

2009 (152) CC 302

GUJARAT HIGH COURT

Hon'ble Judges:K.A.Puj, J.

B.I.F.R. Versus Cmd, Aps Star Industries Limited

COMPANY PETITION No. 190 of 2003 ;
COMPANY PETITION No. 287 of 2003 ;
COMPANY APPLICATION No. 448 of 2007 ;
COMPANY PETITION No. 190 of 2003 ;
COMPANY APPLICATION No. 500 of 2007 ;
COMPANY APPLICATION No. 448 of 2007 ; *J.Date :- FEBRUARY 12, 2008

- [COMPANIES ACT, 1956](#) Section - [391](#)
- SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985
Section - 20(1)

Companies Act, 1956 - S. 391 - Sick Industrial Companies (Special Provisions) Act, 1985 - S. 20(1) - winding up of company - Scheme was moved seeking revival of units - proposal to, however, there was no any concrete and positive steps including infusion of fresh funds, settling of dues of Creditors and workers and/or discharging various statutory liabilities - effect of - no real motive to start company - held, no useful purpose would be served by allowing applicant for convening meeting of various group of creditors and equity shareholders for considering scheme of arrangement in nature of revival and compromise - application of company rejected and petition of creditors allowed.

Imp.Para: [[26](#)] [[27](#)] [[28](#)] [[30](#)] [[31](#)]

Cases Referred To :

1. [Madhu Fabrics Ltd., V/s. State Bank Of India, 2002 4 GLR 3688 : 2001 \(3\) GCD 2582 : 2001 \(107\) CC 487 : 2002 \(1\) BankCas 502 : 2002 \(35\) SCL 826](#)

Equivalent Citation(s):

2009 (152) CC 302 : 2008 (83) SCL 239

JUDGMENT :-

K.A.PUJ, J.

1 Since all these petitions as well as Company Applications are in respect of the same Company, namely, APS Star Industries Ltd., they are heard together and are disposed of by this common judgment and order.

2 Company Petition No.190 of 2003 is registered on the basis of opinion forwarded by the Board for Industrial and Financial Reconstruction (BIFR) on 16.7.2003 to the Registrar of this Court under Sec. 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) stating that despite having allowed enough time and opportunity, it had not been possible to formulate any acceptable revival scheme for the company enabling it to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the Company as a result thereof was not likely to become viable in future and that it was just, equitable and in public interest that the Company should be wound up under Sec. 20(1) of the Act.

3 This Court has, vide its order dated 9.1.2006, after hearing all the parties, admitted this petition and appointed the Official Liquidator attached to this Court as the Provisional Liquidator of the Company and he was directed to take charge of all properties of all the Units of the Company and was further directed to issue public advertisement in two Newspapers, one in English newspaper and other one in vernacular language having wide circulation in the State of Gujarat, Maharashtra and Karnataka. The Official Liquidator was further directed to call for the details of all pending cases filed by or against the Company in different Courts and also the details of the properties which are in charge of the Court Receiver or other persons as per the directions and the orders passed by the Court. The Official Liquidator was further directed to collect the details with regard to disposal of the assets and distribution of the amount amongst the Secured creditors and/or workers pursuant to the order of BIFR or any other Court and was directed to place the said details before the Court at the time of final hearing of this petition. The final hearing of Company Petition No. 190 of 2003 was ordered to be fixed on 20.02.2006.

4 After admission and advertisement of the Company Petition No.190 of 2003 the same has come up for final hearing before this Court on 29.4.2006 and submission was made before the Court on behalf of the Company that the management of the Company has made an application before this Court for recall of the order of admission and advertisement. The Court, therefore, observed that it would be the responsibility of the respondent Company to obtain necessary orders from the very Court, which has passed the order of admission and advertisement. The Court has not entertained any such application for recalling of the order of admission and advertisement and hence the said order has become final.

5 Company Petition No.287 of 2006 is filed by Indian Seamless Metal Tubes Ltd., for winding up of the respondent Company. It appears that the order dated 9.1.2006 was passed by this Court in Company Petition No.190 of 2003

and other cognate matters. Company Petition No.287 of 2003 was not listed alongwith the said group as other Company Petitions, namely, Company Petition Nos. 73, 74, 124 of 1996, 23/97, 50/98 and 161/2000 were disposed of in view of the order passed by the Court on 9.1.2006. Since Company Petition No.287 of 2003 is also for winding up of the respondent Company and Court is seized with Company Petition No.190 of 2003 which is also for winding up of the respondent Company, the Company Petition No.287 of 2003 no longer survives and the same is disposed of accordingly.

6 During the pendency of Company Petition No.190 of 2003, the Company has moved an application being Company Application No.448 of 2007 seeking direction to conduct separate meetings of the (Group-A) consists of secured creditors, (Group-B) consists of employees of the Vadodara Unit, (Group-C) consists of employees of Nashik Unit, (Group-D) consists of employees of Dharwad Unit, (Group-E) consists of Unsecured Trade Creditors, (Group-F) consists of unsecured creditors who have given equipments on lease and (Group-G) equity shareholders for considering and if thought fit with or without modification and approval of the scheme of arrangement in the nature of revival and Compromise.

7 This Court has passed an order on 24.10.2007 observing that if the scheme for revival is entertained, the realisation of the property is bound to be delayed and it may be that if the revival of the Company itself is to take place, no useful purpose may be served for disposal of the property, but at the same time, the expenses already incurred by the OL for preservation of the property and the expenses which may be incurred by the OL for preservation of the property is an aspect, which is required to be considered. The Court further observed that the loss if any caused to the security of the secured assets of the company in liquidation on account of the delay in consideration of the proposal or sanction being granted by this Court is also the relevant aspect, which may be required to be considered. Taking into consideration these two aspects coupled with the objections, the Court found that the matter was required to be considered for putting condition upon the Directors or Ex-Directors of the Company who are moving the proposal of revival to deposit such amount even if the Court is of the view that the proposal of revival can be considered. The Court has, therefore, directed the OL to place on record the expenses already incurred for preservation of the property and the expenses to be incurred per month for preservation of the property and other expenses incidental.

8 The Court thereafter passed further order on 10.12.2007 directing the applicant of Company Application No.448 of 2007 to deposit the sum of Rs.10 lacs with the Registry of this Court on or before 17.12.2007, which amount has been deposited by the said applicant.

9 During the pendency of Company Petition No.190 of 2003 and Company Application No.448 of 2007, Star Industries & Textile Enterprise Employees

Union has moved an application being Company Application No.500 of 2007, seeking permission of this Court to allow it to be joined as a party respondent in Company Application No.448 of 2007 in Company Petition No.190 of 2003.

10 An affidavit in support of this Judge's Summons was filed by one Girish R. Chitnis, Secretary of the Union wherein it is stated that the applicant Union is directly and vitally interested in the Company Application No.448 of 2007 in Company Petition No.190 of 2003 and that prayers made in the Company Application are affecting the applicant Union and its member employees. It is further stated that since the illegal closure of the Nashik Unit of the Company was made in or around 1997, the employees of Nashik Unit of the Company have not been paid anything by way of wages. Further affidavit was filed on 4.12.2007 wherein it is stated that in OJ Civil Application No.354 of 2007 this Court has directed the inspection of the properties of the Company situated at Nashik. Accordingly, the said inspection was carried out on 19.9.2007. It was found that there is only open plot and there is no plant and machinery or building at the site. The same position prevailed when it was inspected before 3 months as directed by this Court to the office of the OL. It is further stated in the said affidavit that the Company does not have any building or plant and machinery and there is only an open plot. It is, therefor, prayed that the workers have not been paid anything for the last 10 years and there is no possibility of Nashik Unit being revived as there is no building, plant and machinery and, therefore, the applicant Union is opposing to the proposed scheme of arrangement in the nature of revival and compromise under Sec. 391 of the Companies Act, 1956 . It is further stated that the proceedings for winding up of the Company should expeditiously be proceeded further so that the assets of the Company can be sold and the workers may be paid their dues at the earliest.

11 On behalf of the Company, a reply was filed on 11.12.2007 wherein it is stated that the applicant Union has concealed the fact that on the earlier occasion the application came to be preferred being Company Application No.336 of 2006. The said application was dismissed for non-prosecution. It is further stated that in case of the Company went into liquidation the staff personnel / managerial persons are not entitled to any amount under Sec. 529A of the Companies Act, 1956 , while in the case of revival the interest of all the employees including workman and staff persons are taken into consideration and hence the objection raised by the application Union is not tenable.

12 In the above background of the matter, all these petitions as well as applications are heard together since the winding up petition was pending for final hearing, even after the order of admission and advertisement was passed long before, the workers as well as secured creditors are pressurising for final hearing of winding up petition. The order could not have been passed till this date only because of pendency of Company Application No.448 of 2007 which

is moved by the Management of the Company for revival of the Company. It is, therefore, necessary to decide this application first.

13 Mr. A.L.Shah, learned advocate appears with Mr. Pavan S. Godiawala, learned advocate for the applicant. An affidavit is filed by one Prabhakar Takalkar, Director and Shareholders of the applicant Company. Mr.Shah has submitted that the applicant Company was having units at Vadodara and Dharwad (in State of Karnataka), Dombivli (in the State of Maharashtra), Nashik (in State of Maharashtra) and corporate offices at Dhanraj Mahal, Mumbai. The applicant was engaged in the business of Precision and Proprietary Textile Bearing Components. The applicant was cash rich Company before the scheme of amalgamation was sanctioned by the BIFR for amalgamating Star Industrial and Textile Enterprises Ltd (SITEL) with APS. The applicant was having a market share of over 70% as of 1987 to 1995 March and a net-worth of over Rs.39 crores on 31.3.1993 and a market valuation exceeding Rs.285 crores. The applicant had its main unit at Vadodara and at Dharwad. The SITEL which was before BIFR as of 1992, had its unit at Dombivli and Nashik in the State of Maharashtra. Due to severe financial losses and market good-will suffered by SITEL, the Operating Agency i.e. IDBI alongwith the Financial Institutions of SITEL proposed merger of SITEL with APS. The BIFR vide order dated 10.3.1995 sanctioned DRS finalised by IDBI as the OA of SITEL for amalgamation of SITEL with APS and the said order dated 10.3.1995 was to have retrospective effect as on 1.3.1994. Subsequently due to non-release of the need-based working capital as directed and sanctioned in the BIFR sanctioned scheme, several orders of exports could not be executed and Dombivli Unit closed down in 1996 and Nashik Unit in early 1998. The closure of these units had the obvious cascading effect on the turnover of Vadodara and Dharwad units.

14 Mr.Shah has further submitted that Bank of India which was the consortium leader of the consortium consisting of itself and the United Bank of India, which were the bankers of the erstwhile Associated Precision Spindles (APS) for the reasons best known to it, had stopped all banking cooperation with the applicant company and other consortium banker of SITEL. The said Bank of India, though had consented to the said amalgamation, failed in sharing the charge of the securities of Vadodara and Dharwad Units and had not given even the second charge to the other consortium Bankers. Further, they had also appropriated Rs.50 lacs of margin money against an expired Bank guarantee without even informing the applicant Company and when the said guarantee remained uninvoked, whereby the applicant company's account was wrongfully designated as a NPA. Further, no pre-shipment finance for export orders against Letters of Credits-LCs and Demand Drafts was provided, resulting in the applicant Company's credibility being affected and export and domestic contracts of almost Rs.100 crores getting frustrated. These are certain instances among various others which have led to the precipitous fall of the Company, inspite of all Banks concerned had desired the amalgamation of

SITEL with the cash rich APS and had become substantive shareholders by converting SITEL's irregularities to them into freely convertible debentures, which thereafter were converted into their equity as provided in the sanctioned scheme.

15 Mr.Shah has further submitted that during this period the Company's Promoter CMD Suresh Metha was forced to resign because of totally unforeseen personal circumstances. The BIFR thereafter gave ample time of more than a year from 2002 to mid 2003 to the new Management of Mr.Rohit Mehta, as the Special Director of the Promoter shareholders with powers of Management under the applicant Company's Articles, and control of the Board at Bombay and Mr. Bharat K. Patel, who as President of applicant company at Vadodara, was given powers of management, his continuance however being subject to the BIFR approval. The BIFR, which had earlier castigated Mr.Bharat K. Patel for his previous record that had come to light, however outright rejected the scheme put up by Mr.Bharat Patel though duly endorsed by IDBI and ultimately by its order dated 26.6.2003, gave its opinion that the applicant Company be wound up. He has further submitted that the previous hearing of 26.3.2003, the BIFR Bench had nothing but scathing remarks on the omission and commission of Banks and financial institutions and gave the applicant company one last chance of 3 months to submit a viable scheme, which however was not even proposed.

16 Mr.Shah has, therefore, submitted that all this has happened only because under the compelling circumstances, the former CMD has withdrawn himself from the debentures of the Company and BIFR has forwarded opined for winding up of the Company. This Court has in turn passed the order of admission and advertisement. The Review preferred was also rejected by this Court.

17 Mr.Shah has further submitted that the applicant company to enable itself to float the revival scheme, preferred Company Application No.236 of 2006 for prayers to direct the OL to permit the applicant and its authorised representatives, including its technical consultants to take joint inventory and inspection and assess all machineries and equipments of the Company's factory premises at Vadodara, Dharwad, Dombivli and Nashik and further sought direction to have trial run of the said machineries and permit to have inspection and take copies of all records in the factory units and at corporate offices at Mumbai. These prayers were granted by this Court on 4.5.2006. The OL has remained silent even after regular correspondence to implement the order. The applicant has also paid the inspection fees of Rs.10,000/- but the OL has not acted upon the order dated 4.5.2006. The applicant thereafter preferred Contempt Application against the OL. The same was withdrawn later on. Thus, the OL assured to comply with the order. Bank of India, thereafter, preferred Review Application alongwith delay application. This Court upon considering the facts and circumstances, rejected the delay condonation

application with reasoned order and directed that, even if the delay is condoned then also there is no merit in the case. Mr. Shah has invited the Court's attention to the order dated 8.3.2007. Bank of India, thereafter, moved an application before this Court seeking permission for sale of hypothecated assets of the applicant company. The said application being Company Application No.289 of 2006 was allowed. The applicant Company preferred leave to file appeal and appeal with stay application. The Division Bench of this Court directed the OL to give inspection to the applicant for Vadodara Unit and Nasik and made it returnable on 21.9.2007. Before that the applicant company had sought permission of this Court for convening and holding the meeting of respective class of creditors and equity shareholders for considering and if thought fit with or without modification, the scheme. The Company Application No.94 of 2007 was withdrawn with a view to present fresh scheme. Upon taking minute inspection of Vadodara unit, the applicant has come out with the fresh scheme much improvised one than the earlier one. He has, therefore, submitted that the Company's bonafide, potential and credential be considered by the Court and the prayers made in the application for convening the meeting are required to be granted.

18 In support of his submission Mr. Shah has relied on the decision of this Court rendered in Company Application No.1 of 2005 on 24.2.2005 in the case of Shree Rama Multitech Ltd., wherein despite several objections raised by the secured creditors, this Court has granted permission to convene the meeting for considering the scheme of arrangement and necessary directions were issued to convene the meeting.

19 He has also relied on the decision of this Court rendered in the case of Essar Oil Ltd., rendered in Company Application Nos.217 and 224 of 2005 decided on 30.6.2005 wherein this Court has taken the view that it is not just and proper for this Court to reject the application at the threshold filed by the Company seeking direction for convening the meeting of the Scheme Lenders to consider the scheme of compromise and arrangement between the Company and scheme lenders on the ground that it is malafide moved and it is fraud on the Debenture holders holding more than 2000 debentures of the Company who are reduced to minorities in the present Scheme because of fraudulent classification and placing them in the same class, with Term Lenders and Working Capital Lenders and hence, the present Scheme is illegal and null and void, as alleged by the objectors. The Court has further observed that this fact by itself is not enough to outrightly reject the Scheme especially when such minority will have an opportunity to discuss and deliberate at the Scheme and even if the Scheme is approved at the meeting by requisite statutory majority, despite their valid and strong objections, they will again have an opportunity to raise their grievance before the Court when substantive petition is filed by the Company for confirmation of the Scheme. Mr. Shah therefore submitted that prayer made by the applicant for convening the meeting deserves to be granted.

20 Mr. A.S.Vakil, learned advocate appearing for Bank of India, one of the secured creditors strongly objected to this application seeking direction for convening the meeting. He submitted that before considering this application, the conduct of the applicant Company is required to be seen. Ever since the Company was registered with the BIFR in the year 1998 the conduct of the Company clearly demonstrates that the company is far from serious to rehabilitate itself. In fact, the Company is also not resourceful enough to mobilize funds, much less sufficient funds. In the guise of wanting to settle with secured creditors, etc., and on the pretext of wanting to present a scheme under Sec. 391 of the Act, the company has, since 1998, completely stalled the process of recovery of the legitimate dues of crores of rupees. On the one hand, since 1998 the company has not paid any amount and stalled the process of recovery, while on the other hand the securities have substantially diminished in value. He has submitted that the present application is required to be rejected on the following facts/events/orders.

"(i) 1998: The Company - APS Star Industries Ltd., filed before the BIFR, Reference Case No.28/1998 (for short "Ref.Case") under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA")

(ii) 31.7.1998: The BIFR at the hearing of the said Reference Case passed an order dated 31.7.1998 (Paragraphs 5,6 and 7 thereof are as follows:

"5. On being asked about the future action plan of the Company, Shri Mehta submitted that on account of their consistent follow up, the foreign collaborator had come around for negotiations. They were hopeful of arriving at a settlement within next three months. The amount of claim when received by the Company would be used for its revival. On being questioned he submitted that they would be in a position to give a revival proposal within eight weeks' time. Regarding the sources of funds for revival, he submitted that they are trying to tie up with a co-promoter. The Bench mentioned that whatever proposal the company made had to be properly tied up so that subsequent delays are avoided.

6. Further on the basis of submissions made and the material on record, the Bench was satisfied that a package under Sec. 17(2) was not possible in this case and as such it was necessary in public interest to take measures specified under Sec. 18 of the Act in relation to the company. Accordingly, in exercise of the powers conferred under Sec. 17(3) of the Act, the Bench appointed IDBI as the Operating Agency (OA) to examine the viability and prepare a viability study report keeping in view the provisions of Sec. 18 of the Act and the 'Measures and Guidelines' enclosed

7. The Bench further enquired about the company's response regarding High Court order for repayment of the dues of workers. The CMD of the

Company, Shri Mehta, submitted that they had already given a provisional revival scheme to IDBI including the treatment of the workers' dues. The workers who had filed a suit in the Labour Court and subsequent contempt petition in the High Court were from the Dombivili unit of erstwhile SITEL which was closed w.e.f 1.3.96. As per the proposal, Dombivili unit which was not in operation, was to be closed down and its assets were disposed of. Part of the proceeds would then be used to make payments to the workers and the balance for revival of the Company."

(iii) 18.12.1998: At the hearing dated 18.12.1998, the BIFR passed an order, paragraphs 2, 3 and 9 thereof are as follows:

"2. In today's hearing, the Bench noted that as reported by the OA, despite a lapse of almost five months the Company had failed to submit any scheme. Meanwhile several letters were received from the company conveying various developments and asking for extension in time for giving a proposal by three months. Meanwhile the company had also conveyed that while its dispute with foreign collaborator SKF - TMC had not yet been resolved as per the newspaper reports, SKF - TMC itself was closing down its operations before 31.12.98.

3. On being asked whether OA (IDBI) was aware of the position regarding Company's proposal, As per the status known to her, the Company had not submitted any proposal and instead had written to BIFR seeking time upto February 1999...

9. After hearing the submissions, the Bench observed that the Company apparently had not taken any concrete steps in the last five months towards working out a rehabilitation proposal. It was a fact that the earlier case of SITEL was also pending with BIFR for more than a decade and the scheme sanctioned in that case was also nowhere near implementation. Under the normal circumstances, BIFR would go ahead with further course of action i.e. exploring the other alternatives at this stage. However, since the promoters could not attend the today's hearing. It was considered appropriate in the interest of justice to allow them one month more as a last chance to give a comprehensive and fully tied up proposal to the OA. It was further directed that: (a) In case there were no concrete developments by then, the Board would ask the OA to issue advertisements seeking offers for change in Company's management as per the procedure without holding further hearing. (b) (c) (d) (e).

(iv) 26.10.1999: At the further hearing of the Reference Case, the BIFR passed an order dated 26.10.1999. In paragraphs 2, 4, 5,9 and 14 it has been observed/recorded as follows:

"2. At the start of today's hearing, the Bench expressed displeasure that inspite of the case being with BIFR for more than one year, there were no indications of any acceptable rehabilitation scheme getting worked out. It was reported that three out of the four units of the company i.e. those at Baroda, Nasik and Dombivili, were found to be non-viable and the company had mooted a proposal for sale of these units and utilized the proceeds thereof for revival of Dharwad unit alongwith settlement of the dues of secured creditors and workers. The OA had held joint meetings on 28.7.99 and 24.9.99 to discuss this proposal.....

4.The various issues regarding the company were discussed in the joint meetings held by the OA and as per the consensus of the joint meeting held on 24.9.99, all parties agreed for the sale of three units of the company and the two flats at Dhanraj Mahal, Mumbai and deposit of sale proceed in an interest bearing no lien account (NLA) to be used for payment to the secured creditors first and thereafter, for clearance of statutory and workers' dues. The balance left would be used for revival of Dharwad unit. All the participating Banks.....

5. On being asked, Shri Mehta, submitted that the Company's Dombivili, Nasik and Baroda units were lying closed respectively from February, 1996, March, 1997 and June, 1999.....

9. The representative of BOI, Shri B.N.Chopra, submitted that there were no delays on their part. The company had come to BIFR in 1998 only, and no one raised objections to its sickness. It was recorded in the minutes of the last hearing also that the company had failed to come up with a scheme. In these circumstances, the question of their issuing NOC should not arise at this stage. The company's proposal envisaging sale of three units had come up now only, to which also their response was positive. Different units of the company were financed by different banks, who held separate charges also. The Company itself was not even in a position to pay insurance premia and maintenance cost but wanted the banks to continue financing it. BOI was ready to do so, depending upon continuations of its first charge on Baroda unit. They had no objection to sale of that unit also, provided the dues of BOI and United Bank of India (UBOI) were set off first. Subject to this and some other conditions already conveyed to the Company, they had no objection to the sale of Baroda unit.

14. Having heard the submissions, the Bench expressed concerned at the slow pace of progress in the case and mentioned that while time upto 31.12.99 was allowed to the Company, as a final chance in view of the recommendations of the secured creditors, it should note that this was the last opportunity available to it to submit its comprehensive and fully

tied up proposal for consideration of the OA and others concerned. Meanwhile, the Bench issued the following directions:

(a).....

(b).....

(c).....

(d) The company shall work out a reasonable OTS with its secured creditors after holding negotiations with them and work out a rehabilitation which should be submitted to the BIFR, OA, and others concerned latest by 31.12.99.

(v) 27.4.2000: At the further hearing of the Reference Case, the BIFR passed an order dated 27.4.2000. In paragraphs 7 and 18 thereof, it has been observed / recorded as follows:

"7. The representative of Bank of India (BOI), Shri B.N.Chopra submitted that the ASC was already in place and guidelines were also issued to it for proceeding further. However, there was no revival proposal or OTS offer at all from the company till date. In the last hearing, the company was allowed final chance and time upto 31.12.99, on which no action had been taken. Further, the valuation of the assets of Vadodara and Dharwad units was also pending due to company's inability to supply the required information. They had already stated that they had no objection to the sale of Vadodara unit, but proceeds thereof as and when received should be used for the settlement of the dues of first charge holders on all assets of that unit i.e. BOI and United Bank of India (UBI). While the banks all along were showing a positive approach and supporting rehabilitation, the company was also expected to keep them informed of the material developments like receipt of Rs.5 crores from SKF - TMC. The company blaming bankers for non-preparation of a rehabilitation scheme was totally baseless, since they had already agreed to provide NOC subject to some conditions and they were not willing to take any further exposure. The company had not even arranged for the insurance of the assets inspite of receipt of Rs.5 crores from SKF-TMC and was asking BOI to arrange for it.

18. On a careful consideration of the submissions made, the Bench expressed serious displeasure at the company utilising substantial funds out of Rs.5 crores received from SKF-TMC without approval of BIFR. As such, no justification was seen for its request to allow it to utilise the remaining amount also, leaving the workers of other units suffering for the sake of revival of Dharwad unit. It had failed to remove the alleged illegal possession of the flats at Dhanraj Mahal or enter into any

acceptable OTS with the banks. The company had not even acknowledged the debts of the banks and all such inactions on its part pointed to the failure of the management. In view of the foregoing, the Bench issued the following directions:

(a).....

(b).....

(c).....

(d) The OA shall issue advertisements seeking offers for change in management of the Company as per the procedure latest by 31.7.2000.....

(e) The company shall provide itemwise details with book values of all its fixed assets and detailed breakup of the liabilities of all the units being closed down, particularly the dues of the workers as on 31.3.99 to the OA within 15 days.

(f)

(g) The existing promoters are still free to submit their fully tied up OTS proposal after negotiations with all the secured creditors and others in response to the advertisements... .."

(vi) 18.01.2001: At the further hearing of the Reference Case, the BIFR passed an order dated 18.1.2001. In paragraphs 3, 4 and 5 it has been observed/recorded as follows:

3. At the last hearing held on 27.4.2000 the Bench expressed its displeasure at the company utilizing substantial funds out of Rs.5 crores received from SKF-TMC without approval of BIFR. It had failed to remove the alleged illegal possession of the flats at Dhanraj Mahal or entered into any acceptable One Time Settlement (OTS) with the Banks. The company has not even acknowledged the debts of the Banks.. ...

4. The company went on appeal to AAIFR against the order of the BIFR dated 27.4.2000 which was dismissed... ...

5. The Bench observed that the case has been dragging on for unduly long and the FIs and Banks were repeatedly pressing hard to grant them permission to continue /file recovery suits in the appropriate Forum."

(vii) 13.03.2001: At the further hearing of the Reference Case, the BIFR passed an order dated 13.3.2001. In paragraphs 11, 21 and 25 it has been observed / recorded as follows:

"11. The representative of the Bank of India (BOI), Shri V.K.Sachdeva stated the same views as expressed by IDBI. The representative of BOI further submitted that the company had been given various chances to give clarifications on the objections raised by the secured creditors and they had failed on all scores. All secured creditors had asked for filing suit against the company as the company could not initiate any rehabilitation steps despite the adequate opportunity being given to them and the company/promoters had not agreed for bringing any fresh funds for its rehabilitation and the sale proceeds of the assets were inadequate to meet the means of finance. Therefore, they had no justification to once again take up the same issue which had been decided earlier. The Bench should give BOI the permission to file suit against the company subject to the condition that no decree would be executed without the prior approval of BIFR.

21. Ms.Ahmadi also stated that if the banks would have been permitted to file suit against the company, even then the decrees obtained by them would not have been executed without the prior permission of BIFR and the superior courts could have also given some interim orders. Therefore, the banks could not have proceeded against the company. If the advertisement for sale of assets would have been given, no buyer would have come forward because the machinery and other assets would have fetched only a pittance and the machines could have been sold only to the "junk dealers" who would have come to buy the assets. Therefore, it would have been in the interest of the secured creditors to get the company rehabilitated so that their dues could be paid. She stated that if any superior court would have given orders for attachment of the property, nobody could have proceeded in the matter... ..

25. The Bench after hearing the submissions made by the participants and after noting the directions of the High Court in the case No.1014/01 dated 14.2.2001, directed as follows:

(a).....

(b).....

(c).....

(d) If any acceptable, viable, fully tied, comprehensive proposal emerged at such a meeting the OA would submit the draft rehabilitation scheme (DRS) for the due consideration of BIFR alongwith copies of such a report

and the minutes of the joint meeting. The DRS should be forwarded to the BIFR, company and to all concerned.

(e).....

(f) The Company should indicate clearly the sources for all the funds to be brought by them giving evidences for such funds to the OA as already indicated in paragraph 22 above.

(viii) 17.05.2001: At the said hearing no substantive progress could take place on account of the tax message received from the Company for a request to postpone the hearing and the reason for adjournment given by the company was that the MD of the company had fallen sick and the doctors had advised him rest for four weeks.

(ix) 27.7.2001: At the further hearing of the Reference Case, the BIFR passed an order dated 27.7.2001. In paragraphs 8,9,10 and 22 it has been observed / recorded as follows:

"8. In today's hearing, the representative of the IDBI(OA), Shri R.C.Sehgal stated that in the joint meeting held by the OA on 21.6.2001, the company's rehabilitation proposal was discussed. The consensus at the joint meeting was that the promoter/present management did not inspire confidence of financial institutions/banks. The proposal submitted by the company was not convincing and projections were too optimistic. All the participants preferred OTS of their dues. The participants also desired that they might be allowed to continue with legal recourse/take the legal action against the Company. To demonstrate their seriousness, the promoters were given time upto 15.7.2001 to deposit Rs.4 crores or 10% of outstanding dues in a no-lien account with the OA. The company had not deposited the amount and their proposal was found not convincing and projections were too optimistic. The OA, therefore, could not formulate the viable scheme.

9. The Board noted that the company was declared sick in the first hearing and seven hearings thereafter had been conducted. It wanted to know from company whether they had come out with any acceptable, viable proposal or had they ever approached the Board seeking for extension of time with due justifications. The company's representative stated that they were waiting for the valuation report from OA and they could not attend to the preparation of a proposal for revival as they had to attend to the various legal issues pending before them. However, they submitted their first proposal on 13.2.99 and recently they had submitted another proposal.

10. The OA indicated that the company had got a stay only in regard to the order for change of management through Delhi High Court (DHC) and no other court case was pending. The Board then asked the Company's representative that in the hearing held on 31.7.98 in para-11, the Bench had specifically observed that if the company was anxious for revival, it should not lose sight of one of the main purposes of SICA which was to save employment for the workers. In case the company wanted to close down some of its units, it should follow proper legal procedure for doing the same.

22. The Company gave further clarifications to the OA in April 2001, which were discussed in the joint meeting of the OA held in the same month. The cost of the scheme was for Rs.81.37 crores, out of which Rs.15.68 crores were compensation to the employees of Dombivili, Vadodara and Nasik units. The payment of banks, Fis would cost Rs.21.16 crores and payment of KSIDC/KIADB would be Rs.2.37 crores and Rs.15.66 crores for payment of Vadodara lease. Payment to NBFC is Rs.6.90 crores. Statutory and other dues - Rs.2.50 crores, production and market expenses from Dahrwad - Rs.4.55 crores. Technology Valuation SKF as per agreement - Rs.1.00 crores, cost of new design pattern - Rs.5.50 crores, start up expenses - Rs.6.90 crores. The means of finance were through the sale of Dombivili, Vadodara, Nasik plant and two flats (attached by BHC in Mumbai) for Rs.39 crores."

(x) 14.2.2002: At the further hearing of the Reference Case, the BIFR passed an order dated 14.2.2002. In paragraphs 5-8 and paragraphs 22,24, and 27 it has been observed/recorded as follows:

"5... .. The Board has also noted that the OA submitted that the secured creditors and others concerned had indicated in the joint meeting that the rehabilitation proposal submitted by the company was not acceptable to them. Subsequently the DHC vide its order dated 11.9.2001 vacated the stay and disposed of the writ petition giving interim protection to the Company for its appeal against Hon ble Bench's order dated 27.4.2000 for change of management. As DHC had vacated the stay, IDBI proposed to initiate action for change of management by issue of advertisement.

6.....

7. As the representative of IDBI, Smt. Iyer stated that no proposal so far had been received by them and Shri Mehta brought Shri Bharat K. Patel in the meeting held in the first week of February and not produced any financial credentials of the new promoters.

8. On being asked whether Shri Patel was short-circuiting the SEBI norms for buying the shares of the earlier promoters as per the SEBI

norms, she could not reply satisfactorily in the matter and only added that one months time should be given to the new promoters to submit his proposal."

22. The representative of IDBI stated that the agreement for change of management and induction of Shri Bharat K. Patel was null and void and change of management should have been done in a transparent manner and the same had come to them as a surprise... ..

24. It was also noted that the CMD of the company resigned and he had given a letter to IDBI and others stating that he would continue to function as consultant and authorised representative in the interim period as has been requested by the Board of Directors (BoD) of the Company. The Bench also recalled that in the submissions made by some of the secured creditors they had indicated that the agreement entered into by the CMD with Shri Bharat K. Patel was not transparent and without any due approval of the secured creditors and should be declared as null and void. The Board wanted to know how the company would be managed and who would take up the operational aspects in the light of the above but the secured creditors and others could not give their satisfactory reply on these issues.

27. The learned counsel on behalf of the company was asked to let this Bench know whether the CMD of the Company, Shri Suresh Mehta resigned, entered into an agreement with Shri Bharat K. Patel appointing him as MD and whether such an appointment was in compliance with the company law provisions and also SEBI provisions regarding transfer of management / shares and whether such an agreement had been entered in a transparent manner with the consent of all concerned. Mr. Tasneem Ahmadi stated that this was a complex question and they should be given some more time to submit their reply in this regard."

Thereafter in paragraph 28 the BIFR issued certain directions.

(xi) 26.3.2003: At the hearing of the Reference Case, the BIFR passed an order dated 26.3.2003. In paragraphs 25,29, 30 and 31 it has been observed / recorded as follows:

"25. On being asked that under such circumstances whether they felt that the Company could be revived, Shri Mehta stated that with the support of BKP there would be chance for revival. He stated that in the joint meeting many of the secured creditors were accepting the proposal of BKP. He stated that Shri Suresh Mehta has become insolvent and as such he could have continued on the Board. He added that BKP would induce fresh funds for Rs.8 crores and added that a further period of 30

days may be given to them for coming out with a fully tied up, acceptable, viable scheme.

29. The company had been with the Board for the last five years and despite that no serious effort had been made either by the company / promoters or by the secured creditors for the rehabilitation process or coming to any other alternative. The promoters of the company (excepting Shri Suresh Mehta who was adjudicated as insolvent) had not made any serious attempt to rehabilitate the company nor the advertisement for change of management (COM) issued by the OA in terms of the BIFR order had brought any tangible response and that they could not be able to formulate any revival scheme. The secured creditors had suggested for winding up of the company. However, the company's representative stated that they may be given an opportunity to submit their fully tied up, viable acceptable, comprehensive rehabilitation plan in 30 days.

30. In view of the foregoing and the material on record, the Bench came to the conclusion that despite having allowed enough time and opportunity it had not been possible to formulate any acceptable revival scheme for the company enabling it to make its networth exceed the accumulated loses within a reasonable time while meeting all its financial obligations and that the company as a result thereof was not likely to become viable in future and that it was just, equitable and in public interest that the Company should be wound up under Sec. 20(1) of the Act. The Bench therefore formed the prima facie opinion to wind up the company in terms of sec. 20 of the Act... ..

31. The Bench further directed that keeping into view the request of the company the Board decided to give them a final opportunity as asked for above to submit their acceptable, viable proposal to the OA within 30 days. They should also deposit 25% of the funds required for the rehabilitation of the company and the same should be kept in an interest bearing no lien account (NLA) with the OA. If no proposal would be received they should inform the Board immediately and the Board would take further necessary action including winding up of the company.

(xi) 16.7.2003: Ultimately the BIFR forwarded its opinion/order dated 16.7.2003 to the Registrar of this Hon ble Court u/s. 20(1) of SICA, which came to be registered as Company Petition No.190 of 2003.

5. Original Application No.14 of 2003 before DRT: (Jan'2003)

As stated in paragraph 4 of Company Application No.289 of 2006, Bank of India thereafter filed before the DRT, Ahmedabad OA 14/2003 against the company and others for recovery of a sum of Rs.3,64,42,148.78

paire. The reliefs have been reproduced in paragraph 4 of Company Application No.289/2006. The DRT was pleased, by order dated 21.1.2003, to pass/ grant certain interim reliefs in favour of Bank of India and also appoint a Commissioner to make inventory of all the hypothecated / pledged securities.

BIFR's prima facie opinion: (26.3.2003)/26.6.2003:

6. Thereafter the BIFR vide its order dated 26.3.2003 formed a prima facie opinion that the Company cannot be revived on a long term basis and that it is just and equitable that the Company should be wound up. Thereafter, by further order dated 26.6.2003 the BIFR confirmed its earlier prima facie opinion dated 26.3.2003 and directed that the said opinion be forwarded to the concerned High Court alongwith the earlier orders / proceedings for further necessary action according to law.

7. Company Petition No.190 of 2003:

It is on the aforesaid basis that the BIFR's opinion came to be registered by this Court as Company Petition No.190 of 2003.

8. Special Civil Application No.11078 of 2003:

One Engineering Mazdoor Sangh (for short "EMS") had filed before this Hon ble Court Special Civil Application No.11078 of 2003, and challenged the BIFR's order dated 26.6.2003 passed in the Reference Case. In the said Special Civil Application No.11078/2003, Bank of India had appeared and filed its detailed affidavit-in-reply and thereby demonstrated the credentials of the said B.K.Patel who had stated to have taken over the management of the Vadodara unit of the Company. The said B.K.Patel is today nowhere connected with the Vadodara unit of the Company.

9. Further orders by the DRT in OA 14/2003:

The DRT was pleased to pass further order dated 18.8.2003 appointing the Manager of the Bank of India or an officer nominated by him as Court Receiver. The Court Receiver submitted his report dated 5.11.2003. As per the said report the outstanding liabilities of the Company towards statutory dues (i.e. sales tax, income tax, P.F., import duty, electricity charges and workers) was approximately Rs.20 crores.

10. Application Exh.A/16 by Bank of India.

It is thereafter that Bank of India preferred the Application (Exh.A/16) before the DRT for permission to sell the hypothecated securities -

plants, machineries and stocks, which are exclusively charged to Bank of India.

11. Order dated 9.1.2006 in the Petition:

This Hon ble Court was pleased by order dated 9.1.2006 to admit the petition, order advertisement thereof and also appoint the liquidator as the provisional liquidator of the company with a direction to take charge of all the properties of all units of the company. Though the company filed a Company Application No.17 of 2006 for review/recall of the said order dated 9.1.2006, the same was ultimately withdrawn by the Company.

12. Order dated 28.3.2006 of the DRT:

The DRT was pleased by order dated 28.3.2006 to permit the Court Receiver for selling hypothecated properties.

13. Company Application No.236 of 2006 by Company for inspection, etc...

It is at this stage that the company preferred Company Application 236/2006 (around April 2006) and obtained an ex-parte order for inspection of the plant and machineries on the basis that the Company would like to prefer a scheme for revival. This Court by ex-parte order dated 4.5.2006 granted Company Application 236/2006.

14. Company Application 289/2006 by Bank, for permission to sell:

In view of the order dated 28.3.2006 passed by the DRT, Bank of India preferred Company Application 289/2006 for permission to sell the hypothecated properties in terms of the DRT order dated 28.3.2006. On 18.9.2006 an order came to be passed wherein it has been recorded as follows:

".....The learned advocates appearing on behalf of the respective parties - Shri A.S.Vakil, Shri Rajesh Mankad, Shri Subramanian Iyer, Shri Bharat Jani and Singhi & Company, etc, have jointly submitted that the said order has been obtained by the applicant without serving any copy of the said application upon any of the opponents except Official Liquidator and in fact, the said order is adversely affecting them. The learned advocates appearing on behalf of the respective parties are justified in making the grievance that the said order has been obtained without serving the copy of Company Application No.236 of 2006 upon them and without giving any opportunity to them. Whenever any application is filed in a pending

proceedings, a copy is required to be served upon all the parties and/or their respective counsel.

15. OJMCA 129/2006:

The Company filed on 31.7.2006 OJMCA 129/2006 against the (provisional) liquidator, alleging non-compliance of the order dated 4.5.2006 passed in Company Application No.236/2006. The said OJMCA 129/2006 was withdrawn on 10.1.2007.

16. OJCA 337/2006 by Bank to recall order dated 4.5.2006:

Bank of India preferred OJCA 337/2006 for review/recall of order dated 4.5.2006 passed in Company Application No.236/2006. The same was dismissed vide order dated 8.3.2007.

17. Company Application 94/2007 (u/s 391-394):

The Company had preferred, on/around 19.2.2007, Company Application 94/2007 for convening meetings for the proposed scheme (of settlement) u/s 391-394 of Companies Act. However, the same was withdrawn on 8.3.2007.

18. Impugned order dated 28.6.2007:

The learned single Judge thereafter pronounced the order on 28.6.2007 and thereby granted permission to Bank of India to sell the hypothecated securities, subject to the terms and conditions stated therein. The valuer has given the valuation report dated 18.9.2007.

19. Company Application (Stamp) No.1862/2007:

In the meanwhile the Company has already preferred Company Application (Stamp) No.1862/2007 and prayed for therein the following reliefs:

"(a) To direct the Provisional Liquidator to give effect to the Orders dated 4th May 2006 passed in Company Application No.236 of 2006 and the Orders dated 8.3.2007 passed in Miscellaneous Civil Application No.2890 of 2006 along with O.J. Civil Application No.337 of 2006 passed by Hon ble Company Judge.

(b) Such other order or orders this Hon ble Court deems fit to grant under the facts and circumstances of the above case."

The aforesaid Company Application (Stamp) No.1862/2007 was notified on board on 6.9.2007 and the learned single Judge granted time upto 20.9.2007 for removal of office objections.

20. The Company filed OJ Appeal together with Company Application. The Company has suppressed the fact regarding filing of the aforesaid Company Application (Stamp) No.1862/2007 and deliberately misled the Court into passing the following order on 13.9.2007:

" Mr.Vakil for opponent No.1 states that the valuers have already inspected the property at Baroda and the valuation report is likely to be ready by Monday.

Mr. AL Shah for the applicant states that since the order dated 4.5.2006 of the learned Company Judge continues to operate, the applicant may be permitted to take inspection as per that order.

In view of the above, we direct the Official Liquidator to permit the applicant to take inspection of the properties at Baroda and Nasik in accordance with the order dated 5.6.2006 passed by the learned Company Judge in Company Application No.236 of 2006, upon deposit of the requisite inspection charges. While giving he applicant inspection of the property at Baroda, the Official Liquidator shall also give intimation to Bank of India.

This Appeal is still pending before Division Bench."

21 On the basis of the aforesaid facts/events/orders Mr.Vakil has submitted that in fact in the hearing dated 26.10.1999 before the BIFR, it was reported that three out of the four units of the Company i.e. Vadodara, Nashik and Dombivali were found to be non-viable and the Company had already mooted a proposal for sale of the said units and utilize the sale proceeds thereof for revival of Dharwad unit. At the hearing dated 27.4.2004 before the BIFR it was then reported that the valuation of the assets of the Vadodara & Dharwad units was also pending due to Company's inability to supply necessary information. Thereafter, at the hearing dated 13.3.2001, the Company's advocate submitted that if advertisement for sale of the assets would have been given, no buyer would have come forward because the machinery and other assets would have fetched only pittance and machines could have been sold only to the junk dealers. At the hearing dated 27.7.2001 before the BIFR Company, in support of the proposed scheme, had stated that the means of finance were through sale of Dombivali, Vadodara and Nashik plants and two flats. Further, after the Board opinion was registered as Company petition in the year 2003, upto February 2007, no scheme was presented. In fact a detailed order came to be passed on 9.1.2006 admitting the petition, ordering advertisements and appointing provisional liquidator. In fact none were appeared in the petition "to

oppose" the winding up of the company. The scheme which was presented/filed, is also withdrawn on 8.2.2007. No new-better scheme has been presented thereafter for more than 6 months. He has, therefore, submitted that it is now abundantly clear and apparent that the Company has been actually and literally dodging its secured creditors, workmen etc. in the matter of repayment of the huge and legitimate dues since the year 1998. Time and again the company in Reference Case before the BIFR made promises and assurances to file a scheme and/or come with a proposal to settle the dues. The same never happened during the period 1998-2003. During all these years the Company has never even attempted to deposit any amount much less a significant amount to show its bonafides. Simultaneously the Bank of India's hypothecated securities have been deteriorating in value since the year 1998. Such conduct on part of the Company of dodging its secured creditors is not only required to be condemned but the Company has clearly misused and abused the process of law solely with a view not to repay the huge legitimate dues of its various creditors, including Bank of India. The order dated 13.9.2007 is also obtained by the Company on clear suppression of material fact i.e. suppressing the fact regarding Company Application (stamp) No.1862 of 2007. On the basis of the order dated 13.9.2007, Bank of India now apprehends that the Company would withdraw Company Application (stamp) No.1862 of 2007 or not remove office objections and thereby allow the said Company Application (stamp) No.1862 of 2007 to be dismissed for non-prosecution. It is in the said circumstances and the aforesaid background facts, prevailing since the year 1998 Mr.Vakil has submitted that the present application moved by the applicant company for convening the meeting be rejected with exemplary costs.

22 Mr.Vakil in support of submission has relied on the decision of this Court in the case of Madhu Textiles Ahmedabad Ltd., rendered in Company Petition No.245 of 2002 decided on 27.4.2005 wherein this Court has taken the view that the petitioner company is not viable and Revival Scheme proposed by the petitioner Company is nothing but merely an eye wash and it is only with a view to buy time so as to dispose of the assets of the Company. There is no real motive to start the production and no material is produced before the Court so as to inspire the confidence of the Court that the unit will really work if some indulgence is shown by the Court.

23 Mr.Vakil has further relied on the decision of this Court in the case of Madhu Fabrics Ltd., V/s. State Bank of India, 2002 4 GLR 3688 wherein this Court has taken the view that frankly speaking, learned counsel for the petitioners is not entitled to challenge the orders passed by BIFR and AAIFR as on filing Sec. 391 scheme, the petitioners have waived their right to challenge the orders of BIFR as well as AAIFR. It is not the case of the petitioners that they presented the scheme before the authorities and the authorities have not considered the same. By filing a scheme for rehabilitation under Sec. 391 in Company Petition and also presenting the same in writ petitions by way of draft

amendment, the petitioners have waived their right to challenge the orders of BIFR and AAIFR. Therefore, both petitions are required to be rejected even on this ground. The Court further observed that assuming that the proposed scheme presented by the petitioners is to rehabilitate and to revive the company, no useful purpose will be served by remanding the matter to BIFR for passing a fresh order on reconsideration especially when the secured creditors who are class by themselves present in the Court are objecting per se for sanctioning of the scheme. Therefore, it would be an empty formality to remand the matter and/or to hold the meeting to consider the scheme of revival and rehabilitation.

24 Based on the aforesaid judgment and the facts of the case Mr.Vakil has strongly urged that no indulgence be shown by this Court allowing the Company to convene the meeting and application be straightway rejected.

25 Having heard the learned advocates appearing for the respective parties, the Court first proceeds to decide Company Application No. 448 of 2007. This application is moved by the Company through one of its Directors and shareholders Shri Prabhakar D. Takalkar. Earlier also, the Company has moved similar application proposing the Scheme of compromise and arrangement, being Company Application No. 94 of 2007 and the said application was withdrawn with a liberty to file a fresh, modified and better Scheme. It is true that normally, the Court does not go into the merits or demerits of the Scheme at the stage when directions are sought for convening the meetings of Creditors and / or shareholders to consider the Scheme and it is left to the discretion of the Creditors and/or shareholders to take appropriate decision at the meetings. If the Scheme is approved by the requisite majority and substantive petition is filed before the Court thereafter by the mover of the scheme seeking sanction of the Court to the Scheme, the Court examines the Scheme on its merits at that stage. But this is not the universal rule. The Court's power are not circumscribed or restricted. The Court may even refuse to issue any direction for convening meetings when it finds it just and proper in certain exceptional cases and the Court would be reluctant to issue such directions for convening the meetings of Creditors and/or shareholders when, looking to the track record of the Company and hidden object behind moving such application, the Court is not prima facie satisfied with the scheme.

26 The Company was before BIFR since 1998. During the pendency of the reference before BIFR, several opportunities were given by the Board for revival and rehabilitation of the Company. Even after forwarding an opinion to wind up the Company and forwarding the same to this Court and even during the pendency of winding up petition before this Court, from 2003 to 2006, no scheme has been moved by the Company. Almost all Secured Creditors and workers have supported the winding up petition and on that basis, the petition was admitted, advertised and Provisional Liquidator was appointed. Neither the order of BIFR recommending this Court to wind up the Company nor this

Court's order of admission, advertisement and appointment of Provisional Liquidator was challenged by the Company. In other words, these orders have become final. One of the Secured Creditors, namely, Bank of India has obtained decree from Debts Recovery Tribunal and also an order for sale of the assets of the Company. Most of the Secured Creditors and workers who are represented before this Court, through their respective advocates, have opposed the Scheme and even raised very serious objections against issuance of directions to convene the meeting as prayed for. In these circumstances, if such a Scheme is moved, the Court will not blindly issue any direction for convening the meeting. The Court will look at the real intention of the mover of the Scheme and/or genuineness of the Scheme even at the initial stage. The present Scheme lacks bonafides and only intention of the movers of the Scheme is to forestall the winding up proceedings and to restrain either the Official Liquidator or the Secured Creditors from selling out the assets of the Company.

27 The Court is, therefore, of the view that no useful purpose would be served in convening the meetings of the Creditors and/or shareholders. As observed earlier, most of the Secured Creditors and workers Unions are represented before the Court through their advocates and they have not merely supported the winding up of the Company but have also opposed the scheme by tooth and nail. The assets of the Company have been deteriorating day by day and the Secured Creditors as well as workers are denied the recovery of their legitimate dues through the process of selling and/or liquidating the assets of the Company. Keeping all these facts in mind, which clearly distinguish the case of the Company with that of the other cases relied on by Mr. Ashok L. Shah appearing for the Company. Hence, these decisions would not render any assistance to the case of the Company. As against this, it appears to the Court that the Company does not seem to be viable and revival scheme proposed by the Company is nothing but merely an eye-wash and it is only with a view to buy time so as to forestall the winding up proceedings. There is no real motive to start the Company and no material is produced before the Court so as to inspire confidence of the Court that the Unit will really work if some indulgence is shown by the Court.

28 As far as Company Petition No. 190 of 2003 is concerned, after the order of admission, advertisement and appointment of Provisional Liquidator is passed on 09.01.2006, the Official Liquidator has filed his report on 28.04.2006 wherein, inter alia, it is stated that in response to the advertisement issued in the various newspapers, he had not received any objection regarding the winding up of the Company either from the Secured Creditors and Banks and financial institutions or from any one. On the contrary, he has received four letters in support of the winding up of the Company. Thereafter, an affidavit is filed on behalf of the Company on 22.06.2006 wherein it is stated that upon completion of the work of inspection and thereafter making application for carrying out particular repairs under the supervision of the Official Liquidator

or its representative, the Company would be in a position to prefer the application for scheme of revival of the Company. It is also stated that the market condition of the textile and textile industries was now on a turn around with good future, not only in India but Internationally and the fact that the Company was even exporting its highly specialized precision products to countries such as USA & Germany, it would be in the interest of justice and fairness also to the employees if the opportunity to submit the revival scheme is given to the Company and the Company is not forced to an untimely and unwarranted death. After the inspection was granted, Company Application No. 448 of 2007 was preferred by the Company and for the reasons stated in the aforesaid paragraphs, the said application was rejected. The Court did not find any prospect in revival of the Company and hence, no directions to convene the meeting of shareholders and / or Creditors were issued.

29 Even an affidavit is filed by the President of the Engineering Mazdoor Sangh on 11.01.2007 wherein it is stated that the Management is sincerely making attempts to revive the Company and they are opposing the winding up order. However, this very Union has taken contrary stand on earlier occasion.

30 An affidavit was filed by Mr. R. A. Mehta wherein except giving details of various proceedings and reiterating the same submissions which were made earlier, no new facts were pointed out by the Company. Before BIFR, the Company itself made the proposal to sell Baroda, Nasik and Dombivali Units of the Company. Now, Scheme was moved seeking revival of these units. Before BIFR, Mr. B. K. Patel was introduced as a Successor to persons in management and he has represented the Company before the Court. Now, the persons who presently come forward to take charge of some of the units of the Company are finding fault with said Mr. B. K. Patel. Mere change of guard without any concrete and positive steps including infusion of fresh funds, settling of dues of Creditors and workers and/or discharging various statutory liabilities, is not an answer to sustain any scheme for revival of the Company or to save the Company from being wound up. Simply because this Court has granted permission to have an inspection would not create any vested right in the Company and on that ground, the Court may not be restrained from passing winding up order. The Court, therefore, is of the view that there is no other alternative but to wind up the Company and accordingly, the Company is ordered to be wound up.

31 Having regard to the facts and circumstances of the case and considering the submissions made by the learned advocates appearing for the respective parties and the authorities cited before the Court, the Court is of the view that there is no substance or merit in Company Application No. 448 of 2007 preferred by the applicant for convening the meeting of various group of Creditors and equity shareholders for considering the scheme of arrangement in the nature of revival and compromise and hence, this application is rejected. Since the application is rejected, amount of Rs. 10 Lacs deposited by the

applicant with the Registry of this Court pursuant to the order dated 10.12.2007 is hereby ordered to be refunded forthwith.

32 Since Company Application No. 448 of 2007 is rejected, Company Application No. 500 of 2007 does not survive as it is only meant for joining party in Company Application No. 448 of 2007. This Company Application is accordingly rejected on the ground that the same does not survive in view of the order passed in Company Application No. 448 of 2007.

33 In view of the aforesaid order, Company Petition No.190 of 2003 stands allowed and the respondent Company is ordered to be wound up. The Official Liquidator who was earlier appointed as the Provisional Liquidator of the Company is hereby appointed as the Liquidator of the Company and he shall discharge all functions and exercise all powers as a Liquidator of the Company.

34 Since winding up order is passed by the Court today in Company Petition No. 190 of 2003, no separate order is required to be passed in Company Petition N. 287 of 2003 which is also moved for winding up of the respondent Company. This petition is accordingly disposed of.

Mr.Pavan S. Godiawala, learned advocate appearing for the applicant in Company Application No.448 of 2007 requests to grant stay against the order, which is pronounced today. Mr. A.S.Vakil, learned advocate appearing for the secured creditor i.e. Bank of India has strongly objected to grant stay against the order. Since the prayer is made in the Company Application to convene the meeting and the said prayer is not granted, there is no question of granting stay. Hence the request to grant stay against this order is rejected.

