

(1987) 09 GUJ CK 0030

Gujarat High Court

Case No: None

In Re: Divya Vasundhara
Financiers Pvt. Ltd.
 Harish
C. Raskapoor and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 7, 1987

Acts Referred:

- Companies Act, 1956 - Section 391, 391(1)(b), 446, 446(3)
- Penal Code, 1860 (IPC) - Section 420

Citation: (1988) 2 GLR 1045

Hon'ble Judges: S.B. Majmudar, J

Bench: Single Bench

Judgement

S.B. Majmudar, J.

The present three applicants have taken out this Judge's summons praying for an order that healing of Case No. 374 of 1982 filed in the Court of the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Bombay be stayed. The application is filed against opponent No. 1 who is the original complainant in the said criminal case and also against opponent No. 2 which is the Court Committee appointed by this Court in the case of Divya Vasundhara Financiers Private Limited, Ahmedabad.

2. In order to appreciate the grievance of the applicants, it is necessary to note a few introductory facts leading to the present application. Opponent No. 2-Divya Vasundhara Financiers Private Limited which is a private limited company was floated with fixed capital of Rs. 1 lac divided into 1000 ordinary shares of Rs. 100/- each. Its object was to promote a scheme of chit fund and savings, amongst others. It appears that the Company had accepted deposits from the public under different schemes. The Company gave advances against industrial and residential properties. After some time, the Company ran into difficulties somewhere in April 1977. At that

time, the public deposits of the Company were more than Rs. 6,50,00,000/- as stated in Company Petition No. 18 of 1978 which was moved in this Court for sanctioning a scheme of promise or arrangement. As the Company was in financial difficulties, the aforesaid scheme of arrangement and compromise was moved u/s 391 of the Companies Act. It was registered as Company Petition No 18 of 1978. In that company petition, after hearing the learned Counsel for the concerned creditors, the scheme was permitted to be put to vote by different classes of creditors and ultimately, this Court (Coram: B.K. Mehta, J.) sanctioned the said scheme of compromise and arrangement by his order dated 28-12-1978, 12/16-1-1979.

3. In the said company petition. Company Application No. 179 of 1977 was moved by the said Company and its Chairman and Managing Director Shri Keshavlal Dhoribhai Patel requesting this Court to stay the commencement or continuation of any suit or proceedings against the Company and or its Directors in connection with the affairs of the Company on such terms as the Court ultimately thought it fit to impose. B.K. Mehta, J. (as he then was) by his order dated 28-7-1978 stayed the commencement or continuation of the suits or proceedings against the Company and/or its Directors in connection with the affairs of the Company which were listed in the said application. Various criminal cases pending in the Chief Metropolitan Magistrate Court at Ahmedabad, in the Court of the learned Judicial Magistrate, First Class, Surat, in the Court of the learned Judicial Magistrate, First Class, Nadiad and Criminal Case No. 1267W/94 in the Court of the Metropolitan Magistrate, Esplanade, Bombay, were stayed, pending finalisation of the scheme proceedings. Several suits filed by several creditors in different Courts were also stayed. Under the sanctioned scheme, a Court Committee was appointed to be the Managing Committee consisting of 9 members whose names are mentioned in the scheme to do all that is necessary for working out the scheme, to supervise the working of the Company and to do all acts, deeds and things necessary or incidental for the working of the Company. As a Chairman of the Committee Shri N.M. Miabhoy, a retired Chief Justice of this Court was appointed. Eight other members were also appointed in the said committee. Shri G.F. Mankodi was appointed as the Chief Executive Officer to look after the day-to-day management of the affairs of the Company on behalf of the Committee. The said Court Committee is functioning from the date of sanction of the scheme till today. The Court Committee has been able to realise money value of some of the assets of the Company and has been able to distribute some dividends to the creditors of the Company.

4. It is in the background of the aforesaid facts that the present company application has been moved by the applicants who are the Directors of Divya Vasundhara Financiers Private Limited to stay further proceedings in Criminal Case No. 374 of 1982 as filed by the opponent No. 1 herein in the Court of Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Bombay. It is submitted that the said complaint was filed by the first opponent on 2-8-1977 at L.N. Marg Police Station and after making investigation, a charge sheet was filed against the

applicants in the Metropolitan Magistrate's Court at Bombay. The charge sheet is filed u/s 420, I.P. Code on the ground that the first opponent was cheated by the applicant-Directors of the Company and that he was duped to part with his money. It appears that in the said case, the learned Magistrate was pleased to pass an order on 23-2-1984 whereby he declined to frame any charge against the applicants and they were discharged. The first opponent, therefore, challenged the said order by filing a revision application being Revision Application No. 136 of 1984 in the Court of Session at Bombay and the said Court was pleased to set aside the order of discharge and remand the matter back to the trial Court for proceeding on merit. After the case was so remanded, the present applicants made application on 6-9-1985 before the trial Court praying for stay of the proceedings on the ground that this Court had on 28-7-1978 ordered stay of the proceedings of any suit or proceedings against the Company and/ or its Directors in connection with the affairs of the Company till further orders. However, the applicants were orally informed by the trial Court that no stay of further proceedings would be granted and that if they wanted to stay the hearing of the case, they had to obtain specific order from this Court. In these circumstances, the present application has been moved.

5. Mr, Soparkar for the applicants contended that the very basis of the scheme of compromise and arrangement is that all proceedings against the Company and its Directors pending in different Courts whether Civil or Criminal arising out of conducting of the affairs of the Company should be stayed so that the Court Committee can effectively function with the co-operation of the Directors of the Company and can realise assets of the Company in the best possible manner. That it was with that and in view that B.K. Mehta, J. passed his order in Company Application No. 10 of 1978 in Company Application No. 179 of 1977 on 28-7-1978 staying various suits and criminal proceedings as mentioned earlier. It is, therefore, in the fitness of things that present criminal proceedings should also be stayed. Mr. Soparkar submitted that when earlier Application No. 10 of 1978 in Company Application No. 179 of 1977 was moved for stay of civil and criminal proceedings, the present criminal case could not be included as the applicant-Directors never knew that such a case was pending against them at Bombay. If they had known it, they would have certainly included number of that case, also, in Company Application No. 10 of 1978. It was further submitted that if stay of these proceedings is not granted, the very purpose of the scheme of compromise and arrangement would be frustrated and the Directors will have to suffer unnecessarily and there would be multiplicity of proceedings. That the Directors would never have agreed to surrender all the assets of the Company for administration of the Court Committee as per the scheme of arrangement and compromise if they were not assured about stay of all pending civil and criminal proceedings against them, as Directors of the Company. It was, therefore, submitted that it is just and proper to stay the proceedings in the criminal case as prayed for in the present application.

6. In this case, earlier, B.K. Mehta, J. by his order dated 14-10-1985 issued rule and granted ad interim directions in terms of para (A) of the summons. All further proceedings in the criminal case were stayed pending the hearing of the application opponent No. 1 when served with the rule appeared through his learned Advocate Mr. B.R. Parikh. He has filed his affidavit-in-reply. It has been submitted that the criminal complaint has been filed against the applicant-Directors of Divya Vasundhara Financiers Private Limited for an offence u/s 420, I.P. Code and a charge is framed against the applicants as per the remand order of the learned Sessions Judge at Bombay. That the earlier order of the High Court staying various proceedings does not apply to the present case as no such stay was prayed for before B.K. Mehta, J. in Company Application No 10 of 1978. He further stated that provisions of Section 591(6) of the Companies Act are applicable to suits or other legal proceedings by or against the Company and criminal proceedings are kept outside the purview of the section. It is contended that if such proceedings are stayed, it would cause irreparable damage to the complainant as evidence will be lost in the meantime and a possibility may arise when proceedings may abate on account of future death of the concerned accused or even the complaint may not be available to give evidence. It was, therefore, submitted that this application should be rejected and the applicants must be permitted to face the criminal proceeding filed against them since 1978 in the competent Court.

7. I have heard Mr. Soparkar for the applicants as well as Mr. B.R. Parikh for opponent No. 1. Mr. R.M. Desai for the Court Committee submitted to the order of the Court. Mr. Soparkar submitted that if these criminal proceeding are not stayed, the very spirit underlying the scheme will be frustrated and that, the Directors would never have agreed to the scheme if they were not assured that pending suits and criminal proceedings against them would be stayed. He further submitted that on the principle of Committee, I should pass a similar order which was passed by B.K. Mehta, J. in Company Application No. 10 of 1978. Mr. Parikh for opponent No. 1 on the other hand submitted, placing reliance on a judgment of the Bombay High Court in the case of Uma Investments Pvt. Ltd. In re-47 Company Cases 242, that as per Section 391(6), proceedings which can be stayed during the currency of application u/s 391 would only be proceedings of civil nature and that said provision would not include criminal proceedings and that such criminal proceedings against the Directors of the Company can be commenced or continued notwithstanding the fact that a scheme for compromise or arrangement has been initiated u/s 391. On merits, it was contended by him that if these criminal proceedings are stayed indefinitely till the entire scheme is worked out, there is every possibility of the evidence being lost and the proceedings getting abated. He contended that original accused may not be available to give evidence as he might also die during the pendency of the proceedings. 8. In the light of the aforesaid rival contentions, the following points arose for my consideration:

(i) Whether the criminal proceedings can be stayed in exercise of powers u/s 391(6) of the Act;

(ii) If yes, whether this is a fit case for staying criminal proceedings. So far as the first point is concerned, relevant provisions of Section 391 will have to be noted at the outset. They provide as under:

391. (1) Where a compromise or arrangement is proposed.

(a) between a Company and its creditors or any class of them; or

(b) between a Company and its members or any class of them; the Court may, on the application of the Company or of any creditor or member of the Company, or in the case of a Company which is being wound up of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under the Rules made u/s 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be. and also on the Company, or in the case of a Company which is being wound up, on the liquidator and contributories of the Company;

Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the Company or any other person by whom an application has been made under Sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the Company, such as the latest financial position of the Company, the latest auditor's report on the accounts of the Company the pendency of any investigation proceedings in relation to the Company under Sections 235 to 251. and the like.

(3) an order made by the Court under Sub-section (2) shall have no effect until a certified copy of the order has been filed with the Register.

(4) A copy of every such order shall be Annexed to every copy of the memorandum of the Company issued after the certified copy of the order has been filed as aforesaid, or in the case of a Company not having a memorandum to every copy so issued of the instrument constituting or defining the constitution of the Company.

(5) If default is made in complying with Sub-section (4), the Company and every officer of the Company who is in default, shall be punishable with fine which may extend to ten rupees for each copy in respect of which default is made.

(6) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against

the Company on such terms as the Court thinks fit, until the application is finally disposed of.

(7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decision of that Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction.

The provisions of Sub-sections (3) to (6) shall apply in relation to the appellate order and the appeal as they apply in relation to the original order and the application.

9. Now, as the wording of Sub-section (6) of Section 391, it appears clear that the phrase "proceeding" as employed by Sub-section (6) is of wide import. It does not include only civil proceedings as submitted by the learned Advocate for opponent No. 1. The word "proceeding" has not been defined by the Companies Act. Therefore, we have to refer to general meaning of the term "proceeding" as gathered from the dictionary and as understood in common parlance. In this connection, I may refer a decision of the learned single Judge of the Punjab and Haryana High Courts in the case of *Workmen of Bali Singh v. MA. Bali Singh* AIR 1969 Punjab and Haryana 147. The question before the learned single Judge of that Court in that case was as to whether provisions of Section 93 of the Punjab Reorganization Act, 1966 covered the proceedings pending before the Labour Court or the Industrial Tribunal under the Industrial Disputes Act. Section 93 of the said Act provided that "every proceeding pending immediately before the appointed day before a Court (other than a High Court), Tribunal, authority or officer in any area which on that day falls with a State or Union Territory shall, if it is proceeding relating exclusively to the territories of another State or Union Territory, stand transferred to the corresponding Court, Tribunal, authority or officer in that other State or Union Territory, as the case may be". It was contended before the High Court that proceedings before the Labour Court or Industrial Tribunal were not covered by the said provision. Repelling that contention, Tek Chand, J. observed as under:

Even if inclusive definition was not given of the word "proceeding" in Section 93, in its general acceptation also, it is a term of wide amplitude, and means a prescribed course of action for enforcing or protecting a legal right and further embracing the requisite steps to be taken whether procedural or substantive. Proceedings also means forms in which relief is sought before Courts of law or before other bodies or authorities determining rights and liabilities and in which actions are brought and defended and the manner of conduct in them and the mode of deciding them.

10. I respectfully concur with the aforesaid observations of Tek Chand, J. It, therefore, becomes obvious that on the phraseology of Section 391(6) it is not possible to hold, as contended by the learned Advocate for opponent No. 1, that the word "proceeding" would include only civil proceedings, and not criminal

proceeding. Further light on this question is thrown by different other provisions of the Companies Act itself. Section 446 is one of them. It lays down the procedure to be adopted in connection with suit and proceedings commenced or pending against the Company in any Court when winding up order has been made or Official Liquidator has been appointed as provisional liquidator by the Company Court, Sub-section (3) of Section 446 provides

Any suit or proceeding by or against the Company which is pending in any Court other than that in which the winding up of the Company is proceeding, may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court.

11. It has been now well settled by a catena of decisions that the term "suit or other proceeding" as employed in various other sub-sections of Section 446 would cover all types of proceedings against the company including even criminal proceedings. If any authority were needed, to highlight this proposition, it is supplied by a decision of the Delhi High Court in the case of Official Liquidator v. R.C. Abrol 47 Comp Case 537. D.K. Kapur, J. in that case held that the High Court had power u/s 446(3) to transfer a pending complaint before the Magistrate for trial to itself Having referred to Sub-section (3) of Section 446, the following observations were made:

This shows that once a proceeding by or against a Company has become a pending proceeding in any Court it can be transferred to the Court which is winding up a Company. For instance, if the present complaint is filed before a Magistrate who takes cognizance of it, then the case would become a pending case before a Magistrate and could be transferred to this Court u/s 446(3), if the Court thought it fit to transfer the same.

Further section which can be usefully referred to in this connection is Section 633 of the Act. It deals with the power of the Court to give relief in certain cases. Section 633(1) and the proviso thereof read as under:

633. (1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a Company, it appears to the Court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him, either wholly or partly, from his liability on such terms as it may think fit;

Provided that in a criminal proceeding under this sub-section, the Court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

12. It is obvious that u/s 633(1) the word "proceeding" does not indicate that it is confined only to civil proceedings or that it exclude criminal proceedings. In other

words the word "proceeding" is used in a comprehensive sense. The proviso makes it clear that it would include even criminal proceedings. It is, therefore, obvious that the legislature while enacting the Companies Act, referred to "proceeding" in various sections but did not thereby confine them to only one type of proceedings, and on the contrary, proviso to Sub-section (1) of Section 633 clearly indicates the legislative intention that word "proceeding" would include criminal proceeding. It is, therefore, impossible to agree with the contention of the learned Advocate for the opponent No. 1 that the word "proceeding" employed in Section 391(6) would include only civil proceeding and not criminal proceeding. However, the learned Advocate for opponent No. 1 was very sanguine in his contention and in support of the same, he placed strong reliance on the decision of the learned single Judge of the Bombay High Court in the case of Uma Investment Private Ltd. (supra). It is true that the learned single Judge, Agarwal, J. in that case took the view that when the scheme of compromise and arrangement is moved u/s 391 before the Company Court, Sub-section (6) of Section 391 cannot be utilised for staying criminal proceedings against the Company for which the scheme is proposed, and Section 391(6) would include only civil proceedings. The reasoning which appealed to the learned Judge on this count is that if the intention of the legislature had been to stay the commencement or continuation of criminal proceedings, it would have specifically said so. It is difficult to agree with this reasoning of the learned Judge for the simple reason that the word "proceeding" as shown above is a term of wide import and it would include in its sweep even criminal proceedings as seen from the settings of various provisions of the Companies Act and even from the point of view of general meaning of "proceeding" as understood in common parlance.

13. The second reason given by the learned single Judge of the Bombay High Court is that there were three classes of creditors, namely, (i) creditors who were the subscribers of terminated Chit group; (ii) creditors who are the subscribers of existing group; and (3) other creditors of the Company. In the case before the Bombay High Court, a proposal was put forward by the Company for a compromise or arrangement. Nothing had been pointed out to the learned Judge that the Company's proposal referred to or covered any criminal proceedings against the Company and its officers. The provisions of Sub-sections (1) and (2) of Section 391 lay down that if any proposal is put forth by a company or a creditor or class of creditors or a member or class of members, the same was required to be considered under the directions of the Court by calling, holding and conducting a meeting or meetings, and if approved by a majority in number representing three-fourths in value of the creditors, or class of creditors or members, or class of members, and agreed to any compromise or arrangement the compromise or arrangement shall, if sanctioned by the Court, be binding on all concerned. The compromises or arrangements are about civil liabilities where a creditor will accept a lesser payment or receive less on distribution or grant time or waive interest and work out other kindred things. In the opinion of the learned single Judge of the

Bombay High Court, it was impossible to take the view that Section 391 was meant for freezing criminal proceedings which may be instituted either by a creditor or a member of a company or by the State either against the Company or its officers. Now, it must be kept in view that the aforesaid reasoning of the learned single Judge, proceeded in the light of the nature of the scheme of compromise and arrangement suggested by the Company and its management. But even that apart, with respect, it is difficult to appreciate how during the consideration of such scheme by the Court, criminal proceedings must necessarily be permitted to be continued against the Company and its directors for their acts as such as taken out by individual creditors as complainants, when under the proposed scheme, there is impliedly to be cease-fire on all fronts so that Court can examine the scheme and grant relief to the concerned creditors in a comprehensive manner. It goes without saying that if individual Directors are accused of offences committed in their individual capacity, the matter would stand on a different footing. However, if the Directors are sought to be criminally proceeded against for their acts as Directors pending consideration of the scheme of arrangement between the creditors and the directors and if the creditors have taken out criminal proceedings, they can be stayed by the Court in suitable cases so that proposed scheme u/s 391 can be effectively considered and implemented. It is, therefore, not possible to agree with the view of the learned single Judge of the Bombay High Court that Section 391 is not meant for freezing criminal proceedings which may be instituted either by a creditor or by a member of the Company or by the State either against the Company or its officers. As a general proposition, with respect, such a conclusion does not flow from the express language of Section 391(6).

14. The third reason which appealed to the learned Judge of the Bombay High Court was that if the officers of the Company were to be held responsible for contravention and infringement of the Income Tax Act or Foreign Exchange Control Act, can a company by putting a proposal before the Court u/s 391 seek the protection of the Court under Sub-section (6) of Section 391 and stay the pending prosecutions or prevent the authorities under the Income Tax Act of the Enforcement Directorate from launching prosecution? Now, so far as this difficulty envisaged by the learned single Judge is concerned, it is obvious that in any case, the Court may in its discretion find that there is no case for staying these criminal proceedings. On the other hand, the Court may find that if these proceedings are allowed to go on, they may jeopardise the smooth working of the scheme. In such an eventuality, it cannot be said that the Court will have no power at all under the very wide wording of Sub-section (6) of Section 391 to stay such proceedings. It is easy to visualise that if the criminal proceedings are initiated against the Directors for their individual acts which may make them liable for criminal actions under the concerned "statutes, such proceedings may stand on a different footing and such proceedings may not be stayed by the Court in exercise of its discretions u/s 391(6). But that does not mean that the Court is having no power whatsoever u/s 391(6) to

stay criminal proceedings against the Directors of the Company in appropriate cases. With respect, the learned single Judge of the Bombay High Court practically equated the question of existence of, such power with the question of propriety underlying exercise of such powers and has assumed that if in a given case, there is no propriety underlying demand for stay of criminal proceedings, the power to stay itself would stand effaced. It is, therefore, not possible to agree with the view which has been taken by Agarwal, J. in the aforesaid Bombay case. On the scheme of the Companies Act and in the light of wide wording of Sub-section (6) of Section 391, it has to be held that in proper cases, the Company Court has jurisdiction to stay even criminal proceedings pending against the Directors and the Company when the scheme of compromise and arrangement is moved before the Court.

15. One another aspect of the matter is required to be kept in view. When a scheme of compromise and arrangement is moved u/s 391, there may be number of civil and criminal proceedings pending against the Directors and the Company as taken out by various creditors in different Courts. The Court may find that if these proceedings are permitted to go, pending consideration of the scheme by the Court, a situation may arise wherein individual creditors as complainants may be able to pressurise the Directors of the Company who may be accused in the cases to succumb to their demands, and that would not only jeopardise consideration and working of the scheme as a whole but may even in a given case, amount to undue preference of creditors who might have filed criminal complaints and to whose pressure, the Directors may succumb. Consequently, even from this aspect of the matter, it would be just and proper to interpret word "proceeding" as employed by Section 391(6) in the widest possible manner so that scheme of compromise and arrangement can be effectively examined and can be properly executed. u/s 392 of the Act, the High Court has power to enforce compromise and arrangement from beginning to end. The Court, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement. Armed with such powers, the Court can certainly stay in a proper case pending criminal proceedings against the Company or its Directors with a view to seeing that the proposed scheme of compromise and arrangement which may be ultimately sanctioned, may be properly worked out. There is ample power u/s 392(1)(b) itself which enables the High Court to give proper directions in regard to any matter which may also include staying criminal proceedings which might have been filed against the Company and the directors even after sanctioning, of the scheme and before the scheme has been finally worked out. It has also to be kept in view that the High Court as a Company Court has inherent power to pass appropriate orders in the interest of justice and requirement of the case. Rule 10 of the Company Court Rules clearly brings out this position. Even that power can be exercised in proper cases, even apart from Sub-section (6) of Section 391. Consequently, the first contention canvassed by the

learned Advocate for the opponent No. 1 has to be rejected. 1st point is answered in the affirmative.

16. So far as the second point is concerned, it relates to the merits of the case. It is not possible to agree with Mr. Soparkar for the applicant that earlier order passed by B.K. Mehta, J. in Company Application No. 10 of 1978 envisages that all future criminal cases or cases not covered by the order should, of necessity, be stayed. No such general direction is spelt out from the order of B.K. Mehta, J. Therefore, it is not possible to agree with Mr. Soparkar for the applicant when he contends that in the light of the above order, the present case should also be stayed. It is also not possible to agree with his contention that in view of Clauses (2) and (5) of the sanctioned scheme, these proceedings will have to be of necessity stayed. When we turn to these clauses, it is seen that all that is provided is that the basis of this scheme is to ensure payment to all the creditors within a reasonable period, to complete and/or dispose of the outstanding in complete projects and realise the dues and to sell the properties and liquidate the investments and to disburse the amounts recovered from outright sale of certain properties. So far as Clause (6) is concerned, it deals with powers of the Committee and lays down the procedure to be followed by the Court Committee for realising all assets of the Company which may be made available for distributing amongst the creditors. This clause obviously has nothing to do with the pending criminal cases, or future criminal cases which may be filed by the creditor-complainants against the concerned Directors of the Company. It has to be kept to view that the proposed scheme consisting of various clauses was put to vote before the body of creditors and it has been approved by absolute majority but there was no clause in the scheme which suggested that all pending criminal and civil cases against the Company and its Directors as filed by various creditors shall remain stayed till finalisation of the scheme. As there was no such clause in the scheme, the body of the creditors had no occasion to consider the same and to approve the same by majority. Therefore, there would remain no occasion for the learned Advocate for the applicant to submit that even present opponent No. 1 would be bound by the decision of the majority of the creditors who have voted for the scheme. However, the submission of Mr. Soparkar that from the point of view of propriety and convenience even this criminal case should be stayed, requires a closer scrutiny. The order passed by B.K. Mehta, J. itself shows that he was pleased to stay various civil proceedings pending between the creditors of the company on the one hand and the Company and its Directors on the other pending the working out of the present scheme by this Court and even criminal cases filed by various creditors against the Company and the Directors in different Courts were stayed including one criminal case in the Court of the Metropolitan Magistrate, Bombay. Thus, from the point of view of propriety, it just and proper for me to fall in line with the earlier order passed by B.K. Mehta, J. in this very scheme proceeding.

17. Now remains the question as to whether the proceedings should be permitted to be stayed wholehog or whether limited stay should be granted. Mr. Parikh for

opponent No. 1 submitted that stay should be limited; while the learned Advocate for the applicant submitted that the stay should be made absolute and all further proceedings in the criminal case should be stayed. So far as this question is concerned, in my view interest of justice demands that stay should be granted in a modified form. It is not easy to brush aside the submission of learned Advocate for opponent No. 1 that if these criminal proceedings are indefinitely stayed, a possibility may arise that evidence may be lost and the proceedings may abate on account of death of either of the accused or even the complainant. It is easy to visualise that this scheme was sanctioned years back in 1978 and even after 9 years the scheme is not fully worked out and it is anybody's guess when the scheme will be completely worked out. It may take years before that eventuality happens. It is not proper to hold up even recording of evidence in the complaint for all these years. I, therefore, deem it fit to grant a partial stay of the criminal complaint filed by opponent No. 1 in the Bombay Court as under:

Earlier stay granted shall stand vacated. Instead, it is clarified and directed that the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Bombay may proceed to hear the complaint and record evidence of the prosecution and also evidence if any offered by the defence and it is thereafter that the proceedings in the complaint may remain stayed for sufficient time awaiting further orders from this Court. In the first instance, the present stay in modified form shall operate for 2 years further i.e. upto 30-9-1989. If by that time the scheme proceedings are not finalised by this Court, it will be open to the applicants to move this Court for extension of stay for a further suitable period. Such application when moved will be decided on merits after hearing the concerned parties.

18. Company Application No. 189 of 1985 shall stand granted to the aforesaid limited extent and prayer (A) in the Judge's summons will also stand granted to this limited extent. There will be no order as to cost in this application. At the request of Mr. Soparkar for the applicants, operation of this order is stayed for four weeks from today to enable him to file an appeal against this order.