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**(2001) 08 DEL CK 0196**

**Delhi High Court**

**Case No:** Company Application No. 28 of 2001

Smt. Promila and another

APPELLANT

Vs

DCM Financial Services Ltd.

RESPONDENT

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**Date of Decision:** Aug. 27, 2001

**Acts Referred:**

- Companies Act, 1956 - Section 391, 391(2), 394
- Reserve Bank of India Act, 1934 - Section 45QA

**Citation:** (2001) 107 CompCas 358 : (2001) 93 DLT 394 : (2001) 60 DRJ 229

**Hon'ble Judges:** Cyriac Joseph, J

**Bench:** Single Bench

**Advocate:** Mr. R.P. Gupta, for the Appellant; Mr. Rajiv Nayar and Ms. Manali Singhal, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

Cyriac Joseph, J.

The applicants Smt. Promila and Shri Ram Prakash Gupta are sister and brother. They jointly deposited with the DCM Financial Services Limited (hereinafter referred to as the Company) six fixed deposits on "either or survivor basis". The said fixed deposits matured on 29.09.1998 and the total maturity amount of Rs. 1,31,796/- became payable to the applicants. When the company defaulted repayment of the deposits to depositors like the applicants, the depositors started sending applications to the Company Law Board praying for suitable directions to the Company u/s 45QA of the Reserved Bank of India Act. Before the Company Law Board the Company submitted that it was not only capable of repaying the deposits but also interested in discharging its liability that towards the fixed deposits. However, it was also submitted that such repayment would be possible only within a period of time and not immediately when the deposits matured for repayment. "The

Company also submitted four different schemes for the consideration of the Company Law Board. The Company Law Board was convinced that the Company would be in a position to repay all the deposits already matured and also those which would be maturing in future, provided, some reasonable time was given to the Company. However, the Company Law Board found that none of the schemes submitted by the cold be accepted. Hence the Company Law Board rejected them and directed the company to furnish a better scheme. In compliance with the said direction the company furnished another Scheme. Ultimately, after taking into consideration the interest of the company, the interest of the depositors and also the public interest, the Company Law Board passed an order dated 17.7.1998 issuing certain directions regarding the payment to be made to the depositors. As per the said order of the Company Law Board all depositors of Rs. 10,001/- to Rs. 25,000/- shall be repaid in 3 years including the interest, from the dates of maturity at 30% in the first year, 30% in the second year and balance 40% in the third year. The interest for both pre and post maturity periods will be paid along with the last Installment. All deposits of over Rs. 25,001/- will be paid in four years from the date of maturity @ 25% each year and the interest for both pre and post maturity periods will be paid along with the last Installment. During the hearing before the Company Law Board a large number of depositors suggested that notwithstanding the said Scheme, hardship cases should be given priority considering the hardship faced by the depositors. Some of the hardship cases as suggested by the depositors were medical requirement, old age, marriage, education etc. Therefore, in the order dated 17.7.1998 the Company Law Board directed that besides the amount that may be needed for repaying the depositors as per the scheme, an amount of Rs. 1 crore should be kept apart by the Company to meet the needs of hardship cases. To decide such cases on merits and also the quantum, the Company Law Board appointed a committee to decide the same. The committee was directed to meet at least once in three months to consider such cases. It was also directed that nonce the committee decided, the amount should be disbursed within a period of 10 days thereafter. Even though the company started making payment in accordance with the directions of the Company Law Board, the company was not able to comply with the directions in totality except in the case of deposits up to Rs. 5,000/- and payments on compassionate grounds. Hence the company filed an application dated 21st October, 1999 before the Company Law Board praying for review of the scheme formulated by the Company Law Board in its order dated 17.07.1998 and also for condoning the delay in complying with the order dated 17.07.1998. The Company also field another application (CA 4/2001) on 26.5.2000 before the Company Law Board reporting that the Company had field a scheme of re-structuring and arrangement with its creditors under Sections 391/394 of the Companies Act before the High Court and that the High Court had been pleased to allow the convening of the meeting of the creditors. The company requested the Company Law Board to adjourn the matter till the petition u/s 391/394 was disposed of. The Company Law Board felt that in view of the pendency of the application u/s

391/394 of the Companies Act in respect of a scheme of re-structuring and arrangement with the creditors, no further directions could be given by the Company Law Board at that stage. Accordingly the Company Law Board by an order dated 26.05.2000 disposed of both the application with liberty to the company to apply if need be after the petition filed u/s 391/394 is disposed of by the High Court.

2. According to the applicants, though they surrendered the fixed deposits receipts for repayment, the repayment was not made by the company as directed by the Company Law Board. The applicants allege that in spite of the directions given by the Company Law Board, the Company did not set apart an amount of Rs. 1 crore to meet the needs of the hardship cases. It is stated that the applicants are aged 76 years and 69 years respectively and that they need money for medical treatment. The applicants have produced photocopies of the prescription and certificates issued from the AIIMS and the G.B. Pant Hospital. It is alleged that since June 1999 the applicants requested the company every month in writing to repay the full amount along with interest to enable them to meet their medical requirements but there was no favorable response. The applicants have also stated that they are opposing the scheme of arrangement proposed by the company under Sections 391/394 of the Companies Act. The applicants pray for a direction to the company to immediately pay the amount of Rs. 1,58,994/- (payable on 29.9.2000) along with interest up to date (less already paid from July 1999 to 12.12.2000). According to the applicants the said amount is urgently required for admitting Smt. Promila in the hospital for an operation and for meeting the expenses in connection with the treatment of Shri Ram Prakash Gupta. The applicants have also prayed that suitable penalty may be imposed on the respondents for not making the payments in time. During the course of arguments it was submitted by Shri R.P. Gupta, appearing in person, that since the operation could not be postponed any further, Smt. Promila was already admitted in the hospital on 24.07.2001 for operation.

3. A reply has been filed on behalf other respondents. According to the averments in the said reply, pursuant to the directions issued by this Court in CA 811/2000 separate meetings of the secured creditors and the unsecured creditors of the company were convened and the scheme was duly approved by the said meetings of the secured and the unsecured creditors. The company has filed CP 48/2001 u/s 391(2) and 394 of the Companies Act praying for grant of sanction to the scheme of arrangement and the said company petition is still pending before this Court. If the applicants have any objection to the said scheme of arrangement they should file objections to CP 48/2001 instead of filing the present application. It is also stated in the reply that the company has proposed the scheme of arrangement to repay its dues to all the creditors by adopting a strategy of entering into a scheme of arrangement with its creditors simultaneously ensuring flow of funds for the same. The applicants claim that on the scheme being implemented the company will continue to remain a viable entity and will be able to wipe off its debtors. According to the respondents the scheme was approved by 98.81% of the unsecured creditors,

present and voting and by 99.81% of the secured creditors, present and voting. It is alleged that through the present application the applicants seeking to obtain an unfair preference over other creditors. It is stated that the claim of all the secured and the unsecured creditors will be most efficaciously and promptly met and fulfilled by the company if the scheme is sanctioned by this Court. The applicants seek benefits for themselves with total disregard to the will of the majority of creditors who have already approved the scheme. It is further stated tat the company cannot give preference to one creditor over others and that the company has moved a composite scheme for equitable repayment to all its creditors without giving preference to any individual creditor. The respondents have also pointed out in the reply that the company had filed CA No. 891/2000 seeking stay of commencement or continuation of any suit or proceeding against the company and this Court vide order dated 6.7.2000 has directed that no judgment or decree shall be executed against the company. The respondents have stated in the reply that the company has already paid to the applicants more than what they would have been paid under the proposed scheme of arrangement. The details of such payments are given in the reply. As against the total maturity amount of Rs. 1,31,796/- the applicants have already been paid a sum of Rs. 92,000/-. According to the respondents, the applicants have already been paid almost 70% of their maturity amount in cash whereas the scheme under the consideration of this Court envisages the payment of only the principal amount.

4. According to Mr. Rajiv Nayyar, learned Senior Counsel appearing for the respondents, when an application u/s 391(2)/394 of the Companies Act for sanction of a scheme of arrangement with the creditors of the company is pending before this Court, application from individual creditors for direction to the company to repay the amount should not be entertained by this Court as it will go against the decision of the majority of the creditors and will undermine the scheme itself. It is contended that when the vast majority of the creditors have approved the scheme of arrangement providing for an equitable distribution of money for payment to all creditors, individual creditors should not be allowed to steal a march over the other creditors. It is also contended that the scheme approved by the majority of the creditors is binding on all the creditors and Therefore the applicants are not entitled to file the present application. It is further contended that if the requests of such individual creditors are granted by this Court, the proposed scheme of arrangement, even if sanctioned by this Court, will be rendered unworkable and infructuous.

5. I have carefully considered the above contentions raised on behalf of the respondents. As per Section 391(2) of the Companies Act, any compromise or arrangement approved by a majority of creditors will be biding on all the creditors only if the said compromise or arrangement is sanctioned by the Court. The scheme of arrangement proposed by the company in this case was approved by a majority of the creditors but the application u/s 391(2) & 394 of the Companies Act for

sanction of the scheme is still pending before this Court. Creditors like the applicants herein are entitled to raise their objections to the application for grant of sanction and only after considering such objections, if any, the Court can take a decision in the matter. In fact several creditors have filed objections to the said application of the company. Since sanction has not yet been granted by this Court to the scheme of arrangement, it cannot be said that the scheme is binding on the applicants or that the applicants are not entitled to file the present application. However, learned counsel for the respondents is right in submitting that in the normal circumstances when a petition u/s 391(2) and 394 of the Companies Act for sanction of scheme of arrangement with the creditors is pending before this Court individual applications of creditors for direction to the company to make payments should not be entertained by this Court. Since the scheme of arrangement has been approved by the majority of the creditors and since there is the possibility of the said scheme being sanctioned by this Court, ordinarily any request for payment should await the decision of this Court on the petition for sanction of the scheme. The spirit of the provisions contained in Sections 391 to 394 of the Companies Act requires the Court to follow such a course of action. But it cannot be said that pending decision on the petition for sanction of the scheme, this Court has no power or jurisdiction to entertain an application for direction to make payment to the creditors. Learned counsel for the respondents could not point out any provision in the Companies Act or any other law which specifically prohibits the filing of such an application or passing of any order on such application. As rightly submitted by applicant Shri Ram Prakash Gupta, this Court has got inherent power to do complete justice and such inherent power has not been taken away or inhibited by any provision in the Companies Act. Therefore, the question is whether there are extraordinary circumstances warranting a deviation from the normal course and justifying a direction to the respondents to make further payments to the applicants.

6. The applicants are aged 76 years and 69 years respectively. They are suffering from serious ailments requiring medical treatment. Smt. Promila requires an operation and during the pendency of this application she has been admitted in the hospital for the operation. Having regard to the averments in the application and the materials placed on record, I am satisfied that the applicants are genuinely and urgently in need of money. In my view the facts of this case reveal extraordinary circumstances warranting a deviation from the normal course and justifying a direction to the company to make further payments to the applicants. It should be mentioned in this context that even in the order dated 7.7.1998 of the Company Law Board special provision was made for dealing with hardship cases and the respondent was directed to set apart an amount of Rs. 1 crore to meet the needs of the hardship cases and a committee was constituted by the Company Law Board to consider such hardship cases. It was also directed that once the Committee decided the amount, it should be disbursed within a period of 10 days thereafter. In the

above circumstances, I am of the view that in the interest of justice the company should be directed to make further payments to the applicants. This is necessary to do complete justice to the parties.

7. It is not disputed that the total principal amount deposited by the applicants is Rs. 1,14,630/- and the maturity amount is Rs. 1,31,796/- and the amount already paid to the applicants is Rs. 92,000/-. The maturity amount of RS. 1,31,796/- had become payable to the applicants on 29.9.1998. The applicants are claiming interest on the said amount from 29.9.1998. As per the order dated 17.7.1998 of the Company Law Board, it was agreed to by the company that the interest payable would be contracted rate up to the date of maturity and 10% after the date of maturity. In other words if payments were made in terms of the order dated 17.7.1998 of the Company Law Board the applicants would have received interest @ 10% on the maturity amount of Rs. 1,31,796/- for the period after 29.9.1998 and the entire amount would have been paid within a period of three years i.e. before 28.09.2001. At the same time it has to be considered that the applicants have already been paid a sum of Rs. 92,000/-. It is also to be taken into account that the Scheme formulated by the Company Law Board is not being implemented now and that further payment to the applicants is being directed without waiting for the decision on the application for sanction to the scheme approved by the majority of the creditors. Having regard to the entire facts and circumstances of this case, I am of the view that ends of justice will be adequately met if the company is directed to pay to the applicants the unpaid portion of the maturity amount on or before 28.09.2001 and the payment of 10% interest on the maturity amount for the period after 29.09.1998 is dispensed with. I do not find any merit in the prayer of the applicants for imposing penalty on the company on account of the delayed payment.

8. Hence the application is disposed of with a direction to the respondents to pay to the applicants a sum of Rs. 39,796/- on or before 28.09.2001.

9. Let a copy of this order be given duly to the counsel for the parties.