

(1998) 06 BOM CK 0078

Bombay High Court

Case No: Criminal Writ Petition No"s. 173, 188, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 318, 320, 321, 322, 323, 324, 330, 331, 332, 333, 334, 335, 336, 337, 338, 349, 350, 351, 352, 353, 358, 359, 360, 361, 362, 363, 364, 370,

Orkay Industries Limited and
others

APPELLANT

Vs

The State of Maharashtra and
others

RESPONDENT

Date of Decision: June 26, 1998

Acts Referred:

- Companies Act, 1956 - Section 227(2), 441(2), 442, 446, 536(2)
- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Displaced Persons (Debts Adjustment) Act, 1951 - Section 20
- Negotiable Instruments Act, 1881 (NI) - Section 138, 141

Citation: (1998) 3 BomCR 415 : (2000) BomCR(Cri) 14 : (1998) 2 MhLJ 910

Hon'ble Judges: V.R. Datar, J; S.N. Variava, J

Bench: Division Bench

Advocate: G.P. Yadav, C.P. Grade II, V.R. Manohar, Prashant Naik, W.N. Yande and A.V. Doijode, for the Appellant; R.Y. Mirza, S.R. Shinde, Smt. S.G. Joshi, Smt. P.H. Kantharia, M.P. Galeria, D.N. Salvi, Ms. Usha V. Kejariwal, Miss A. R. Kamath, Pravin Singal, S.G. Deshmukh, N.P. Dalvi, D.P. Adsule, R.L. Patil, I.S. Thakur, Smt. J.S. Pawar, R.S. Deshpande, D.S. Mahispurkar, R.P. Behere, S.R. Borulkar, R.Y. Mirza, V.K. Jailramani, A.P.Ps., Pravin Samdani, Gaurav Joshi, S.N. Vimadalal, instructed by y M/s. Vimadalal and Co., Mahesh Jethmalani, S.B. Jijina and Kocharekar Advs., instructed by y M/s. Mulla and Mulla and C.B. and C., Naval A. Agarwal, instructed by M/s. Apte and Co., Vinay kumar Tiwari, instructed by M/s. M.V. Kini and Co., Miss Ruby Kerawala, i.b M/s. Little and Co., J.J. Bhat, A.K. Desai, M.B. Sabnis and G.S. Rao, instructed by M/s. Purnanand and Co., Virendra Tulzapurkar and S.S. Parab, instructed by M/s. Madehar and Co., Sanjay Udeshi, instructed by Sanjay Udeshi and Co., Aspi Chinoy, instructed by M/s. Mehta and Girdharlal, J.D. Singh, Mrs. Vandana Jaisingh, Meher Gowala, Shrikant Bhat, Ishwar J. Mankani, V.V. Kanabar, Manoj Mohite, Vijay Tawde, S.H. Ahuja, Girish S. Godbole, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.N. Variava, J.

By all these petitions the petitioners pray that the proceedings before the Metropolitan Magistrate Courts, u/s 138 of the Negotiable Instruments Act, be quashed. In some of these petitions a prayer is also made that undertakings given by the concerned petitioners to those courts, to pay amounts, be also quashed and/or set aside.

2. Most of these petitions have been filed by Directors of two companies viz. Orkay Industries Limited and Atash Industries (India) Limited. In most of these petitions the concerned company is also a party. In some, it is a co-petitioner. In some, it is a respondent. In all these petitions common questions of law are raised. The main question raised before this Court is whether by virtue of section 536(2) read with section 441(2) of the Companies Act providing that all transfers made, after the commencement of winding up, will be void, any offence can be deemed to have been committed u/s 138 of the Negotiable Instruments Act. According to the petitioners, as the payments, if made, would have been void u/s 536(2) of the Companies Act, they were justified in refusing to do a void act and there is no "failure to make payment" and hence no offence has been committed u/s 138 of the Negotiable Instruments Act.

3. For the purpose of his argument Mr. Manohar had shown to Court facts in Criminal Writ Petition No. 430 of 1998. These facts are merely illustrative. Except for some differences, the facts in all these petitions will be the same. Mr. Manohar points out to Court that to the respondent No. 2, in Criminal Writ Petition No. 430 of 1998, 22 cheques aggregating to a total of Rs. 3,14,85,159/- were issued by Orkay Industries Ltd. These were issued between 15th March 1996 and 26th April 1996. All these cheques were dishonoured on 10th May 1996. On 21st May 1996 a statutory notice, as required by section 138, was served on Orkay Industries Ltd. This was received by Orkay Industries Ltd. on 22nd May 1996. The 15 days period would therefore have ended on 6th June 1996. In the meantime, on 27th May 1996, Company Petition No. 372 of 1996 came to be filed by one M/s. U.K. Industries Ltd. Thus in this case the cheques were issued before the petition for winding up was presented. However, in some petitions the cheques were issued after a petition for winding up was presented.

4. Mr. Manohar fairly pointed out that even though the company petition was filed before expiry of 15 days from receipt of the notice, Orkay Industries Ltd. paid to the 2nd respondent, between 22nd May 1996 and 4th July 1996 a sum of Rs. 1,50,67,623. Very fairly Mr. Manohar points out to Court that Orkay Industries Ltd. has also paid to M/s. U.K. Industries Ltd. a sum of app. Rs. 1,04,00,000/- on 15th January 1997 and 19th May 1997. Some of the respondent creditors have pointed

out to Court that Atash Industries (India) Ltd. have also paid to some of the creditors some amounts after the filing of the winding up petitions. We are informed that creditors in Company Petitions Nos. 580 of 1995, 581 of 1995, 582 of 1995. 583 of 1995 and 584 of 1995 have all been paid in full by Atash Industries (India) Ltd. and those petitions have been got dismissed on 25th September 1997 on the ground that the petitioners have been paid in full. Further in some of the proceedings u/s 138 of the Negotiable Instruments Act, Atash Industries (India) Ltd. have given undertakings to the Court that they would pay the disputed amounts in certain installments. Some installments of some parties have been paid.

5. Mr. Manohar points out that against Orkay Industry Ltd., today there are pending 39 company petitions for winding up. He points out that the total liability in all these company petitions is in a sum of app. Rs. 36,67,12,803/- . Mr. Manohar points out that against Atash Industries (India) Limited 24 company petitions were filed of which 19 are still pending. He points out that the total liability of the company in these petitions is in the region of app. Rs. 5.30 crores.

6. Mr. Manohar has appeared for all the petitioners. He has argued on behalf of all the petitioners. Mr. Manohar makes a statement that Orkay Industries Limited is not going to oppose the winding up petitions and will be submitting to an order of winding up. It is clarified that this statement is not being made on behalf of Atash Industries (India) Limited, as proceedings are pending before the Board for Industrial and Financial Reconstruction. Mr. Manohar points out that on 21st April 1998, a Provisional Liquidator has been appointed Liquidator of Orkay Industries Ltd. in Company Petition No. 767 of 1997.

7. Mr. Manohar submits that the presentation of a petition for winding up of a company has very serious consequences. He submitted that section 441(2) of the Companies Act provides that a winding up of company shall be deemed to commence at the time of presentation of the petition for winding up. He submitted that there is thus a deeming provision whereunder the winding up of company takes place from the date of the presentation of the petition for winding up. He submitted that such a deeming provision must be given its full legal meaning and effect. He submitted that when a statute shows that a certain state of affairs have to be imagined, the inevitable corollaries and incidents of that state of affairs must flow. In support of this submission he relied upon the authority in the case of *East End Dwellings Co. Ltd. v. Finsbury Borouch Council*, reported in 1951(2) All ER 587.

8. Mr. Manohar points out that u/s 536(2) of the Companies Act, any disposition of property (including actionable claims) which is made after the commencement of the winding up is void unless the Court otherwise orders. He submits that, by virtue of section 441(2), the term "after the commencement of the winding up" necessarily means after the presentation of a petition for winding up. He submits that the Companies Act attaches considerable significance to the very presentation of a petition for winding up. He submits that this is clear from the provisions of section

442 where, on the presentation of a petition for winding up the Court has power to stay all pending suits and other proceedings. He submits that the rational behind this is that the Company Court should have full session of all matters relating to the concerned Company. He submits that in fact in England, upon the presentation of such a petition, the bank accounts of the company are completely frozen. He points out that there is no such provision in the Indian Companies Act. He however submits that section 536(2) invalidates every transaction which had taken place after the commencement of the winding up. He submits that thus that cheques themselves would be void.

9. Mr. Manohar submits that the rational behind section 536(2) read with section 441(2) is to prevent disposition of the property of the company in order to ensure that the interest of the unsecured creditors will not be prejudiced. He submits that it is the basic concept of the law, governing the liquidation of insolvent estates, (including insolvent companies) that the assets of the insolvent should be distributed rateably amongst all the unsecured creditors. He submits that the expression "in the case of a winding up by Court" in section 536(2) of the Companies Act does not mean that section 536(2) is to come into force only after a winding up order is passed or only upon the passing of such an order. He submits that the expression "in case of winding up by Court" must be read in the light of section 441(2) and, therefore, once a petition for winding up is filed, section 536(2) comes into operation and there can be no transfer or disposition of properties. He submits that even if any transfer takes place, such transfer would be void.

10. Mr. Manohar relied upon the commentary in Halsbury Laws of England, Volume 7(2), 4th Edition (Reissue) Para 1698 on pg. 1239 wherein it has been stated that the winding up order has retrospective effect. It is stated that every disposition of the company property made after commencement of the winding up is void unless the Court otherwise orders. It is stated that in a proper case, the Court may so order otherwise while the petition is pending and before winding up order is made. It is stated that in order to exercise this option the Court will do its best to ensure that the interest of the unsecured creditors will not be prejudiced and will validate transaction entered into in good faith in due course of trade and completed before the date of winding up order. It is also stated that payment of past debts will not be sanctioned. It is also stated that the Directors who make improper payment, being the company's assets, would be themselves liable to the company for the money paid away.

11. Based upon this Mr. Manohar submits that this makes it clear that payment of past debts would not be sanctioned by Court. He submits that as the Court will not sanction such payments, the Directors, who made such payments out of the Company's assets, would themselves become personally liable to make good the monies. He submits that it may be possible that a company, against whom a petition is filed, may be very solvent and flourishing. He submits that a company may be

confident that as the debt is disputed no order will be passed in that petition. He submits that such a company may continue its operation and may continue to make payment. He submits that even then the company is taking a risk inasmuch as the payment may be recalled and/or the Directors may be called upon to personally make good the monies. He submits that therefore it is open for a company and its Directors to validly take up a contention that they cannot be compelled to do an illegal act or an act which is bound to be held void. He submits that the company and its Directors would be entitled to not make payment because if such a payment is made it would be void. He submits that a company and the Directors cannot be forced to make void payment. He submits that there is no provision in any law and the Court also cannot force a company or its Directors to make a void payment or do something which is not permitted by law.

12. In support of this last submission Mr. Manohar relied upon the authority in the case of Nawabkhan Abbaskhan Vs. The State of Gujarat, . In this case an excitement order had been passed against the accused u/s 56 of the Bombay Police Act. This order was passed without giving the accused any hearing. There was disobedience or order and prosecution was launched u/s 142. The question was whether a conviction could be upheld. The Supreme Court held that the initial order of externment was rendered void ab initio as it did not comply with the provisions of the Act itself. The Supreme Court held that since it was void ab initio, the order was itself a nullity. The Supreme Court held that as the order itself was a nullity, the accused cannot be guilty of flouting an order which never legally existed.

13. Mr. Manohar showed to Court section 138 of the Negotiable Instruments Act. He submitted that u/s 138 of the Negotiable Instruments Act, an offence is deemed to have been committed only after the three conditions laid down in the proviso to the said section were fulfilled. He submitted that therefore the offence is deemed to have been committed only if the drawer of the cheques "fails to make payment" of the money to the payee or to the holder in due course within 15 days of the receipt of notice as stipulated in section 138. He submits that therefore till the expiry of the period of 15 days, there is no offence. He further submits that an offence can only be deemed to have taken place if there was "failure to make payment". He submits that a drawee or holder of a cheque cannot be elevated to a position of a secured creditor or put on a level higher than an unsecured creditor. He submits that there will be no difference between a drawee or a holder of a cheque and a person who holds a promissory note or a hundi. He submits that if before the period of 15 days is over, any circumstance intervenes which makes it impossible to make payment, then there can be no "failure to make payment". He submits that thus there can be no offence u/s 138 of the Negotiable Instruments Act. He submits that if within this period of 15 days or earlier a petition for winding up of the company has been presented, then the provisions of section 536(2) of the Companies Act would come into effect. He submits that then there is a legal bar and there can be no disposition of property by the company or its Directors. He submits that section 141 of the

Negotiable Instruments Act, makes it clear that, in cases where an offence u/s 138 is committed by a company, persons who at the time of the offence were in charge of and responsible to the company shall also be deemed to be guilty of the offence. He submits that if therefore a company itself cannot make payment or dispose off any of its property then the persons who are in charge of the company also cannot make payment or dispose off any property. He submits that where the law makes a transaction void, the law is in effect laying down a restriction on the parties preventing them from entering into a transaction which is void. He submits that in such cases parties cannot be expected to and even courts cannot direct parties to perform acts or things which are not permitted by law or which are illegal.

14. In support of this Mr. Manohar relied upon the authority of the Supreme Court in the case of [A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another](#), In this case the Supreme Court has held that the courts cannot by their fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. The Supreme Court has held that they cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the law. Mr. Manohar also relied upon the authority of the Supreme Court in the case of [Johri Lal Soni Vs. Smt. Bhanwari Bai](#), . In this case the Supreme Court has held that there is a clear distinction between a void and the voidable transfer. The Supreme Court has held that this distinction is well-known to law. The Supreme Court has held that a void transfer is one where there is no transfer at all and is completely destitute of any legal effect. The Supreme Court has held that a void transfer is a nullity and does not pass any title at all. The Supreme Court has held that on the other hand a voidable transfer is otherwise a valid transaction which continues to be good until it is avoided by the party aggrieved.

15. Mr. Manohar submits that u/s 536(2) all dispositions of property are void unless the Court otherwise orders. He submits that under these circumstances to make a payment would be to give to the holders of a cheque preference over others similarly situated. He submits that to pay the amount of the cheque would be to give such persons preference over persons holding a promissory note or a hundi. He submits that the object behind section 536(2) is that all unsecured creditors must be treated equally with effect from the date of presentation of a petition for winding up. He submits that the company and its Directors cannot now give preference to some unsecured creditors by paying amounts of cheques in preference to other debts.

16. Mr. Manohar relied upon a Division Bench judgment of this Court in the case of Tulsidas v. Industrial Bank, reported in AIR 1931 Bom 2. In this case the provisions of section 227(2) of the Companies Act, 1913 were being considered. Section 227(2) was identical to section 536(2) of the present Act. The Division Bench held that the purpose behind section 227(2) is to prevent any improper alienation and disposition

of a property of a company during the period which must elapse before a winding up petition can be heard. The Division Bench has however held that bona fide transactions carried out and completed in the ordinary course of current business can be sanctioned. The Division Bench held that this power to sanction is given for the benefit and the interest of the company so as to ensure that the company, which is made the subject of petition for winding up nevertheless obtain money necessary for carrying out its business and so avoid its business being paralysed. The Division Bench held that the Court will not allow the assets of the company to be disposed of at the mere pleasure of the company and thus cause the fundamental principles of equity amongst its creditors to be violated. The Division Bench held that in a winding up, all unsecured creditors are to be paid *pan passu* and that the appropriate date for ascertaining their legal position is the date of commencement of the winding up. The Division Bench has held that the object of this is to prevent injustice and scrambles and intrigues which would arise if the company was at liberty to prefer one creditor to another. The Division Bench has held that if any payment has been obtained either for the purpose of getting an adjournment in a winding up petition or through the Court process, the same must be returned by the creditor. The Division Bench has held that before a petition is presented, it is the ordinary course of business to pay all the debts and even to give security for the overdraft or loan. The Division Bench has held that after the petition is presented the situation is different and all debts have to be paid *pan passu*. The Division Bench has held that therefore it is no longer in the ordinary course of business to pay one creditor in full to the detriment of their fellow creditors.

17. Mr. Manohar also relied upon the judgment in the case of Official Liquidators Electric Supply Co. Ltd. Vs. Siemens (India) Ltd., wherein it has been held that payment of debt due to some creditors during the period that a winding up petition is pending should not be validated by the Court if it would result in the loss to the other creditors who are to be treated equally with those who have been paid. However, it is also held that the business of the company can be continued in good faith. It is also held that to carry on the business it might become necessary for the company to enter into various transactions and it would be impossible to do so if it was not able to make transfers.

18. Mr. Manohar also relied upon the authority in the case of Kamani Metallic Oxides Limited v. Kamani Tubes Limited, reported in (1984) 56 CC 19 wherein the Court has held that the words "in the winding up" u/s 536(2) does not mean "after the winding up order is passed" or "upon passing of such order". The Court has held that it means "during the winding up proceedings." This however was in the context of a question whether an application, u/s 536(2) of the Companies Act, to the effect that certain transactions be validated and/or declared not to be void could be maintained even before a winding up order was made. In this context it was also held that sometimes dispositions would be necessary in the interest of the company during the pendency of the petition for winding up. It was held that unless the

company Court has power to protect such transactions during this period the Directors may become reluctant to enter into transactions.

19. Mr. Manohar relied upon the authority in the case of Chitoor District Cooperative Marketing Society Ltd. v. Vegetols Ltd., reported in (1987) (Supp.) S.C. 167 wherein the Supreme Court has held that the repayments made after the winding up order could not be validated in the absence of any evidence showing that the same were made in a bona fide manner under a commercial compulsion in the course of transaction necessitated for the running of the business. The Supreme Court has held that in the absence of such evidence the repayments made even prior to the date of the winding up order could be validated. Thus to be noted that the Supreme Court is also recognising fact that repayments may have to be made in the bona fide manner in a commercial compulsion in the course of transaction necessitated for the running of the business and that in such a case the courts would validate those transactions.

20. Mr. Manohar also relied upon the authorities in the cases of In re A.I. Levy (Holdings) Ltd., reported in (1963) 1 CD 19; Re Operator Control Cabs Ltd., reported in (1970) 3 All ER 567. These authorities merely reiterate what has been held above viz. that the object of the section was to project the interest of creditors and that an application for validation could be made even prior to an order for winding up being passed.

21. Based upon all the above authorities, Mr. Manohar submits that by reason of section 536(2) of the Companies Act, the company and its Directors could validly refuse to make payment after a petition for winding up was presented. He submits that such refusal would not amount to "failure to make payment" and therefore there would be no deemed offence u/s 138 of the Negotiable Instruments Act.

22. He submitted that in any event the correct course for this Court would be to stay all the proceedings u/s 138 of the Negotiable Instruments Act till such time as all the pending petitions for winding up were finally disposed off. In support of this Mr. Manohar relied upon the authority in the case of Sunil Chandra v. Krishna Chandra, reported in AIR 1949 Cal. 689. In this case the Company Court had passed a general order of stay till an application for sanction of amalgamation was disposed off. The criminal proceedings against the manager had also been stayed. The question was whether on the disposal of the application for sanction of the scheme of amalgamation, the criminal proceedings revived and/or a specific order vacating the stay was required. The Calcutta High Court held that no specific order for vacating the stay order was required and the criminal proceedings revived by themselves. In our view, this was a case where a specific stay had been granted by the Company Court in exercise of its company jurisdiction. This can have no application to the facts of this case where writ jurisdiction is sought to be invoked to quash criminal proceedings.

23. On a question from Court, Mr. Manohar very fairly stated that he was not canvassing that merely because a petition for winding up was presented, by virtue of section 536(2) read with section 441(2) of the Companies Act all affairs of the company came to a standstill. He fairly stated that he was not submitting that on a petition for winding up being presented the Company could not carry on any business, incur any debts, make any payments and/or raise any loans. He stated that whatever was necessary for the commercial survival of the company could be done by the company and that the same would be saved by orders of the Court. Thus, it is to be seen that even according to Mr. Manohar, on the presentation of a petition for winding up, the affairs of a company do not come to a complete standstill. It is not the case that on the filing of a winding up petition the Directors cease to be in charge of and/or responsible to the company for the conduct of the company.

24. On the other hand Mr. Chinoy appearing for the 2nd respondent in Petition No. 430 of 1998, submitted that these petitions and the submissions of Mr. Manohar are based on the proposition that there exists a bar or prohibition preventing the company or its Directors from making payment of cheques or from discharging their duties and functions. He submits that there is no provision in the Companies Act which prohibits the company or its Directors from performing their duties and function and from making payments. He submits that u/s 536(2) the transactions/dispositions would be void, unless sanctioned by Court, only if an order of winding up is passed or a Provisional Liquidator is appointed. In support of this proposition Mr. Chinoy relies on the case of A.C. Goel Vs. First National Bank Ltd., Delhi . In this case it is held that the winding up is a process which starts after the Court passes an order. It is held that till there is such an order there cannot be any winding up in fact. It is held that the first step is taken only after the passing of the order for winding up. It is held that section 441 of the Companies Act introduces a statutory fiction. It is held that in section 441 the Legislature has significantly used the words "shall be deemed to commence" and not "shall commence". It is held that this is done to indicate that although the winding up does not in fact commence at time of presentation of petition, it nevertheless shall be taken to commence from that stage. In this case it is held that there is no conflict between section 441 of the Companies Act and section 20 of the Displaced Persons (Debt Adjustment) Act, 1951.

25. Mr. Chinoy also relied upon the case of Gorakpur Electric Supply Co. Ltd. v. Nariman & Co., reported in (1947) 17 CC 87 wherein it is held that there is no provision in the Companies Act that after an application for winding up is made any payment or realisation automatically becomes void even though the application for winding up may be ultimately rejected. It is held that the only reasonable interpretation would be that after the winding up order is made, any payment made during the pendency of the binding up petition is invalid.

26. Mr. Chinoy admitted that on a winding up order being passed there would be relation back to the date of the presentation of the petition. He submits that however prior to the passing of an order for winding up the legal consequences of dispositions becoming void do not come into being. In other words the dispositions only become void if and when an order for winding up is passed. He submits that section 536(2) cannot be read to mean that merely on a petition for winding up being presented the affairs of the company come to a standstill. He submits that section 536(2) does not prevent the company from continuing its business, purchasing goods and/or raw material, making payments for the same, raising loans etc. merely because a petition for winding up has been presented. He submits that merely on a petition for winding up the Directors of the company do not cease to be Directors and cannot abrogate their duties to the company. He submits that the Directors continue to be responsible for the running of the company. He submits that there is thus no bar or prohibition against the company or its Directors from making payments or meeting obligations merely on a petition for winding up being presented. He submits that transactions/payments/ dispositions cannot become void immediately on a petition for winding up being presented. He submits that the petition may be dismissed or withdrawn. He submits that in that case section 536(2) would never apply and no transaction/payment/ disposition would be void.

27. Mr. Chinoy submits that u/s 138 of the Negotiable Instruments Act the offence is deemed to be committed on dishonour and non payment within 15 days of receipt of notice of demand. He submits that as there is no bar or prohibition from making payments, if the amount of the cheque is not paid within 15 days after receipt of notice, there is "failure to make payment" and the offence is deemed committed. He submits that a subsequent order of winding up, even though it relates back, would have no effect on the offence which is already deemed committed. He submits that a winding up order affects payments/dispositions, if any made. He submits that on a winding up order being passed the Official Liquidator would get a right to apply for return of money/property. He submits that the Court may or may not protect/sanction the payment/disposition. He submits that the offence is deemed committed for non payment. He submits that subsequent winding up order cannot affect the offence as in this case there is no disposition or payment.

28. Mr. Chinoy relied upon the cases of Travancore Rayons Ltd. v. Registrar of Companies, reported in (1998) 64 CC 819 and In Re Navjivan Mills, reported in (1986) 59 CC 201. He also pointed out that almost all the authorities relied upon by Mr. Manohar, in support of the submission that transfers/dispositions made after presentation of winding up petition would be void, recognise that the Company can carry on its business and activities. He submits that the courts recognise the fact that the company has to make dispositions/payments in order to run its business. He submits that some of those authorities are dealing with the question whether Court can protect the transaction during the period that the petition for winding up

is pending. He points out the courts have held that there is power to protect even though a winding up order has not been passed. He points out that the order which will be passed will always provide that it will operate only in the event of a winding up order being passed or a Provisional Liquidator being appointed. To show the usual form of such an order Mr. Chinoy relied upon the case of (He Burton & Deakin Ltd.), reported in (1977)1 All ER 631.

29. Mr. Tulzapurkar appearing for the 2nd respondent in Criminal Writ Petition No. 393 of 1998 further elaborated. Mr. Tulzapurkar fairly admitted that if there was a prohibition or a legal disability to pay e.g. by an injunction order or a statutory bar then there would be no "failure to make payment" as envisaged by section 138 of the Negotiable Instruments Act. He supports Mr. Chinoy in the submission that a mere presentation of a petition for winding up did not operate as a statutory bar or a disability to make payments. He submits that there is nothing in the Companies Act to show that on a mere presentation of a petition for winding up, the company was barred from making payments. He submits that it would be the order of winding up or an order appointing the Provisional Liquidator which would place a bar on making payments. He submits that the bar would operate retrospectively by virtue of section 441 but the bar would come into existence only on the order of winding up being passed or a Provisional Liquidator being appointed. Mr. Tulzapurkar submits that there was no absolute prohibition to make payments prior to that date. He submits that the deeming fiction, u/s 441(2), comes into effect only on the passing of winding up order. He submits that it was only the deeming fictions which makes the operation of section 536(2) retrospective. He submits that in the absence of winding up order, for example where a petition is dismissed or withdrawn, the deeming fiction would not come into play and would not operate at all. He submits that under such circumstances the deeming fiction should not be extended beyond the purpose for which it was enacted.

30. In support of this submission Mr. Tulzapurkar relied upon the commentary in Principles of Statutory Interpretation by Justice G.P. Singh, Sixth Edition pg. 242 wherein it has been stated that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose that fiction is created. It is stated that in so construing the fiction is not to be extended beyond the purpose for which it was created, or beyond the language of the section by which it is created. It is stated that the legal fiction cannot be extended by importing another fiction. It is also stated that a legal fiction in terms enacted for the purposes of one Act is normally restricted to that Act and cannot be extended to cover another Act.

31. Mr. Tulzapurkar also relies upon the case of Union of India and another Vs. Sampat Raj Dugar and another. In this case the Supreme Court has held that the interpretation which is to be placed upon a provision should be consistent and designed to achieve the object of the Act. Mr. Tulzapurkar submits that to extend the legal fiction, as suggested by the petitioners, would amount to defeating the

object for which section 138 of the Negotiable Instruments Act was enacted.

32. Mr. Tulzapukar also relied upon the authority in the case of Punjab National Bank & another v. The Punjab Finance Pvt. Ltd. & others, reported in (1974) TLR1884. In this case the question was whether leave u/s 446 of the Companies Act was necessary to continue or commence any suit during the pendency of a petition for winding up where no winding up order had been passed. In this context the Court held that the deeming fiction u/s 441(2) could not be extended to include in its ambit section 446 of the Companies Act.

33. Mr. Tulzapukar also relied upon the authority in the case of J.A. Dixit Vs. Official Liquidator . In this case a submission that as the winding up related back to the date of presentation of the petition for winding up limitation must be held to be suspended from the date, was negatived. The Court held that the period of limitation continued to run and if a debt was barred on the date the winding up order was passed it could not be recovered.

34. Mr. Tulzapukar also relied upon the case of Monark Enterprises Vs. Kishan Tulpule and others . In this case the question was whether a transaction amounted to fraudulent preference. The Court held that if the transaction was made in good faith or in the ordinary course of business and for valuable consideration it would not be annulled.

35. Mr. Tulzapukar submits that the above authorities show that mere presentation of a petition for winding up does not suspend all obligations or liabilities. Mr. Tulzapukar submits that these show that the civil liabilities and criminal liabilities operate on a different field. He submits that these show that a subsequent order of winding up can in no way have any effect on an offence which has already been committed at an earlier date.

36. Mr. Bhatt for the 2nd respondent in Company Petition No. 373 of 1998 and company Petition No. 379 of 1998 also supported Mr. Chinoy and Mr. Tulzapukar. He relied upon an authority in the case of Re.J. Burrows (Leeds) Ltd., reported in (1982) 2 All ER. In this case a Company's contributions had become due under the Social Security Act, 1975 to the Department of Health and Social Security. That had not been paid. The company was directed to be wound up. The Department of Health and Social Security initiated proceedings against the company in the Magistrates' Court alleging that the company had committed an offence u/s 146 of the Social Security Act, 1975. It was clarified that the sole purpose of the proceedings was to proceed against the Directors of the company. The Liquidator applied for stay of the proceedings. The Court held that by bringing the proceedings the department was not seeking another method of having its claim adjudicated on but was merely enforcing a statutory right which had been conferred on it by the Social Security Act, 1975. The Court held that the Social Security Act gave a right to proceed in the Magistrates Court and it was for the Magistrate to decide whether

the department was to be deemed to have been paid all its contribution in full. The Court held that it would not prevent the department from recovering in criminal proceedings a penalty imposed by statute.

37. Mr. Jethmalani appearing for the 2nd respondent in Criminal Writ Petition No. 296 of 1998 submits that section 138 of the Negotiable Instruments Act and section 536(2) of the Companies Act operate in entirely different fields. He submits the term "void" means when an act has no legal effect. He relied upon Blacks Law Dictionary, 2nd Edition, Volume 2, pg. 1869, wherein it is stated that even though an agreement or a contract may be void it may still subject the parties to penal consequences. He submits that merely because an agreement or a contract is void does not mean that the offences will not be deemed to have been committed.

38. Mr. Jethmalani relied upon the case of [Abdul Jabbar Ibrahim Vs. Serkop Builders and Others](#). In this case the question was whether a promoter was not liable for prosecution for offences under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. It was submitted that as per the law laid down by a Division Bench of this Court in the case reported in 1981 BLR an agreement to purchase which was not registered was invalid and ineffective. It was submitted that an unregistered agreement could not be the foundation of any rights or liabilities. It had been submitted that on the basis of an unregistered agreement, there could also be no offence under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. The Court negated this submission. The Court held that even though there may be no civil rights or liabilities created by an unregistered agreement, still the liability for criminal prosecution under the Act would lie.

39. Mr. Jethmalani also relied upon the case of [Pradeep Bhupatrali Vasa Vs. Bombay Builders Pvt. Ltd. and Others](#), wherein again the same view has been reiterated. Mr. Jethmalani pointed out that the judgment in Abdul Jaffar's case has been approved by the Supreme Court [Swarup Builders and Others Vs. Sheikh Mohd. Sanghi and Others](#).

40. Mr. Jethmalani submits that therefore even though section 536(2) of the Companies Act may provides that any disposition is void even then the criminal liabilities arising from the Act would continue to apply.

41. Other lawyers appearing for some respondent in other petitions adopted the arguments of Mr. Chinoy and Mr. Tulzapurkar.

42. We have considered the rival submissions. As a general proposition, there can be no disputes that merely because an agreement is void does not by itself mean that there can be no criminal liability in respect thereof. However, in this case the question arises as a result of the wording of section 138 of the Negotiable Instruments Act. Under this section before an offence can be deemed to have been

committed there must be "failure to make payment" within 15 days of receipt of notice of demand. The question is whether a party, who is precluded or estopped from making payment, can be said to have "failed to make payment". If for example an order of winding up had been passed or the Provisional Liquidator had been appointed before the period 15 days were over, then there could have been a legal disability to pay. Similarly if there was an order of injunction preventing payment there would be a legal disability. If a legal disability prevented the company or its Directors from making payment, an arguable question may arise whether the party who has been so prevented could be said to have "failed to make payment". The question does not arise before us in these petitions. We therefore do not express any opinion on that point.

43. In all these matters till the end of the period of 15 days, there has been no order of winding up nor any order appointing Provisional Liquidator. However in all these matters, a petition for winding up had been filed either before the cheques were issued (in some cases) and in any event before the period of 15 days, after receipt of notice, expired. Thus the question for consideration is whether merely by reason of a winding up petition being presented there was a bar or legal disability in making payment.

44. To consider this question what is to be seen is whether u/s 536(2) dispositions of property become void immediately on the presentation of a petition for winding up or become void only on an order of winding being passed or Provisional Liquidator being appointed. If the legal position was that on the mere presentation of a petition for winding up, all dispositions of property become void then it would necessarily follow that irrespective of whether or not, there is any merit in that petition and irrespective of fact that the company may have a bona fide defence all activities of that company would effectively come to a standstill. On the wide wording of section 536 of the Companies Act, the company could no longer raise any loans, make payments for goods/raw materials required by the company, pay salaries to its employees and Directors, make statutory contributions etc. On the wide wordings of section 536 of the Companies Act even trading in shares of such a company would have to come to a standstill. If this argument is accepted, persons who purchased shares in the open market through the Stock Exchange without any knowledge of a petition for winding up having been presented, would also get affected as all such transactions would be void. Therefore, if this wide proposition were to be accepted then once a petition for winding up is presented, even without an order for winding up, there would be for all practical purposes closure of the company. All activities of the company would have to come to a standstill. If this were the law then unscrupulous parties could blackmail/pressure all companies to succumb to unjustified demands by merely threatening to or presenting petitions for winding up. Conversely unscrupulous companies could avoid payment/discharge of its liabilities by having their own parties present bogus petitions for winding up. After one is dismissed another could be filed. In this manner, the company could

avoid discharging its liabilities indefinitely if not permanently. If the law was that merely on the filing of a petition for winding up all dispositions were void, it would lead to absurd or catastrophic results. In our view that can never be the legal position.

45. Undoubtedly as laid down in Kamani Metallic Oxides case (supra) the words "in the winding up" in section 536(2) mean "during winding up proceedings". However that does not mean that merely because a petition for winding up has been presented all transactions/dispositions undertaken, during the period the petition is pending, become void ab initio. If they were to be void ab initio i.e. immediately on their being entered into, then on the petition being withdrawn or dismissed, they would not revive. It is clear that if the petition is withdrawn or dismissed then the transactions would never have been void. This clearly shows that the transactions/dispositions are not void ab initio but become void on the passing of an order for winding up or on appointment of a Provisional Liquidator. What section 536(2) read with section 441(2) provides for is to convert what was otherwise valid into void by virtue of the legal fiction. Thus the voidness takes effect on the passing of the order of winding up or appointment of Provisional Liquidator. By virtue of the legal fiction, in section 441(2), it then relates back to the date of presentation of the petition for winding up.

46. Undoubtedly that legal fiction has been created in order to ensure equitable distribution of the property of the company amongst all its unsecured creditors and to see that some unsecured creditors do not get preference over other unsecured creditors. However, it is to be seen from almost all the authorities relied upon by the parties, including Mr. Manohar, that the company can carry on its business and do all things necessary, including dispositions of property for commercial necessity. The Court has power to sanction disposition of property undertaken in good faith in the normal course of business and for commercial necessity. The Legislature empowered a Court with power to protect dispositions because it was envisaged that companies would, in order to continue to carry on their business and survive, have to make payments/dispositions in good faith. As seen above the Court could protect/sanction even during the pendency of the petition for winding up. However as seen from the form of such orders the protection/sanction is only in the event of a winding up order being passed. This is because if no winding up order is passed and the petition is withdrawn or dismissed then the transaction/disposition would not be void. This also shows that the transaction/disposition would become void only on the passing of the order for winding up or appointment of a Provisional Liquidator.

47. Thus, it is clear that section 536(2) does not lay down any bar or prohibition preventing the company from making payments or even disposing of the property. Even otherwise it was always open to the company and/or its Directors to apply to Court for an order protecting such payments and dispositions of property even after

a winding up order is passed. As there is no prohibition from making payments, in our view there would be a failure u/s 138 of the Negotiable Instruments Act if the company or its Directors do not make payment only on the ground that petition for winding up has been presented.

48. For the above reasons, it will have to be Held that merely on the presentation of a petition of winding up the affairs of a company do not come to an absolute standstill. It will have to be held that merely on the presentation of a petition for winding up, the directors of the company do not cease to be in charge of and responsible to the company for the conduct of the business of the company. If the proposition as canvassed by the petitioners is to be accepted then merely on the presentation of a petition for winding up, all affairs of the concerned company would come to a standstill. In that case on a strict construction even wages and salaries of the employees and Directors could not be paid, no statutory payments/contributions could be made, no payment could be made for goods or raw materials required by the company for its survival, no monies could be raised even though it may be required for the purposes of running the company. The effect would be that merely on presentation of a petition for winding up the company would get completely paralyzed. The law never contemplated or envisaged such a drastic result merely on the presentation of a petition for winding up. It is clear that for the purpose of carrying on commercial activities of the company payments can be made, goods can be purchased and the normal activities of the company can be carried on. Of course if and only when a winding up order is passed then at that stage there may be risk that payments which have been made would become void unless the Court otherwise directs. The risk is that the creditors may be directed to bring back the amounts or the goods or the property. We are not holding that all the creditors will be so directed. It is possible that the Company Court may come to the conclusion that the payment or disposition was in good faith for the benefit of the company and its creditors and was necessary for the purpose of keeping the company running. We are unable to accept submission that the Directors may be called upon to personally bring in the amounts paid. Such a direction would only be passed if payments are improper. No such order would be passed for genuine payments made in good faith from legitimate dues of the company. It is therefore clear that there is no absolute prohibition or bar preventing the company or its Directors from making payment or even making disposition for the purpose of running the business of the company in the ordinary course. It will thus have to be held that if after notice u/s 138 of the Negotiable Instruments Act, payments have not been made merely on the ground that petition for winding up has been presented, there would be a "failure to make payment" u/s 138 of the Negotiable Instruments Act.

49. Also it must be seen that "failure to make payment" would be there only if, during the 15 days after receipt of notice, the company or its Directors thought themselves restrained by law from making payment. Neither of these companies

have approached the Company Court for validation/sanction to make payments. This *prima-facie* indicates that there was no intention to make payment. Further both these companies, even after petitions for winding up have been presented, have made certain payments to certain creditors. It is thus obvious that whilst making those payments neither of the companies nor their Directors considered themselves as restrained by law from making payments. Not only that but Atash Industries (India) Limited and its Directors had given undertakings to the Magistrates in some of the proceedings u/s 138 of the Negotiable Instruments Act that they would make payments in installments. This is at a time when, to their knowledge, company petitions were pending. Thus it is clear that, at the time when these undertakings were given and/or payments made, neither the company nor its Directors thought that they were prohibited by law from making payment. The facts of these cases therefore show that the non payment within 15 days from receipt of notice was not because the company or its Directors considered themselves to be under a legal disability to make payment. If that be so, then "failure to make payment" is factually not by reason of any provision of any law. The "failure to make payment" is factually because as stated above, either there was inability to pay or lack of funds or for some other reasons best known to the Companies.

50. It has also been shown to us that on 26th March 1998 in Company Petition No. 360 of 1997 a statement was made that in the proceedings u/s 138 of the Negotiable Instruments Act, an undertaking had been given to satisfy the claims. On the basis of this statement, the company petition is got dismissed. This in spite of fact that this criminal writ petition was filed on 10th March 1998 and an ad-interim order of stay of the proceedings u/s 138 had been obtained on 17th March 1998. It appears to us that the company and its Directors are not being honest with courts. For that reason also no reliefs should be passed in their favour.

51. That brings us to another aspect raised by Mr. Manohar. As set out above, Mr. Manohar had made a statement on behalf of Orkay Industries Limited that the company was not going to oppose the winding up order. As set out above, it is pointed out to Court that as many as 24 company petitions are filed against this company and the claim in all these petitions are in very large amount. As set out above a statement has been made that this company was not going to oppose a winding up order. It was stated that now such an order is bound to be passed and the company is bound to be wound up. The submission is that as the first company petition was filed on 27th May 1996, within the period of 15 days and as now a winding up order was bound to be passed the process of winding up is deemed to relate back to 22nd May 1996. The submission is that now the cheques would become void and no claim or liability either civil or criminal can be based upon such void cheques. It is submitted that for this reason also all the criminal proceedings should be quashed.

52. To be immediately noted that there is no such submission in respect of Atash Industries (India) Limited. In fact, on a query from Court, it was clarified that Atash Industries (India) Limited is not willing to make such a statement. It must be mentioned that in fact Atash Industries (India) Limited has filed proceedings under the Board for Industrial & Financial Reconstruction and, therefore, it is dear that they are not willing to be wound up.

53. We are unable to accept this submission. As set out above, it is clear that there was no payment within the period of 15 days after receipt of the notice. Therefore there was a failure to make payment. Thus at the end of the period of 15 days, the offence is deemed to have been committed. The offence was therefore completed at that point of time. We are in agreement with the submission that a subsequent order appointing a Provisional Liquidator or winding up the company can have no bearing on the proceedings u/s 138 of the Negotiable Instruments Act once the offence is deemed committed prior to such an order being passed. If prior to the order of winding up or appointment Provisional Liquidator an offence has already been committed then the subsequent order cannot absolve the company or its Directors of the offence nor give rise to any defence in the proceedings u/s 138 of the Negotiable Instruments Act. To be remembered that the subsequent order would only relate back and affect dispositions of property or payments made. In proceedings u/s 138 of the Negotiable Instruments Act the deemed commission of offence is not by virtue of any disposition of property or payment but the by virtue of any non-payment. Thus once there is "failure to make payment" during the period of 15 days from receipt of notice, the subsequent order of winding up or appointment of Provisional Liquidator does not absolve the failure during the period of 15 days. For this reason we do not accept the submission of Mr. Manohar that the subsequent order appointing the provisional liquidator and also that the certainty of an order of winding up being passed in case of Orkay Industries Limited absolves the offence which has already been committed much earlier.

54. Mr. Manohar also submitted that there is a conflict between the provisions of section 138 of the Negotiable Instruments Act and the provisions of section 536(2) read with section 441(2) of the Companies Act. He submitted that a conflict arises because if during the pendency of winding up proceedings, certain payments were made or dispositions took place then on an order of winding up being passed, they would definitely relate back. He submitted that it is very possible that the winding up petition may remain pending for a long period of time and it may be years before the final order of winding up is passed. He submitted that in the meantime prosecution and proceedings u/s 138 may proceed and may result in conviction and sentence. He submitted that if thereafter a winding up order is passed and the same relates back to the date of the filing of the petition then there would have been miscarriage of justice inasmuch as the company and/or its Directors would have been prosecuted and convicted for an act which is void. He submitted that as there is a conflict between these two provisions, the provisions of the Companies Act must

prevail. In this behalf he pointed out that under the Negotiable Instruments Act and in section 138 there is no non obstante clause which provides that the provisions of the Negotiable Instruments Act or section 138 would apply over the provisions of any other Act. He submitted that on the contrary, section 138 provides that it is without prejudice to the other provisions of the Act. He submitted that therefore section 138 does not prevail over the other Act and cannot prevail over the provisions of the Companies Act.

55. We are unable to accept this submission of Mr. Manohar. We see no conflict between section 138 of the Negotiable Instruments Act and section 536(2) read with section 441(2) of the Companies Act. As stated above, the two operate in separate fields. In any case, as stated above, the offence is complete on the 15th day after receipt of the notice by virtue of non-payment and if during that period there was no voidness then a subsequent order of winding up has no effect on the offence which has already been committed. This is also clear from the fact that if the winding up petitions were dismissed or withdrawn then it would be very clear that an offence u/s 138 would have been committed because in that case there would be no voidness. In our view the law can never be that on a winding up there is no offence but on a dismissal of petition an offence is deemed to have been committed. As stated above, the commission of the offence is not dependent upon the winding up of the company but is dependent upon dishonour and non-payment of the amount within 15 days of the receipt of the notice. It is at this stage that the offence gets completed.

56. Mr. Manohar also submitted that till the disposal of all the winding up petitions there should be a stay of the proceedings u/s 138 of the Negotiable Instruments Act. These submissions were based on the same grounds on which the proceedings were sought to be quashed. In our view, there can be no stay of the proceedings u/s 138 of the Negotiable Instruments Act. As stated above, these proceedings have no bearing and are entirely unrelated and unconnected with the pending petitions. Even if an order of winding up is now passed and/or the order appointing Provisional Liquidator can have no effect on the proceedings u/s 138 of the Negotiable Instruments Act. Therefore, there can be no stay of these proceedings. The authority relied upon by Mr. Manohar in the case of Sunil Chandra has no relevance at all. That was a case where the Company Court in exercise of its power under the Companies Act had granted a stay of proceedings. In this case the Company Court has granted no stay of proceedings. In view that we have taken, we seen no reason to grant the stay of the proceedings u/s 138 of the Negotiable Instruments Act.

57. There is one last aspect which must be dealt with. It would appear that in some of the petitions there is a difference. In the cases covered by Criminal Writ Petition No. 393 of 1998 and Criminal Writ Petition No. 296 of 1998, the facts are different. In Criminal Writ Petition No. 393 of 1998, the Company Petitions bearing Nos. 580 of

1995, 581 of 1995, 582 of 1995, 583 of 1995 and 584 of 1995 were filed on 17th October 1995. The cheques were given on 9th March 1996, 15th April 1996 and 20th April 1996. All the cheques were dishonoured on 19th August 1996 and notice of dishonour was given on 24th August 1996. The 15 days would thus expire on 9th September 1996. Thus in this case the cheques were given, the dishonour took place and the notice were all within the period of pendency of company petitions. However, all those company petitions came to be dismissed on 25th September 1997, on the ground that the dues of all those petitioners had been paid. Therefore, in spite of pendency of petitions the company itself paid all dues of the petitioning creditors. The company did not think that it could not make payments because of the provisions of section 536(2) of the Companies Act. Even if Mr. Manohar's arguments were acceptable, which they are not, on the petitions being dismissed, there is no voidness. Thus in these matters there is "failure to make payment" in any view of the matter. It must be mentioned that subsequent to 8th September 1996, certain other petitions have been filed against Atash Industries (India) Limited. The first of the pending petitions was filed on 8th October 1996 i.e. after the period of 15 days was already over. Therefore, today there is no petition which was pending during the period of 15 days from receipt of the notice by the company.

58. Similar in the case in Criminal Writ Petition No. 296 of 1998. In this case also the five company petitions mentioned above, had been filed on 17th October 1996. Two cheques were issued on 21st December 1995. All the cheques were dishonoured on 26th May 1996. The notice of dishonour was given on 7th June 1996 and the 15 days expired on 22nd June 1996. The complaint has been filed on 17th July 1996. As stated above, all the five pending petitions were dismissed on 25th September 1996. In this case, there is one further fact. On 23rd January 1998, the company through its Directors gave an undertaking to the Magistrate to make payment in four equal installments. Thereafter one installment has been paid by the company. In this case in spite of other pending petitions, the company and its Directors have chosen to give an undertaking that they would make payment and have in fact made payment of one installment. Also to be noted that at the time that the company gave the undertaking to the Magistrate, it had not been stated or pointed out that there were pending company petitions. The fact has been suppressed and/or not mentioned to the concerned Magistrate undoubtedly because the company and its Directors never considered the pendency of company petitions as a bar which precluded them from making payments.

59. It must be mentioned that this company has also given undertaking to the Magistrate in proceedings u/s 138 launched by the 2nd respondent in Criminal Writ Petition 360 of 1998 and Criminal Writ Petition No. 353 of 1998. As pointed out above in this case the company had filed the criminal writ petition on 10th March 1998. They had obtained a stay of the proceedings u/s 138 on 17th March 1998. Still on 26th March 1998 the Company Court was informed in Company Petition No. 360 of 1998 that an undertaking to pay had been given in section 138 proceedings and

on the basis of this statement got the company petition dismissed. The conduct of Atash Industries (India) Limited in suppressing facts and obtaining orders from courts without pointing out correct facts must be deprecated. In our view this conduct precludes the company from getting any equitable reliefs.

60. For all the above reasons, all these criminal writ petitions stand dismissed. The interim stay granted in these petitions stand vacated forthwith.

61. The request of Mr. Naik that stay be continued for some time stands rejected.

62. All the accused in Case Nos. 62/S/97, 743/S/97, 744/S/97, 745/S/97, 61/S/97, 530/S/97, 347/S/97, 145/S/97, 146/S/97, 431/S/97, 531/S/97, 741/S/97, and 139/S/97 in the matter of Orkay Industries Limited and accused in Case No. 775/S/96, 754/S/96 and 763/S/96, 776/S/96, 752/S/96, 106/S/96 and 56/S/96 in the matter of Atash Industries (India) Limited are directed to appear before the Additional Chief Metropolitan Magistrate, 23rd Court Esplanade on Monday, the 27th July 1998.

63. All the accused in Case Nos. 520/S/97, 292/S/97, and 518/S/97 in the matter of Orkay Industries Limited and Accused Nos. 291/S/97, 294/S/97, and 295/S/97 in the matter of Atash Industries (India) Limited are directed to appear before the Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Bombay on Tuesday, 28th July 1998.

64. All the accused in Case Nos. 1096/S/97, 1097/S/97, 1095/S/97, 750/S/97 and 751/S/97, in the matter of Orkay Industries Limited and the accused in Case No. 307/S/97 in the matter of Atash Industries (India) Limited are directed to appear before the Additional Chief Metropolitan Magistrate, 20th Court, Mazagaon, Bombay on Wednesday, 29th July 1998.

65. All the accused in Case Nos. 2319/S/97, 2318/S/97, 408/S/97, 331/S/97, 332/S/97, 333/S/97, 334/S/97, 457/S/97, 458/S/97 and 1935/S/97 in the matter of Orkay Industries Limited and the accused in Case No. 2225/S/97, 1080/S/97, 1084/S/97, 1085/S/97, 1081/S/97, 716/S/97, 1896/S/97, 1895/S/97 and 1006/S/97 in the matter of Atash Industries (India) Limited are directed to appear before the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Bombay on Thursday, 30th July 1998.

66. All the accused in Case Nos. 1142/S/97 and 1141/S/97 in the matter of Orkay Industries Limited and the accused in Case Nos. 662/S/97, 2106/S/97, 91/S/97 in the matter of Atash Industries (India) Limited are directed to appear before the Additional Chief Metropolitan Magistrate, 5th Court, Dadar, Bombay on Friday, 31st July 1998.

67. All the accused in Case Nos. 163/S/97 and 203/S/97 in the matter of Orkay Industries Limited are directed to appear before the Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Bombay on Monday, 3rd August 1998.

68. All the accused in Case Nos. 1244/S/97, 1245/S/97, 628/S/97, 1021/S/97, 1020/S/97, 2076/S/97 and 1689/S/97 in the matter of Atash Industries (India) Limited are directed to appear before the Additional Chief Metropolitan Magistrate, 40th Court, Girgaum, Bombay on Tuesday, 4th August 1998.

69. All the accused in Case Nos. 58/98, 59/98, 60/98, 67/98 and 66/98 in the matter of Orkay Industries Limited are directed to appear before the Judicial Magistrate, First Class, Panvel on Thursday, 6th August 1998.

70. All the accused in Case No. 3177/S/98 in the matter of Atash Industries (India) Limited are directed to appear before Pune Court on Friday, 7th August 1998.

71. The office to send a copy of this order to the concerned Magistrates.

72. Writ petitions dismissed.