Limited, (SDGL) would be about Rs.12 Crores. Thus, the total liabilities would be Rs.84 Crores out of which Rs.38 Crores would be to the Institutions and Rs.46 Crores to the public which were collected by way of deposits. The relevant portions of the report of the learned Senior Counsel is extracted hereunder:

"17.The firm of Chartered Accountants have stated that if the Interest component is totally eliminated in the major liabilities of MMFGL, the outstanding as on 31.03.95 would only be about Rs. 72 crores. Their statement in this direction is made as an Annexure.

18.According to the firm of Chartered Accountants, the major liabilities as on 31.03.95 of SDGL apart from inter company transactions would be about Rs. 12 crores and that too mostly to Banks.

In the above liabilities total of 84 crores, 38 crores would be to the Institution and balance 46 crores to the Public by way of Deposits. If this portion is resumed and arrived at as a basis for finding a solution, a sum of Rs. 84 crores will have to be found. What are the sources?

As already suggested, all the 22 companies, if treated as a single unit, something like 700 acres with a school complex and a few buildings are available. Even if they are sold as a complete unit, in the current market trends they may not fetch more than Rs.50 crores. There is a Capital Gains liability that should be kept in view. Though Mr. C. Harikrishnan is not in full agreement with the opinion *expressed by the tax expert, Mr. V. Ramachandran, this problem is not to be ignored.*

Mr. C. Harikrishnan is of the view that under the facts and circumstances, there cannot be any capital gains if it is sold as a unit. However, it is highly doubtful whether any single buyer in the present context would venture investing of such huge money into this proposal.

The only institution which has come forward showing some interest and making concrete proposal is Kanchi Math. Kanchi Math may be persuaded to take over. Any amount realised by such transaction may be distributed to Banks first after the scaling down. If the amount is insufficient, the Committee of Depositors suggested may negotiate with the Banks and arrive at a consensus of distribution.

Alternatively, the Official Liquidator may be directed to call for offers of purchase of a composite unit of all the lands at Chengleput, and if any proposals are made the same may be examined.

If none of these above suggestions are found to be workable, only one course is available, v.i.z. direct the *winding up of the company and allow the law to take its course."*

In the report, the learned Senior Advocate suggested exploring the possibilities of selling the lands as one composite unit and also expressed doubt as to whether a single buyer would venture investing so much money. He also suggested that if it was not possible to sell the lands, the only course available was to direct winding up the company and allow the law to take its course. The liquidation proceedings were pending in respect of other Companies also. After this report, nothing happened and a stalemate prevailed. The secured creditors were unable to realise their money. The Depositors did not get any money. Many of them were old and some of them died. The statutory authorities also could not realise their claims.

4. While so in the year 2005, it appears that one Mr.Niranjan Hiranandani was inducted into MMFGL Group of Companies by the PR Group. On 13.12.2005, the said Mr.Niranjan Hiranandani filed a petition in C.A.No.16 of 2017 in C.P.No.72 of 1996. C.P.No.72 of 1996 for

winding up of Sanathana Dharma Gurukulam Limited, (SDGL). In the application filed by the Mr.Niranjan Hiranandani, it has been stated that he was inducted as Director of Sanathana Dharma Gurukulam Limited, (SDGL) and that the said Company along with four other companies are sponsoring a Scheme for reconstruction and revival of operations of the companies and for scheme of arrangement and compromise with creditors; that Rs.34 Crores would be brought in for liquidation of all liabilities of the companies that have been wound up and other group Companies. The said amount of Rs.34 Crores would be utilised for full and final settlement of all claims of the deposit holders, secured and unsecured creditors in consideration for transfer of lands standing in the names of various companies to the sponsoring companies. The sponsoring companies were keen to revive the academy as well, to develop the land for putting up IT Parks, Residential Township, Commercial and Special Economic Zones, Hospital and for other activities.

5.In 1996, the sponsoring five companies filed petitions in C.P.Nos.73 to 77 of 1996 to approve a Scheme. The scheme broadly suggested that the sponsor companies would bring in Rs.34 Crores for discharging the liabilities of all the Companies through private negotiations, to commence immediate operations of the Academy, to develop the lands under occupation by putting up IT parks, Residential Towns, Commercial and Special Zones, Hospital and for other activities. On such discharge, the lands standing in the name of the scheme companies would be transferred to the sponsoring Companies. Similarly, applications were filed in various Company Petitions praying for stay of liquidation proceedings pending approval of the scheme.

6.On 21.01.2006, the Appellant in O.S.A.No.402 to 406 of 2008 filed an application objecting to the scheme in C.P.Nos.197 of 1995 and 194 of 1997 and to consider his offer of Rs.45 Crores for the purchase of assets of the School in the place of the scheme suggested by the sponsoring companies. He had stated that he was filing the application on his own behalf and for the benefit of the Madras Motor Finances and Guarantee Company Limited (MMFGL) as he was the Director of the said Company. However, the said application was not pursued and never numbered.

7. On 29.01.2006 and 30.01.2006, the meeting of the Shareholders and the Depositors respectively was conducted by the Chairman appointed by the Court. In February 2006, the Chairman filed a report before this Court. Certain suggestions were made by the Depositors to the scheme and the suggestions were incorporated as requested by the Depositors by the Chairman as could be seen from his report. The main suggestion was that after the words Rs.34 Crores "or such other higher amounts were to be added." This was incorporated. This ensured that the sponsoring companies had to bring in more than Rs.34 Crores if necessary for settlement of claims.

8. When C.P.Nos.73 to 77 of 2006 for Approval of Scheme were taken up for hearing, one Whitemist Seacraft Industries Private Ltd., Company represented by the appellant in O.S.A.Nos.402 to 406 of 2008 filed objections to the Scheme. The Appellant in O.S.A.Nos.356 to 360 of 2011 filed his objections. A Depositor's Association claiming to have 186 depositors as members objected to the Scheme. The learned Single Judge

after evaluating the scheme and the objections raised by the objectors held the Scheme to be fair, in the interest of the public and sanctioned the scheme.

9.The sponsoring Companies who propounded the Scheme filed the Compliance Report within six months from the date of the order and this Court accepted the Compliance Report. The appeals have been filed against the order dated 21.07.2006 passed by the learned Single Judge approving the scheme.

10.When the matter was taken up for hearing, the respondents filed a Memo dated 04.07.2022 stating that after the sanction of the Scheme of arrangement and compromise with creditors by this Court on 21.07.2006 the Scheme was implemented and the sponsoring companies namely the respondents were discharged by the order dated 19.12.2006. The respondents therefore submitted that due to post implementation of the scheme, nothing survives in the above appeals. The appellant in O.S.A.Nos.402 to 406 of 2008 filed a counter memo dated 10.10.2022 stating that the appeal challenges the very order sanctioning the scheme and the respondents cannot contend that the appeals have become infructuous because the scheme has been implemented. The appellants submitted that this Court will have to necessarily examine the legality and validity of the impugned order of this Court sanctioning the scheme.

11. In view of the submissions made by the learned counsel for the appellants, we heard the appeals on merits. Mr.Karthick Seshadri, learned counsel for the appellant in O.S.A.Nos.402 to 406 of 2008 submitted as follows:

(a) that the Scheme lacked transparency and was in breach of the statutory provisions of the Companies Act. The sponsoring companies did not furnish any details as regards the outstanding liabilities of the companies to the depositors. The scheme also did not provide particulars as to how many properties were offered as security to the secured creditors and the details of actual outstanding to the various secured creditors. The learned Judge did not call for the report of the Official Liquidator and that of the Registrar of Companies before sanctioning the scheme. The report of Mr. C.Harikrishnan, learned Senior Advocate was of the year 1999 and his observation that the value of the liabilities exceeded the value of the assets was made in the year 1999 and the same cannot be made the yardstick to accept the scheme in the year 2006 by which time, the property value became higher. The notices to the Shareholders and the Depositors were not issued as per the Provisions of the Companies Act and the Company Court Rules. The Depositors meeting was attended only by 258 persons physically and some others by proxy which were all exercised by Executive Directors of PR Group and the total members represented only 10% of the outstanding claims. There was no meeting of Shareholders of the seventeen scheme companies whose assets was transferred to the sponsoring companies. The affairs of the companies were carried out against public interest. This Court was a custodian to the assets and this Court ought to have ensured that the best value was obtained for the assets in order to serve public interest. The statutory framework under Sections 391 and 394 of Companies Act, 1956 provides for fair and transparent method to ensure that there is no unlawful and illegal gain by any Stakeholder in the course of winding of the

Company and these provisions have been violated while accepting the instant scheme.

(b)The scheme was nothing but sale of assets of seventeen companies to the so called five sponsoring companies. The learned Single Judge adopted the same approach as the Division Bench of the Bombay High Court in ***Shree Niwas Girni Kamgar Kruti Samiti vs. Rangnath Basudev So many and others*** reported in ***(2005) 127 Com Cas 752***. On appeal, the Hon'ble Supreme Court in ***Meghal Homes (P) Ltd. Vs.Shree Niwas Girni Samiti and others*** reported in ***(2007) 7 SCC 753*** held that any attempt to dispose of the assets of the company in liquidation in the ruse of a scheme was impermissible, and it was against commercial morality. The scheme was propounded only to avoid competing bids and offers that would have been made by other interested land developers. The scheme was stage managed to obtain the properties of the companies for a lesser price by managing a few persons.

(c)Mr.Niranjan Hiranandani had entered into a secret arrangement with the P.R Group and arbitrarily fixed Rs.34 Crores for purchase of lands. He started negotiating with secured creditors and with a few

Depositors to make them agree for a lesser sum. All these acts were done by Mr.Hiranandani even before the scheme of revival was sanctioned by this Court. By these acts, Hiranandani created a situation by presenting a *"fait accompli"* which was opposed to commercial morality. The Court had offers from two other Industrialists, one through appellant in O.S.A.Nos.356 to 360 of 2011 made by ETL Infrastructure for Rs.65 Crores and another through Depositors Association from one B.K.Goenka Group for Rs.80 Crores. The learned counsel therefore submitted that Court ought to have obtained true valuation of the assets and ought not to have relied upon the report of the learned Senior Advocate made in the year 1999 for holding that the value of the liabilities far exceeded the value of the assets.

(d) The said Mr.Hiranandani ought not to have been inducted into the MMFGL Group as it is in violation of Section 536 (2) of the Companies Act, 1956. The said Mr.Hiranandani acting in concert with the PR Group gained illegal entry into MMFGL and took possession of the assets and knocked away the assets for a song. The objector namely his client was actually acting in accordance with their fiduciary duties with the

Company. The learned counsel submitted that the liquidation was a better course of the action and would have yielded better results to the depositors and to the public Shareholders. The learned counsel further submitted that the objectors would not get any pecuniary benefit and their objections were made only in public interest for the benefit of Shareholders and the thousands of depositors. In fact, the appellant was facing prosecution for the offences under Sections 420 and 409 of IPC as a consequence of Charge Sheet filed by the Police on the complaint given by the Depositors.

12.Mrs.E.Abirami representing Mr.V.Raghavachari, learned counsel for the appellant in O.S.A.Nos.356 to 360 of 2011 submitted that

(a) the scheme is in nature of sale and it was against public policy and referred to the Judgement of the Delhi High Court in ***Mohan Exports India Ltd. Vs.Tarun Overseas Ltd.,*** reported in ***(29) DRJ 312.*** wherein, the Court held that if it is evident that the main purpose of scheme is to transfer the immovable properties of a company such a scheme would not be in public interest.

(b)The learned counsel further submitted that the respondent had no *locus standi* to file the petition for sanction of the scheme and relied upon the Judgement of ***S.K. Gupta vs K.P. Jain*** reported in ***(1979) 3 SCC 54***.

(c) The Scheme did not comply with the mandatory provisions of the Companies Act and hence is vitiated and relied upon the following Judgments:

(i) Mazda Theatres P.Ltd vs. New Bank of India Ltd., reported in ***ILR 1975 1 Del 1***

(ii) Auto Steering India P.Ltd, reported in ***In re, (1977) 47 Com Cas 257.***

(iii) Nand Prasad vs.Arun Prasad reported in ***AIR 1959 Pat 293.***

(d) It is the duty of the Court to assess the nature of the scheme of arrangement and to ensure that it is in the public interest and that in the instant case the learned Single Judge did not do so. She relied upon the Judgment of Hon'ble Apex Court in ***Administrator of the Specified Undertaking of the UTI vs. Garware Polyester Ltd.,*** reported in ***(2005)***

10 SCC 682 in support of her submission.

(e) that the scheme cannot contradict the Provisions of RBI Act. The RBI Act states that the Depositors shall be repaid in accordance with the terms and conditions of the deposits. In this case, since the depositors were not paid as per the terms, it was against the RBI Act and hence, is not valid. The learned counsel relied upon the Judgment of the Hon'ble Apex Court in ***Integrated Finance Co.Ltd. vs. RBI*** reported in (***2015) 13 SCC 772.***

(f) The scheme provides for withdrawal of criminal prosecution and is in violation of the statutory provisions which is against public policy and relied upon:

i.JIK Industries Ltd vs.Amarlal vs .Jumani reported in ***(2012) 3 SCC 255.***

ii.Abdul Karim vs. State of Karnataka reported in ***(2000) 8 SCC 710.***

(g)Since an illegal scheme was implemented *Status quo ante* can be restored. She relied upon ***Century Flour Mills Ltd.Vs.Suppiah*** reported in

AIR 1975 Mad 270 in support of the said submission.

13.Mr.P.S.Raman learned Senior counsel for the respondents in O.S.A.Nos.356 to 360 of 2011 submitted that:

(a) Mr.Hiranandani was part of a well established group and was well known in academic field and in real estate business. This was the prime business of the 22 companies which formed a single unit. The Companies were either wound up or petitions were pending for winding up and it was at that stage Mr.Hiranandani stepped into the five companies which were outside liquidation and offered to settle the Depositors who had lost all hope, the unsecured and secured creditors besides the statutory liabilities. In fact, he offered to pay the depositors 50 % of their claim even before the sanction of the scheme to show his bonafides. The learned Senior Counsel submitted that in the process of reviving the Companies Mr.Hiranandani no doubt had commercial interest in his mind. The efforts were taken by him at the stage when every body else lost hope and the only option was to allow the law to take its own course which meant that the companies would have to be wound up and liquidated. If the companies were allowed to be wound up and the assets sold, the sale proceeds would have satisfied only the claims of secured creditors. Neither the unsecured creditors nor the depositors would have realised any money. Mr.Hiranandani had negotiated with all the secured creditors and all of them agreed to assign their claim in favour of Kotak Mahindra Bank on his personal guarantee and agreed to waive the interest substantially. Mr.Hiranandani negotiated with the statutory authorities and brought down the liabilities substantially. The depositors had agreed to receive 50 % as by then they realised that the Company and its Directors had abandoned them. They would not have been benefited in any manner if the companies were allowed to be liquidated.

(b) The learned Senior Counsel submitted that the Ex-Directors of PR Group abandoned the companies and for 10 years nobody came forward to help either the depositors or to settle the secured creditors. The appellants who claimed to be Ex-Directors of the companies were those who had been castigated by the Senior Advocate in his report in 1999. These Directors kept quiet for nearly 11 years. The Appellant in O.S.A.Nos. 356 to 360 of 2011 had left for U.K to evade arrest and legal prosecution. Infact, Appellant in O.S.A.Nos.356 to 360 of 2011 and T.Palanivelu, the appellant in O.S.A.Nos.402 to 406 of 2008, abandoned the company and did not bother about the depositors or the other creditors between 1996 and 2006.

(c) Most of the properties were offered as security to the Banks and were outside the liquidation proceedings. But for the scheme, none of the depositors or the unsecured creditors would have been benefited. It was almost impossible to sell these properties as it was difficult to find a single purchaser as was observed by the Senior Advocate in his report.

(d)The learned Senior Counsel submitted that the appellant in O.S.A.Nos. 402 to 406 of 2008, Mr. T.Palanivelu filed the original unnumbered application offering Rs.45 Cores in his capacity as Director of MMFGL, and he did not pursue the application for the reasons best known to him. Thereafter, he filed an Affidavit objecting to the Scheme on behalf of M/S. Whitemist Seacraft Industries Private Ltd., which held shares in MMFGL group of companies. The said objection was filed without authorisation or the concurrence from the Board. The other Directors of Whitemist Seacraft Industries Private Ltd., filed an affidavit stating that the company had not authorised, Mr.T.Palanivelu to file an objection on behalf of the Company. The learned Single Judge rightly concluded that Mr,Palanivelu had no *locus standi* to represent Whitemist Seacraft Industries Private Ltd., and file objections.

(e)As regards the Appellant in O.S.A.Nos.356 to 360 of 2011, the learned Senior Counsel submitted that the conduct of the appellant leaves much to be desired. The appellant absconded and left for United Kingdom and did not return for nearly 10 years. He did not take any effort to alleviate the grievance of the depositors who were very old and some of them even died between 1994 and 2006. In fact, the learned Senior Advocate had castigated the role of the Directors. His offer of Rs.65 Crores to take over the companies was not genuine. He did not produce any document to prove his worth. That apart the assets of the company were not freehold properties. The liabilities exceeded the assets and it was only due to the effort of Mr.Hiranandani a solution was possible. Any offer after all the efforts of Mr.Hiranandani has to be rejected because the persons who made the offer had enough time of nearly 10 years to resolve the crisis and they did not do any thing. There was no explanation forthcoming as to why he did not make any offer earlier when the depositors were struggling. They were incapable of resolving the stalemate and offers made was only for the sake of making. The learned Single Judge had found that the objectors were not bonafide as they had abandoned the company during the financial crisis.

(f) The appeal filed by the TVS Finance and Service Ltd., in O.S.A.No.188 of 2009 is liable to be dismissed, as they had not objected to the scheme before the learned Single Judge and have not made out any ground to assail the order of the learned Single Judge.

(g) The learned Senior counsel submitted that after the approval, the scheme was implemented in year 2006 and now 16 years have gone by. In the meanwhile, the property has been developed and

2 Schools – Triveni Academy & Indian Public School, 1 Hospital – Hiranandani Hospital, 120 Acres of Industrial Plots, 65 Acres of residential plotted development, 40 Acres of high rise & low rise apartments consisting of 1584 Apartments, 3 Lakhs Sq.ft of Hostel facilities, 30000 Sq.Ft of Office Space, 30000 Sq.Ft of Shopping complex, 40 Acres of sports facilities, 25000 Sq.Ft of Club House,Temple in 3 Acres, 54 Acres of golf course have come up. The appellant in O.S.A.Nos. 402 to 406 of 2008 had filed the appeal nearly two years after the implementation of the scheme. The appellant in O.S.A.Nos.356 to 361 of 2011 filed the appeal 5 years after the implementation. O.S.A.No.188 of 2009 was filed 3 years after the implementation of the scheme. None of them sought for stay of the scheme. The appellants were aware of the implementation of the scheme and the acceptance of the compliance report by the learned Single Judge. They had been inactive for 16 years and in view of the developments that had taken place in the meantime any orders passed by this Court, setting aside the scheme at this stage could be a "*Brutum Fulmen",* an inexecutable Judgment.

(h) The learned Senior counsel further submitted that Mr.T.Palanivel represented M/s.Whitemist Seacraft Industries Private Ltd., in his capacity as Director and objected to the scheme. The learned Single Judge found that he was not authorised by the said company to oppose the scheme. He has now filed this appeal in his individual capacity claiming himself to be an Ex-Director of MMFGL. The learned Senior counsel submitted that the objector before the learned Single Judge and the appellant are two different persons. The appellant as Director to MMFGL was not the objector before the learned Single Judge. Hence, his appeals are not maintainable.

14.Mr.S.R.Rajagopal, learned Senior counsel for the Respondent in O.S.A.Nos.402 of 406 of 2008 submitted that both the appellants had no *locus standi* to file objections before the learned Single Judge and have no *locus standi* to file the above appeals. The learned Single Judge after taking into account, the situation prevailing at the relevant point of time and the fact that the scheme was approved by the depositors and the Share holders, found that the scheme was fair and rejected the offers made by the third parties as they were not bonafide. He submitted that the

Appellate Court would not interfere with the approval of the scheme by the learned single Judge, unless there is gross violation of procedures and allegations of illegality which would be against the public interest. In this Case, no such violation has been pointed by the appellants. On the other hand, the appellants are persons who had abandoned the company when it was in trouble. They had shown no interest either to settle the Depositors or Secured Creditors. The appeal filed by Mr.T.Palanivelu in his capacity as Ex-director of Madras Motor Finance and Guarantee Company Limited (MMFGL) is not maintainable.

15.Mr.T.K.Bhaskaran, learned counsel for the respondents in O.S.A.No.188 of 2009 reiterated that:-

(a) the appeal filed by the Mr.T.Palanivelu is not maintainable. His objections on behalf of the Whitemist Seacraft Industries Private Ltd., before the Learned Single Judge itself is not maintainable, as the other Directors of Whitemist Seacraft Industries Private Ltd., filed affidavits confirming that he was not authorised to object on behalf of the Whitemist Seacraft Industries Private Ltd. Therefore the appeal filed by him in a different capacity is not maintainable.

(b) The scheme is not a sale since at the time of the presentation of the scheme, the properties held by the companies were not free-hold properties. Most of the properties were mortgaged with the Banks and the secured creditors stood outside the winding up proceedings. The only way that the claims of these creditors standing outside the winding up proceedings could to be settled was by way of a scheme. The Company Court could not have sold these properties as these properties were outside the winding up proceedings. The companies were treated as single unit and the scheme is for restructuring of that unit and there was no sale as submitted by the appellants.

(c) The statutory provisions were complied with. The submissions of the appellants that the meeting of Share holders of the seventeen scheme companies was not conducted and it was in violation of the statutory provisions cannot be accepted. All the 22 companies constituted one single unit with five sponsoring companies. The meeting of the Shareholders of the five sponsoring companies was conducted. There is no necessity to call for a meeting of the Shareholders of the scheme companies separately. The learned Single Judge had considered these objections and rightly held that not calling for the meeting of the Shareholders of the scheme companies is not in violation of the statutory provisions. That apart, the learned counsel submitted that the scheme was for the creditors and the shareholders were not going to get anything in the scheme meant for the depositors and the creditors and hence their wishes do not credit any consideration. The learned counsel relied upon the following two judgements in support of his submissions:

(i) ***In Re Oceanic Steam Navigation Company Limited*** reported in ***[1938] 3 All ER 740***.

1. ***In Re Tea Corporation Limited*** reported in ***(1904) 1 Ch 12***.

(d) The learned Counsel also submitted that the sponsoring companies were competent to file the petitions. The official liquidator, certainly is entitled to propose a scheme in view of the winding up proceeding. The sponsoring companies as creditors were also entitled to maintain a petition under Section 391 of Companies Act. It is not correct to say that only the Official Liquidator is entitled to file the petition under Section 391 of Companies Act. The learned counsel relied upon the following judgments in support of his submission:-

(i) ***In Re Commercial and Industrial Bank Limited*** reported in ***[1959] 29 Com Cas 157***.

(ii) ***N.A.P. Alagiri Raja and Company vs. N.Guruswamy and others*** reported in ***MANU/TN/0278/1986.***

(iii) ***Rajendra Prasad Agarwal and others vs. The Official Liquidator, High Court*** reported in ***(1978) 48 Com Cas 476.***

(e)The learned counsel submitted that erstwhile Directors of the company had no *locus standi* to claim themselves to be the Directors of the Company after the Official Liquidator had taken charge under Section 445 of Companies Act. The grant of stay of winding up proceedings by this Court would not revive their status as Directors. The learned Single

Judge considered these aspects and rightly held that the objectors have no *locus standi* to maintain the objections. The learned counsel relied upon the judgment in ***Sudarsan Chits versus O.Sudumaran Pillai and others*** reported in (***1984) 4 SCC 657*** in support of his submission.

(f) The learned counsel further submitted that the objectors could not place any material to show as to how the value of the assets of the companies in liquidations exceeded the liabilities. Till the scheme was floated none of the objectors showed any interest in taking any positive action to meet the liabilities of the companies or alleviate the grievance of the depositors.

(g) The Economic Offences Wing sought leave to file an appeal before this Court in O.S.A.Sr.No.66542 to 66546 of 2007. The said Appeal was dismissed on 19.01.2008. Against this order, the Economic Offences Wing filed SLP before the Honourable Supreme Court and the Hon'ble Supreme Court affirmed the order of this Court. In the said O.S.A, the Economic Offences Wing had raised the same ground raised by the appellants in the instant Original Side Appeals.

(h)The Judgements relied upon by the appellant in ***Meghal Homes (P) Ltd., vs Shree Niwas Grini Samiti and others*** reported in ***(2007) 7 SCC 753*** is not applicable to the facts of this case. In the said case, the Hon'ble Apex Court was dealing with disposal of the assets of the companies. Whereas, in the instant case, the scheme was in the nature of restructuring and not a sale. The Judgement in ***Auto steering India P.Ltd*** reported in ***In re (1977) 47 Com Cas 257*** has no applications of the facts of instant case. In that case, there were no material particulars placed before the Court indicating the financial position of the company. However, in the instant case, financial position of the company was placed before this Court and hence the judgment would not be applicable to the facts of the case. The reliance on ***Integrated Finance Co. Ltd Vs. RBI*** reported in ***(2015) 13 SCC 772*** to state that the scheme cannot be contrary to the provisions of RBI Act is also misplaced. In that case there was a specific circular prohibiting the company from accepting deposits. The said circular was not disclosed in the scheme. Hence, the Court found non-disclosures of the material information vitiated the order sanctioning in this scheme. In the instant case, however the depositors were consulted and they had approved this scheme. The Judgement in ***Century Flour Mills Ltd.Vs.Suppiah*** reported in ***AIR 1975 Mad 270*** is also inapplicable. In that case *status quo ante* was restored, since certain actions were taken in violation of the Court order. Whereas, in this case, the scheme was implemented pursuant to the sanction given by the Court and those two situations cannot be compared.

16.We have given our anxious considerations to the submissions made by the learned Senior Counsel and the learned counsels on either side and to the pleadings and the documents on record.

17.The scheme was sanctioned by the order dated 21.07.2006 by the learned Single Judge based on the petitions filed by five sponsoring companies for restructuring the group of companies consisting of twenty two companies in which 17 companies were treated as Scheme companies. The sponsoring companies had implemented the Scheme by December

2006 and had filed a full satisfaction report on 18.12.2006. In the full satisfaction report, the sponsoring companies had stated that on the request of the sponsoring companies and the strength of the personal guarantee of Mr.Niranjan Hiranandani, Kotak Mahindra Bank paid a sum of Rs.18,91,56,026/- (Rupees Eighteen Crores Ninety One Lakhs Fifty Six Thousand and Twenty Six only) to the secured creditors, an amount of Rs.1,10,00,000/- (One Crore Ten Lakhs only) to the unsecured creditors. To facilitate disbursement to depositors information about payment in various news dailies on different dates was published. In addition to the above, disbursement was conducted in nearly 20 places in coordination with the President of the Central Depositors Association and Office Bearers of Local Depositors Associations. After notice to depositors in all Rs.21,23,46,750/- (Twenty One Crores Twenty Three Lakhs Forty Six thousand Seven Hundred and Fifty only) was paid under this Scheme in respect of 31,279 deposit receipts. These payments were certified by M/s.Murali Associates, Chartered Accountants. The sponsoring company through their nominee, M/s.Olympia Constructions Private Limited paid a sum of Rs.5,21,47,492/- (Rupees Five Crores Twenty One Lakh Forty

Seven Thousand Four Hundred and Ninety Two only) to the Income Tax Department. Further, a sum of Rs.23,00,000/- (Rupees Twenty Three Lakhs only) was paid towards Land Tax. Besides the above they also stated that the school had been revamped in all aspects and a qualified Principal and Chief Executive Officers had been appointed. Substantial amounts were invested to renovate classrooms etc. This Court by the order dated 19.12.2006 accepted the compliance report and passed the following order.

> *"This report is filed on the full satisfaction of the Scheme sanctioned by this Court. On 29.08.2006, the interim report was filed before this Court. This is a final report which shows the full satisfaction in terms of its secured and unsecured creditors.*
>
> *2.The report is filed to discharge the sponsor companies from any further obligation. Consequently, this report states that the Committee shall be discharged which has been appointed to administer and run the school.*
>
> *3.This Court accepts the full satisfaction report filed by the petitioners. The committee is hereby discharged from further obligations imposed under the scheme. The*

petitioners are hereby directed to cause necessary resolution for the winding up of the companies and the follow up action."

This order accepting the Compliance Report has not been challenged by the appellants. The appellants had filed a Memo wherein they had stated that after the implementation of the scheme, the lands were developed into Schools, Public Hospital, Industrial Plots, apartments, Office Space etc., the details of which we have extracted earlier in this Judgment.

18.The appeals filed by appellant in O.S.A.Nos. 402 to 406 of 2008, were numbered only in the year 2008. The appellant has not chosen to seek stay of the order. The appeal was also not filed before the implementation of the scheme. The case of the Appellant in O.S.A.Nos.356 to 360 of 2011 is worse. The appeals have been numbered nearly 5 years after the scheme was implemented. The appellants had allowed the implementation of this scheme and only thereafter filed the appeal. Even in these appeals they did not seek for any interim order or make any prayer for early disposal of the appeals. The appellants kept quiet for 16 years to pass by. In the meantime, several transactions have taken place involving third parties. Even if an order setting aside the scheme is passed at this stage it would be impossible to set the clock back. We accept the submission made by the learned Senior Counsel that any order passed by us setting aside the Scheme now would only be a "*Brutum fulmen*", an inexecutable judgement. Therefore, on this ground alone the appeals deserve to be dismissed.

19.The learned counsel for the Appellants in O.S.A.Nos.402 to 406 of 2008 in his reply submitted that if the argument of *Brutum fulmen* is accepted, it would lead to a dangerous situation and the parties would create a situation by presenting a *fait accompli* and such an argument should not be accepted. However, he submitted that he was not for disturbing the third parties whose interest would be affected and suggested that the unexploited land can be utilised and brought to sale for the benefit of share-holders and depositors. The learned counsel therefore in effect conceded that if the scheme is set aside without considering the interest of third parties it would be an inexecutable order. We are not sure as to how the unutilised or unsold lands can now be separated and sold for the benefit of depositors and share-holders. Not withstanding the above view taken by us, we felt that we should examine the scheme to ascertain if it is against public interest and if so to find ways to remedy the situation. Therefore, we propose to examine the contentions raised by the learned counsel for the appellants challenging the order passed by the learned Single Judge sanctioning of the scheme.

20.The Appellant in O.S.A.Nos. 402 to 406 of 2008 has filed the appeal in his capacity as Ex-Director of MMFGL. He had not filed any objections to the scheme in that capacity before the learned Single Judge. The objection was filed by one Whitemist Seacraft Industries Private Ltd., represented by Mr.T.Palanivelu claiming himself to be a Director of the M/s.Whitemist Seacraft Industries Private Ltd.,. Admittedly, M/s.Whitemist Seacraft Industries Private Ltd., had not authorised the said Mr.Palanivelu to file objections on behalf of the company. Two other Directors of the said company namely Mr.Razvi and

Mr.P.C.Paramanandan have filed affidavits before the learned Single Judge stating that the company had not authorised Mr.T.Palanivelu to file any objection on behalf of M/s.Whitemist Seacraft Industries Private Ltd.,. That apart, Mr.Palanivelu filed objections in the name of M/s.Whitemist Seacraft Industries Private Ltd., because it had held shares in MMFGL. However, at the time of filing of objections the shares were transferred to Mr.Niranjan Hiranandani and his nominees. Thus M/s.Whitemist Seacraft Industries Private Ltd., had no shares in MMFGL. On that ground also M/s.Whitemist Seacraft Industries Private Ltd., was not competent to object to the scheme even assuming that Mr.Palanivelu was authorised, which is not so. The learned Single Judge had recorded these facts in the order impugned and held that Mr.Palanivelu had no *locus standi* to object on behalf of the M/s.Whitemist Seacraft Industries Private Ltd., While that being so, Mr.T.Palanivelu has not challenged those findings of the learned Single Judge. Instead, he has filed these appeals in his capacity as Ex-Director of MMFGL. Mr.T.Palanivelu had not objected to the Scheme in his capacity as a Ex-Director of MMFGL before the learned Single Judge. Therefore, the appeal filed by him without objecting to the scheme before the learned Single Judge is not maintainable and the appeals in O.S.A.Nos. 402 to 408 of 2008 are liable to be dismissed as not maintainable.

21.However, we are examining the merits of the contentions raised by the parties to satisfy ourselves that the scheme was approved in accordance with law, since, this Court has a duty to ensure that the scheme is in accordance with law and the scheme is in public interest notwithstanding the locus of the parties questioning it. Besides that the appellant in O.S.A.Nos.356 to 360 of 2011 has raised similar objections.

22.The first primary objection of the objectors is that a sale was camouflaged in the form of a scheme and therefore it was against public interest. The learned Counsel submitted that the Hon'ble Apex Court had held in ***Meghal Homes (P) Ltd vs. Shree Niwas Girni Samiti and others*** reported in ***(2007) 7 SCC 753*** that though the company court cannot sit in an appeal over the commercial wisdom of the Shareholders of the company but it is duty of Court to ascertain whether the scheme is a ruse to dispose of the assets of the company by way of a private understanding. The learned counsel referred to paragraph 52 of the said judgement which reads as follows:-

> *"**52.** We cannot understand the decision in Miheer H. Mafatlal v. Mafatlal Industries Ltd. [(1997) 1 SCC 579] as standing in the way of understanding the scope of the provisions of the Act in the above manner. We are therefore satisfied that the Company Court was bound to consider whether the liquidation was liable to be stayed for a period or permanently while adverting to the question whether the scheme is one for revival of the company or that part of the business of the company which it is permissible to revive under the relevant laws or whether it is a ruse to dispose of the assets of the company by a private arrangement. If it comes to the latter conclusion, then it is the duty of the court in which the properties are vested on liquidation, to dispose of the properties, realise the assets and distribute the same in accordance with law."*

The learned Counsel for the Appellants submitted that the scheme in the instant case was actually a sale of the assets of the company by a private arrangement. We will have to examine this scheme and the facts and circumstances prevailing prior to the proposal of the scheme to find out whether the scheme was a ruse to dispose of the assets or was an attempt to revive the companies. The facts would disclose that the companies were either wound up or were directed to be wound up by the Court. The net worth of the company was in negative, The properties and receivable were mortgaged to various financial institutions. Even as per the report of the learned Senior Advocate, the total outstanding to the various institutions was around Rs.38 Crores as on 31.03.1995 excluding the interest component. The banks had obtained Decrees against the companies. The learned Judge found that the Debts Recovery Tribunal had passed a Decree for a sum of Rs.84.65 Crores on the proceedings initiated by the financial institutions as on 31.03.2006 and the sale certificate was also issued. The report of Mr.C.Harikrishnan, Senior Advocate confirms the fact that, the land belonging to SDGL to the extent of 200 acres was brought to sale by public auction and lands were sold for an amount of Rs.55,00,000/- (Rupees Fifty Five Lakhs only). Thus, the properties of these companies were mortgaged with various financial institutions. The learned Single Judge also found that the creditors were standing outside the liquidation proceedings and therefore, no sale could have been made by the Company Court. The properties mortgaged to the financial institutions were not in one full stretch but there were Poramboke lands in between. No uniform valuation could be made for the entire stretch of land. The scheme provided for settling the claim of the secured creditors, the depositors, other unsecured creditors and the statutory authorities, and this could not be done for over 11 years. It was only after Mr.Hiranandani stepped into the sponsoring companies, he was able to negotiate with the secured creditors and on the strength of his personal guarantee, the secured creditors had assigned all their claims in favour of Kotak Mahindra Limited. This exercise had to be done to save the property from the secured creditors. That apart the sponsoring companies also had taken effort to convince the Income Tax Authorities for waiver of interest and penalty. So far as the depositors were concerned, the admitted fact was that many of them were old and nearly 800 of them had died pending the winding up proceedings. Therefore, at the time when the scheme was proposed, there was a stalemate wherein, the secured creditors were holding the properties, there was huge claim from unsecured creditors and statutory authorities and the depositors. It is no doubt true that Mr.Hiranandani was inducted to revive the financial credibility of the sponsoring companies and Mr.Hiranandani came in with a commercial interest. However, that does not mean that the scheme proposed by the sponsoring companies, would amount to sale of the assets, as admittedly the assets were not free-hold properties available for sale. For 10 years, no body could sell the assets and pay the creditors or the depositors. Someone was needed to take initiative and to resolve the situation. It was in these circumstances that the scheme was proposed. Therefore, it cannot be said that it was a case of sale of properties which were available. Neither the official liquidator nor the Company Court could have sold the properties which were mortgaged to the secured creditors, but for the steps taken by the sponsoring companies after the induction of Mr.Hiranandani. The learned Judge has elaborately considered the objections that the scheme was a sale and rejected the contentions of the appellants. We are in agreement with the reasons given by the learned Single Judge to hold that the Scheme was not a ruse to sell the properties.

23.The next submission made by the counsels was that the learned Single Judge had merely accepted the Arbitrary valuation fixed by the Propounders of this Scheme and did not take into account the other offers made through the Depositors Associations and by one of the objectors. According to them, the Court had not taken into consideration the valuation of the assets. The Propounders of the scheme did not furnish the details of the assets and liabilities as on the date of proposing the scheme.

24.(a). As stated earlier, no body took any steps to liquidate the assets and clear the outstanding liabilities. The learned Single Judge observed in the judgment at Paragraph 81 that the details of the liabilities of the group of companies and the assets of the companies were furnished by the sponsoring companies and after the comparison under the liabilities and the assets. The learned Single Judge also observed in paragraph 83 that detailed working sheet was given in the paper book which showed that the assets of the companies were not enough to meet out the liabilities.

The relevant portion of the judgment of the learned Single Judge is extracted hereunder:

> *"81.The learned counsel appearing for the petitioners submitted a paper book indicating the pattern of share holding in SDGL, MMFGL and UBPL. Apart from this he has also submitted share holding pattern in 5 sponsor companies and 11 other companies. The details are regards liabilities of the group companies, the extent of holding by the group company where the school is running, which is the subject matter of the scheme are also given. They have also enclosed a valuation as regards the lands covered under the scheme.*
>
> ...
>
> *83.As far as liabilities of the companies are concerned, they have also given details both as regards the liabilities to the banks as well as the liabilities arising on account of deposits. A detailed working given in the paper book clearly show the assets of these companies stand no comparision to the liabilities a mismatch in the matter of meeting out of the liabilities a mismatch in the matter of metting out of the liabilities. In the context of the above said status, the submissions to the petitioners as well as the objectors need to be noted."*

24. (b) The recording of the above fact by the learned Single Judge that the respondents had produced working sheet and details of assets and liabilities of the Group Companies is now sought to be questioned by the appellants. In our view, the appellant cannot dispute the findings with regard to the happenings in Court and as to the records perused by the learned Single Judge. This submission is contrary to the Judgment of the Hon'ble Apex Court in ***State of Maharashtra vs. Ramdas Shrinivas Nayak and anr.,*** reported in ***(1982) 2 SCC 463.***

> *"4....................We are bound to accept the statement of the Judges recorded in their Judgement as to what transpired in Court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their Judgement that something was done, said or admitted before them, that has to be the last word on the Subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the Judgement of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other*

evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgement, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but he may not call in question the very fact of making the concession as recorded in the Judgement.

8.So the Judges' record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself, but nowhere else"

In view of above materials, we are unable to agree with the submissions of the appellants that no details was furnished to the Court.

25.As regards, the submission that there were other offers, it is to be noted that the propounder of the scheme found a solution which could not be found for 10 years. The claims made by the objectors that they offered more were not genuine and has to be rejected Mr.T.Palanivelu made an offer for Rs.45 Crores and did not pursue that application. The Depositors Association filed an affidavit of a Director of Goenka Group of Companies stating that they were willing to offer Rs.80 Crores. It is pertinent to note that this was done after the stalemate was cleared and not before it. The learned Single Judge has gone into this aspect and rightly concluded that it is an offer made by a third party. The scheme cannot be looked as a sale of property and see if there were offers subsequent to the efforts taken by the propounder of the scheme. The liabilities of the company was higher than the value of assets. The very fact that the secured creditors agreed for one time settlement and to assign their claims in favour of Kotak Mahindra by reducing their claim proves that the value of the assets was not enough to satisfy their claims. Otherwise, there was no necessity for them to scale down their claims. In any event, the depositors through whom the offers was allegedly made by the Goenka Group have not challenged the order of learned Single Judge. Therefore, the findings of the learned Single Judge in that regard has become final. In any event, the offers were made after the stalemate was removed and the sponsoring companies had found a solution. These offers cannot be considered as competing offers. The learned Judge also found that the Court cannot sit in Judgement over the commercial wisdom of shareholders and act as an Appellate Court and found that the scheme in the facts of the instant case was fair.

26. The next submission made by the learned counsel for the appellant was that no report was received from the Registrar of Companies or the Central Government as mandated under the Companies Act. The learned Single Judge had given sufficient opportunity to file a report about the Scheme. The Regional Director thereafter took time to file his report and in spite of several opportunities no report was filed by Regional Director. The learned Single Judge therefore observed that since the Regional Director has not given any report it has to be considered that the

Regional Director has no objections for the scheme. Therefore, the submissions made by the learned counsels for the appellants has to fail on this ground also.

27.The other submission made by the learned counsel for the appellants that no notice was issued to the shareholders of the companies which were sought to be dissolved. The facts as narrated above would show that all the 22 companies constituted one single unit with the 5 sponsoring companies having link to the 17 Companies as shareholders and creditors. The winding up proceedings were pending against the scheme companies. The net worth of the company was in the negative. The Registrar of the companies in his report filed on 27.04.2004, had noted that the substratum of the company was totally lost. While that be so, the shareholders were not likely to get anything in the scheme of priorities under the Companies Act. Therefore their wishes do not merit any consideration. In this regard the judgments relied upon by the respondents in ***[In Re Oceanic Steam Navigation Company Limited [1938] 3 all ER 740 ; In Re Tea Corporation Limited (1904) I ch 12*** squarely apply to the facts of the instant case. That apart, none of the Shareholders have objected to the scheme. Thus, the submissions of the appellants that interest of the shareholders in all the companies were not taken care of cannot be countenanced. Under the circumstance it is well known that distribution of the assets of the companies would leave nothing for distribution to the shareholders. That apart, we find that all the 22 companies were treated as one unit and there were cross-holdings in the Companies. The meeting of the shareholders of five sponsoring companies took place on 21.01.2006 and this in our view is sufficient compliance of the statutory requirement.

28. The next contention of the appellants was that the scheme could not have been sanctioned since the affairs of the company have been carried out against the public interest. This submission has to be stated only to be rejected. It is the contention of the learned counsels for the appellant that they were not opposed to " a scheme" and they were opposed to only to the scheme proposed by the sponsoring companies. Thus appellants were aware of the fact that only a Scheme could have brought the Companies, the secured creditors, the depositors out of the

stalemate prevailing for more than a decade.

29.The other submission of the learned counsels for the Appellants is that the induction of Mr.Hiranandani was by an arrangement, between the P.R.Group and Mr.Hiranandani and it was a violation of Section 536 (2) of the Companies Act, that Mr.Hiranandani had negotiated with the secured creditors, depositors and the statutory authorities and created a situation by presenting a *"fait accompli"* while proposing the scheme. The submission that a *"fait accompli"* was presented does not merit consideration. It is the case of all the persons concerned that there was no hope left in any body in reviving the companies, settling the secured creditors or paying the depositors. It was only after the induction of Hiranandani that things started moving. The depositors were old and had no way to realise their hard earned money. They could atleast get 50% of the invested amount. Had the Court allowed the law to take its own Course, the depositors would not have gained anything. Between 1994 to 2005 none came forward to do anything or take any action. In such circumstances, efforts taken by the sponsoring companies after the induction of Mr.Hiranandani cannot be called as creating a situation by presenting a "fait accompli." But for the timely action taken by the said Mr.Hiranandani the stalemate would have continued for several more years by which time many of the depositors would have died. The secured creditors who stood outside the Company Court would have taken over the assets of the company. We are also aware that Mr.Hiranandani did not step into the sponsoring companies for doing social service. No doubt he had commercial interest. But the point is nobody else was prepared to bell the cat and take that effort to save and revive the companies besides settling the secured creditors and the depositors. The sponsoring companies were not liquidated ultimately and hence induction of Mr.Hiranandani would not be in the violation of Section 536 (2) of the Companies Act.

30.The learned counsel for the Appellant in O.S.A.Nos.356 to 360 of 2011 also submitted that the scheme was in violation of public policy, inasmuch as it contradicted the statutory provisions of criminal law by allowing exoneration of the directors from Criminal proceedings. We find that the learned Single Judge had not approved the scheme as such and found that the scheme is subject to the proceedings before the Civil and

Criminal Court with option to compound the offence. This observation of the learned Single Judge would make it clear that the scheme was only subject to the proceedings before the Civil and Criminal Courts and hence, the scheme as approved by the learned Single Judge was not opposed to public policy. The learned Single Judge however had given an option to compound the offences which is a recognised action in criminal law. An action to compound the offences in terms of the Criminal Procedure Code would not be against public policy. Therefore, the Judgement cited by the learned counsels in ***JIK Industries Ltd vs. Amarlar V.Jumani*** reported in ***(2012) 3 SCC 255*** is not applicable to the facts of the instant case.

31.The learned counsel submitted that *status quo ante* can be restored as held by this Court in ***Century Flour Mills Ltd., Vs. S.Suppiah*** reported in ***AIR 1975 MAD 270*** where action had been taken in violation of interim order of the Court. This case is not applicable to the facts of the instant case. Action taken in violation of Court order and action taken in compliance of the Court order as in this case cannot be equated.

32.The next submission of the learned Counsel for the Appellant was that the scheme was contrary to the provisions of the RBI Act, since the depositors were not paid in accordance with the terms and condition on which they were accepted. The learned counsel relied upon ***Integrated Finance Company Ltd Vs. RBI & Others*** reported in ***(2015) 13 SCC 772*** in support of her submission. The facts of the said case is not similar to the facts of the instant case. In that case, there was a specific Circular by the RBI prohibiting the company concerned from accepting deposits in any form whether by way of fresh deposits or renewal. The said circular was not disclosed in that scheme. In this case, as we have noted earlier, the depositors could not realise their money for nearly more than 10 years and most of them died during the said period. The assets of the company which were mortgaged to the secured creditors stood outside the winding up proceedings. There was no way the depositors would have realised their money but for the scheme. Hence, we are of the view that in the facts of the instant case, the scheme was fair and in public interest.

33.The learned Single Judge found the scheme to be fair and not opposed to public interest. The settled position of law is that the company court cannot sit in judgement over the commercial wisdom of the shareholders who had approved the scheme. That being the case, when the scheme has been approved by the learned Single Judge, the Appellate Court's Jurisdiction is even more restricted especially at this stage (i.e) 16 years after the approval of the Scheme. The provisions of the Companies Act in Sections 391 to 394 are to ensure transparency and fairness in the scheme proposed. There has been substantial compliance of the provisions of the companies Act and we see no reason to interfere with the finding of the learned single Judge in the facts and circumstances of the instant case.

34.Thus, we are of the view

(a) that the appellants have by their own conduct by filing the appeals belatedly, without seeking any interim order have not only allowed the implementation of the scheme but allowed 16 years to pass by. By this time, several developments have taken place in the land and any order passed by us at this stage would be a '*Brutum fulmen;* an inexecutable Judgment. We cannot set the clock back. Therefore, the appeals have to be dismissed on this ground alone.

(b) the appellant in O.S.A.Nos.402 to 406 of 2008 has filed this appeal in his capacity as Ex-Director of Madras Motor Finance and Guarantee Company Limited (MMFGL). He was not the Objector before the learned Single Judge. The Objector before the learned Single Judge was M/s.Whitemist Seacraft Industries Private Limited represented by the appellant. M/s.Whitemist Seacraft Industries Private Limited has not filed any appeal, challenging the order of the learned Single Judge. In such circumstances, the appeal filed by the appellant in his capacity as Director of M/s.Madras Motor Finance and Guarantee Company Limited (MMFGL) is not maintainable and hence, O.S.A.Nos.402 to 406 of 2008 are dismissed on that ground.

(c) We nevertheless examined the merits of the contention raised by the appellants since the appellant in O.S.A.Nos.356 to 360 of 2011 also raised similar objections as that of the appellant in O.S.A.Nos.402 to 406 of 2008. On consideration of the grounds raised by the appellants in O.S.A.Nos.402 to 406 of 2008 and O.S.A.Nos.356 to 360 of 2011, we find that the grounds raised by them are liable to be dismissed on merits as well for the reasons stated above.

(d) As regards the appeal in O.S.A.No.188 of 2009, we find that they were not Objectors to the scheme before the learned Single Judge, their appeal is also liable to be dismissed, since they have no locus to challenge, the order of the learned Single Judge. In any event, the learned counsel for the appellant in O.S.A.No.188 of 2009 did not make any separate submissions and adopted the submissions made by the counsels for the other appellants. Since we have dismissed the other appeals on merits O.S.A.No.188 of 2009 is also dismissed for the very same reasons.

35.Accordingly, all the Original Side Appeals are dismissed. No Costs.

[V.M.V.,J]

[S.M.,J] 08.11.2022

Index: Yes
dk

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.
dk

O.S.A.Nos.402 to 406 of 2008
and O.S.A.No.188 of 2009 and O.S.A.Nos.356 to 360 of 2011

08.11.2022