Asmitha Microfin Limited (Asmitha)

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Court : Andhra Pradesh

Decided On : Feb-03-2017

Judge : A. Ramalingeswara Rao

Appeal No. : Company Petition Nos. 200 & 201 of 2016

Judgement :

Common Order:

1. These two Company Petitions are being disposed of by this common order as they relate to the scheme of arrangement agreed between the two companies, who are the petitioners in both the Company Petitions. The petitioner in Company Petition No.200 of 2016 is Asmitha Microfin Limited (Asmitha) a public limited company incorporated on 26.02.2001. Its registered office is situated in Hyderabad, Telangana. The authorized share capital of the said company as on 01.04.2015 is Rs.400.00 crores divided into 3,50,00,000 equity shares of Rs.10/- each and 36,50,00,000 preference shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.333,64,38,510/- divided into 2,43,82,786 fully paid-up equity shares of Rs.10/- each and 30,92,61,065 optionally convertible cumulative redeemable preference shares (OCCRPS) of Rs.10/- each. Similarly, the petitioner in Company Petition No.201 of 2016, SHARE Microfin Limited (SHARE) was registered on 20.04.1999 as a public limited company and it is having its registered office in Hyderabad, Telangana. Its authorized share capital as on 01.04.2015 is Rs.830.00 crores divided into 10,00,00,000 equity shares of Rs.10/- each and 73,00,00,000 preference shares

of Rs.10/- each. The issued, subscribed and paid-up share capital as on 01.04.2015 is Rs.697,35,20,420/- divided into 5,32,17,042 fully paid up equity shares of Rs.10/- each and 64,41,35,000 OCCRPS of Rs.10/- each. Both the companies are engaged in the business of providing financial and support services to marginalized sections of society particularly underserved rural and urban women across India. The erstwhile State of Andhra Pradesh passed Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2010 regulating the loan disbursement and recovery process for micro finance institutions in Andhra Pradesh and Telangana. The provisions of the said Act reduced the revenue generation of the companies. The reduced revenues of both the companies have caused both of them to service their repayment obligations to their creditors out of the recoveries made by them from their business in States other than Andhra Pradesh and Telangana. The debt payment obligations coupled with limited fresh loans to the companies lenders created liquidity issues. The petitioners thought of segregating their respective businesses and consolidate in order to face the challenges. The Board of Directors of both the companies met on 31.03.2016 and approved the scheme of arrangement between the two companies to be operative from the appointed date subject to approval and direction of this Court. The petitioner in Company Petition No.200 of 2016 filed Company Application No.480 of 2016 for convening the meetings of equity shareholders, preference shareholders and creditors. This Court, by order dated 27.04.2016, appointed the Chairpersons to convene the meetings of the equity shareholders, preference shareholders and creditors of the petitioner company. Similarly, the petitioner in Company Petition No.201 of 2016 filed Company Application No.481 of 2016 for convening the meetings of equity shareholders, preference shareholders and creditors and this Court, by order dated 27.04.2016, appointed the Chairpersons to convene the meetings of the equity shareholders, preference shareholders and creditors of the petitioner company.

The meetings of the shareholders, preference shareholders and creditors of both the Companies were held as follows:

Sl.No.	Meeting for	Meeting held on

1	Shareholders of Asmitha Microfin Ltd	30th May-2016
2	Preference shareholders of Asmitha Microfin Ltd	31st May-2016
3	Creditors of Asmitha Microfin Ltd 31st May	2016
4	Shareholders of SHARE Microfin Ltd	1st June 2016
5	Preference shareholders of SHARE Microfin Ltd	2nd June 2016
6	Creditors of SHARE Microfin Ltd	2nd June 2016

After filing the reports by the respective Chairpersons, both the Company Application Nos.480 and 481 of 2016 were closed by orders dated 14.06.2016. After closure of the said Company Applications, the present Company Petitions were filed for sanctioning and confirming the scheme of arrangement agreed between the petitioners so as to be binding on all the members, employees, creditors of both the companies. The Company Petitions were admitted and the petitioners were directed to get the notices published in the Business Standard , English daily, Hyderabad edition and Andhra Bhoomi Telugu Daily, Hyderabad edition. Appropriate notices were issued to the Regional Director, South East Region, Ministry of Corporate Affairs, Ranga Reddy District. Pursuant to the said notices, the Regional Director filed his report on 04.08.2016. After publication of notices in the Newspapers, the HDFC Bank Limited filed Company Application

No.1277 of 2016 in Company Petition No.200 of 2016 submitting their objections to the said scheme. In support of their application it is stated that the Bank is one of the creditors of the petitioner company, who advanced a term loan of Rs.85.00 Crores vide facility agreement dated 29.07.2010. The total principal loan amount outstanding as on 31.03.2015 is Rs.26,85,70,850/- and out of the total 33 creditors of the petitioner company, the applicant is one of the major lenders to the company. In view of the environment created by the operation of the provisions of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2010, the petitioner company proposed a Corporate Debt Restructuring Package (CDR) to its lenders. The same was approved by the lenders including the applicant on 29.06.2011 and CDR documents were executed on 16.09.2011. It was agreed that the total restructured debt was Rs.1156.79 crores out of which an amount of Rs.350.00 crores was to be converted into Optionally Convertible Cumulative Redeemable Preference Shares (OCCRPS) and those instruments were redeemable along with redemption premium at an yield of 12% p.a., on a quarterly basis over 16 quarterly instalments commencing from June 2013 till March 2018. It is further stated that during the implementation of CDR package, the petitioner company failed to adhere to the terms of repayment due to which priority loans were extended by most of the CDR lenders and despite the same, the petitioner company failed to repay the outstanding loan amounts to the creditors. At this juncture, SHARE in Company Petition No.201 of 2016 approached the CDR Cell with the present scheme of arrangement with Asmitha for approval. Pursuant to the said proposal, various meetings of CDR Empowered Group (CDREG) were convened. But, the CDR lenders forum have not provided their mandates for the above referred proposal of scheme of arrangement between the petitioner companies. The same was communicated on 30.07.2016. The applicant bank also lent monies to the petitioner company in Company Petition No.201 of 2016 and the said company also defaulted in its repayment under CDR package. The following grounds were raised by the applicant against the proposed scheme of arrangement:

1) The applicant received the notice dated 02.05.2016 of meeting of creditors in its branch office at Secunderabad. Even though the loan was sanctioned by the City Branch Office, all the correspondence emanated from the registered and corporate

office of the applicant company at Mumbai and the notice dated 02.05.2016 was not communicated to the said office at Mumbai in order to avoid participation of the top management. Hence, the service of notice on the applicant was not properly done and consequently the meeting of creditors convened pursuant to the orders of this Court in C.A.No.480 of 2016 is bad in law and not binding on the applicant. Immediately after coming to know of the meeting of the creditors, a letter was issued through its advocate on 12.07.2016 to the petitioner to make available all the relevant information pertaining to the case to enable the applicant to take a decision and in spite of the same the petitioner company vide its reply dated 18.07.2016 refused to cooperate. After receipt of the said reply the applicant informed by letter dated 10.08.2016 that it reserves its rights to raise appropriate objections before this Court.

2. Though the notice of meeting was received in the branch office of the applicant bank it took sometime to reach the higher authorities and by that time the meeting was already convened on 31.05.2016 and the bank could not attend such meeting due to inadvertent delay in internal correspondence among the departments of the applicant bank. The non-participation in the meeting is merely a procedural irregularity and hence the decision taken in the said meeting is not binding more particularly when it has a substantial loan exposure.

3. If the applicant bank had attended the creditors meeting it could not have got requisite majority for approval.

4. The mere change in legislative environment cannot be a ground for merger or demerger of the company.

5. The proposed scheme of arrangement is detrimental to the interests of the creditors and if the same is allowed it would result in severe financial hardship to the creditors.

6. The main purpose of the scheme is transferring the healthy part to one entity, petitioner in Company Petition No.201 of 2016 and unhealthy part to the other entity, petitioner in Company Petition No.200 of 2016 and it results in healthy company flourishing and unhealthy company having its natural death.

7. The reasons for formulating the CDR package and the proposed scheme are one and the same i.e., the challenges posed by the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2010. Though the CDR was approved, the companies have defaulted on the terms of repayment under the CDR, and hence there is no guarantee that the proposed scheme of arrangement could be successful.

8. The proposed scheme lacks bona fides and is a fraud played on the creditors.

9. The petitioner company in Company Petition No.200 of 2016 requires huge and continuous cash flow/fresh investments in its business in order to keep the rotation of finances into the market. But keeping in mind the petitioner s financial track record and also its failure to adhere to the repayment schedule as envisaged in the CDR and the legislative environment in the States of AP and Telangana it would be extremely risky for all the creditors including the applicant Bank to pump in fresh credit to the business of the petitioner company and it is difficult for the creditors to recover the existing/outstanding loan amounts from the petitioner due to its poor financial status as reflected in its latest audited balance sheets. In fact, the petitioner is liable to be wound up as could be seen from the excess of liability over assets.

10. The scheme of arrangement would benefit the promoters of the petitioner who are also majority shareholders in the company. The proposed scheme provides for allotting 1.0956 shares of the petitioner in Company Petition No.201 of 2016 for every one share hold by the existing shareholder in Company Petition No.200 of 2016 in addition to their share holding in the petitioner company, but the debt of the creditors would be transferred to the petitioner company which would carry a meager interest of 1% with a very long repayment period coupled with the aspect of absence of any tangible identified cash flow.

11. The repayment schedule provided under part G of the scheme for the creditors of the company is highly unreasonable as the principal outstanding will be paid in a span of 9 years from the effective date with a moratorium period of 3 years. In fact, the creditors are not going to realize any significant portion of their debt in the next 6 years and since the survival of the company itself is doubtful, it is not in the

interest of creditors to sanction the scheme by this Court.

12. There is no road map outlined under the scheme in clear terms about the survival of the petitioner in Company Petition No.200 of 2016 post demerger under the proposed scheme. In fact, the CDR Cell has rejected the proposal of demerger vide its letter dated 30.07.2016. It is surprising that when no bank has given any mandate to the CDR Cell, 11 creditors consented to the scheme of demerger mechanically and without introspecting the adverse implications of such proposed scheme.

13. The petitioner would not be in a position to continue its business in the States of AP and Telangana due to legislative environment and hence the proposed scheme would cause undue financial damage to its creditors.

14. The petitioner did not enclose the list of pending litigations to the scheme nor disclosed the details in the scheme with respect to suits for recovery of monies filed against its borrowers in order to show its bona fides in recovering the dues. The applicant Bank further states that most of the claims are now time barred and hence the petitioner cannot recover any money from the defaulters.

15. The petitioner had written off an amount of Rs.318.18 Crores s per the explanatory scheme of calculations enclosed to the scheme, but the mode of adjustment of the said amount is not explained.

16. The proposed scheme is intended to seek undue legal protection from its creditors and deny them their lawful right of recovery of their outstanding dues. The applicant apprehend that the promoters/majority shareholders of the petitioner company may take steps to wind up the company and allow its natural death after implementation of the scheme as the company would become financially unviable after the implementation of the scheme.

17. The issue of OCCRPS in the petitioner company to its CDR lenders is sham and creditors would not be benefited out of the same. Further, there are many restrictions imposed on redemption of such OCCRPS. The redemption period is 12 years i.e., redeemable in 12 quarterly instalments starting from 30.06.2024 and

it does not secure the interest of the creditors.

18. Though the CDR was approved in the year 2011 and in view of the legal protection enjoyed by the companies no action could be taken by the lenders. Now after 5 years, this devise of scheme of arrangement is made only to avoid legal actions.

19. The company which is liable to be wound up under Section 433 of the Companies Act is not eligible to take protection under Section 391 of the Act. Ultimately, it is stated that the applicant would reserve its right to inform the said objections to other Central Government authorities such as Registrar of Companies, Competition Commission of India and Reserve Bank of India with a request to them not to give approval to the scheme. It is also stated that if the Court is pleased to sanction the scheme, the scheme shall be sanctioned subject to modifications under Section 392 of the Act. The petitioner Company filed a counter to the objections stating that the applicant Bank approached this Court with unclean hands by suppressing material facts and presented a tailor made and misleading factual matrix moulded to suit its vested interests. The application was filed to delay approval of the scheme by this Court after approval by the equity shareholders, preference shareholders and the creditors of the companies. The total exposure of the applicant Bank is Rs.26,85,70,850/- and it represents the total outstanding debt of 6% of the petitioner as on 30.04.2016 and the applicant is a participant in the Joint Lenders Forum (JLF) formed in respect of the petitioner company in accordance with the Reserve Bank of India guidelines and CDR mechanism. When the applicant Bank filed a request to the CDREG to revoke the approved CDR package to the company on 03rd October 2015 the same was rejected by the CDREG. The applicant Bank also asked the larger creditors for one time settlement with the petitioner company in the meeting of JLF held on 14.10.2015 and the same was also negatived by the other lenders. In fact, the creditors consented to the present scheme of arrangement and referred it to the CDREG for approval. It was stated that consequent to the legislation, the RBI issued a notification recognizing that the challenges afflicting the MFI sector were not necessarily on account of any credit weakness per se, but were mainly due to environmental factors and hence a special regulatory asset classification benefit

has to be extended by the RBI to the lenders who have restructured MFI accounts. In pursuance of the same, the petitioner companies were referred to the CDR mechanism by the lenders and the decisions regarding the CDR proposals, schemes, assumptions and workings were driven by the lenders. The CDR package assumed recoveries of approximately 20% of the outstanding loans in the states of Andhra Pradesh and Telangana as on 31.03.2011 on an annual basis. But, in view of the legislation the actual recovery was less than 1%. In spite of the effect on recovery process, the petitioner companies have repaid INR 2,430 Crores in the form of principal and interest payments (apart from penal interest and other fees under CDR mechanism) to its lenders as on July 2016. In fact, during the Senior Level Bankers Meeting (SLBM) dated 22.08.2013, SIDBI and ICICI (two biggest lenders of the petitioner) and all other senior bankers placed on record the appreciation for the petitioner s performance in fulfilling commitments to its lenders. In the said SLBM dated 22.08.2013 the merger - demerger plans of the petitioner companies were also discussed. In fact the applicant Bank communicated its consent for the said plan on 26.10.2013 and executed a Rupee Term Loan Agreement with the petitioner company on 08.05.2014. The said crucial facts are suppressed in the present application. It is also stated that in the Joint Lenders Meeting on 06.03.2014 and CDREG meeting dated 07.03.2014, the lenders advised the petitioner companies to implement a merger demerger, and to separate its business in the AP states and non-AP states. The scheme was approved by the super majority of the creditors of the petitioner company present and voting at the meeting as required under law. The letter quoted by the applicant in the CDREG was issued in the absence of proper appraisal of the developments by the relevant representatives of the lenders. In fact the applicant received notice dated 02.05.2016 at its branch office in Secunderabad on 07.05.2016 with regard to proposed meeting to be held on 31.05.2016. The status of scheme of arrangement was circulated to all the lenders including the applicant Bank s senior officials via e-mail on 05.04.2016 duly informing the applicant about the filing of proceedings for seeking sanction of this Court to the scheme of arrangement. The HDFC Bank, Secunderabad branch has been the point of regular communication between the petitioner companies for more than a decade. E-mails were sent to the senior officials on 05.05.2016 and 06.05.2016 also and the deponent of this

application is one of such officers. It is also stated that if a lender abstains from attending the court ordered meeting of creditors, such a lender cannot raise contentions after the scheme of arrangement has been approved. The applicant, having not chosen to attend the meeting, is not entitled to raise the objections nor thwart the approval of the scheme of arrangement. The allegation that the petitioner did not cooperate for the information sought by the applicant on 12.07.2016 in spite of its reply dated 18.07.2016 is without any basis. The applicant intentionally not participated in the creditors meeting held on 31.05.2016 and the allegation that if it had attended the meeting, the scheme would not have got requisite majority of approval is totally unsustainable. The present application is filed only to harass and pressurize the petitioners to engage in discussion for one time settlement of their dues after the scheme of arrangement was approved by all the shareholders and pending consideration before this court. Since October 2013, the petitioner company in Company Petition No.201 of 2016 disbursed INR 63.61 Crores and the petitioner company in Company Petition No.200 of 2016 disbursed INR 36.81 Crores in the AP State. These fresh disbursements facilitated recoveries from the defaulted borrowers to the tune of 55.51% and 59.41% of the disbursements since October 2013 in respect of the petitioners in Company Petition Nos.201 and 200 of 2016 respectively. The petitioners proposed business plans were submitted to both the RBI and its lenders. The allegation that the petitioners would not be in a position to repay the debt of creditors is based on assumptions and without any basis. The allegation that the petitioner company is liable to be wound up is also equally untenable as the object and purpose of Section 391 of the Companies Act is to revive/restructure the companies instead of administering them civil death. The rationale for repayment schedule is based on various discussions held between the petitioners and their lenders including two largest lenders (SIDBI and ICICI Bank). In view of sensitive nature of markets involved and external regulatory environment, none of the MFIs including the petitioners have pursued any legal proceedings or actions against the borrowers in AP. The scheme does not envisage the writing off INR 318.00 Crores of debt obligations towards its lenders as alleged. The write off by the petitioner company in Company Petition No.201 of 2016 relates to a portion of its nonperforming portfolio in the AP States which the management observed as unrecoverable. In

respect of the OCCCRPS redemption also the allegation was denied. It is also stated that in consideration of the special circumstances applicable to the companies, the creditors of the petitioner have previously waived demands for any personal guarantees which are otherwise mandatory for any fresh funding under the JLF mechanism. The present application is filed to defeat the decision of the majority lenders who intend to save the public money, protect two and half decade old institutions, protect the employment of over 4500 employees and ensure continuity of financial inclusion of 3.50 million households. Accordingly, it sought dismissal of the application.

A rejoinder and a surrejoinder were filed by the applicant Bank disputing the averments made in the counter affidavit.

Similarly, Company Application No.1278 of 2016 was filed by the applicant HDFC Bank in Company Petition No.201 of 2016. M/s. Aditya Birla Finance Limited also filed Company Application No.1342 of 2016 in Company Petition No.201 of 2016 seeking to implead as respondent and adjudicate the objections raised by it. In support of the said application it is stated that the applicant sanctioned and disbursed an amount of Rs.50.00 Crores to the petitioner company in Company Petition No.201 of 2016 in August 2010 and September 2010.

The said company was unable to maintain the repayment schedule of the said term loan in view of the enactment. The applicant is a part of the lenders who approved the CDR package with effect from 01.04.2011. As per the said package the outstanding amount was fixed at Rs.36.00 Crores as on 01.04.2011 and the said amount was restructured as Rs.23.02 Crores towards term loan and Rs.12.98 Crores towards OCCRPS. In spite of not maintaining the repayment schedule under the said CDR package the applicant sanctioned and disbursed additional loan of Rs.6.70 Crores to the petitioner company. As on 31.03.2015 the petitioner company is due and payable a sum of Rs.27.80 Crores to the applicant. The applicant also stated that in the scheme of arrangement the said amount is proposed to be transferred to the extent of Rs.18.18 Crores to the petitioner company in CP No.200 of 2016 where recoveries were negligible and Rs.9.19 Crores to be transferred to the petitioner company in CP No.201 of 2016. The

specific objections are as follows.

1) There is no majority in value of the creditors and shareholders who voted in support of the proposed scheme of arrangement in the meeting held by the chairperson.

2) The vote of the Small Industries Development Bank of India (SIDBI) was subject to certain conditions and objections but was taken as a favourable vote.

3) The value of SIDBI voting was Rs.243,38,32,757/- and the same has to be deducted from the majority voting. Even if it is not deducted at least its vote should be treated as neutral.

4) The allocation of an amount of Rs.18.18 Crores to the company in CP No.200 of 2016 is intended to defeat the recovery of the amounts as no recovery is possible in respect of the said company. Thus, the entire debt of Rs.27.80 Crores is drastically affected on account of the proposed scheme of arrangement.

5) It is further stated that when the petitioner in CP No.201 of 2016 obtained CDR package from its creditors and the borrower account became substandard it is not entitled to invoke the rights under the Companies Act.

6) If the scheme of arrangement is approved the equity of the company in CP No.201 of 2016 would come down from 6,44,13,50,000/- to Rs.32,20,67,500/- and the status of OCCRPS would be converted into ordinary equity shares giving up the preferential and security coverage.

7) Even if the proposed scheme of arrangement was approved by majority of the creditors, the interest of the minority shareholders and creditors have to be protected by this court.

In the light of the above facts, the following points would arise for consideration in the present Company Petitions.

1) Whether a company, whose financial position has become weak by the liabilities being more than the assets is entitled to enter into a scheme of arrangement under Section 391 of the Companies Act?

2) Whether the scheme of arrangement was approved by the requisite majority of shareholders, preferential creditors and creditors?

3) Whether this Court has got jurisdiction to modify the scheme of arrangement proposed by the Board of Directors of the Companies involved in it and approved by the shareholders, creditors and others in the meeting held for the purpose of considering the scheme of arrangement and if so whether the proposed scheme of arrangement requires any modification in the light of the objections raised by the objectors?

Both the companies are engaged in the business of providing financial and support services to marginalized sections of the society particularly underserved rural and urban women across India. Both the companies were incorporated in the year 2001 and 1999 respectively. The passing of Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2010 brought a drastic change on the operations of both the companies. It reduced the revenue generation of the companies. In view of the adverse impact caused by the legislation, both the companies had to service their repayment obligations to their creditors out of the recoveries made by them from their business in the States other than in the State of Andhra Pradesh and Telangana. The debt repayment obligations coupled with limited fresh loans to the companies created liquidity issues. In those circumstances, they thought of segregating their AP businesses and non-AP businesses from each other and consolidate them. They wanted to consolidate their AP businesses in Asmitha and non-AP businesses in SHARE. The salient features of the scheme of arrangement between the two companies are that; demerger of non-AP businesses of Asmitha into SHARE and demerger of AP business of SHARE into Asmitha. This involved issuance of equity shares of SHARE to the lenders of the SHARE, cancellation of certain share capital of SHARE held by OCCRPS holders and revision of the terms of the loans and preference capital pertaining to the AP businesses of SHARE and Asmitha. It was envisaged that by virtue of the said scheme of arrangement, SHARE would become a mature micro finance institution and both the SHARE and Asmitha companies would have an increased scope for the operations of their respective non-AP business and AP business in order to achieve economies of scale through

consolidation. It was also stated that the terms and conditions of service applicable to the staff and employees after implementation of the scheme shall not in any way be less favourable than those applicable to them immediately preceding the implementation of the scheme. 01.04.2015 was appointed as the date for implementation of the scheme. The scheme proposes issuance of equity shares of SHARE in the ratio of 1:1.0956 to the shareholders of Asmitha and the equity shares of Asmitha in the ratio of 1:1.1541 to the shareholders of SHARE. The Board of Directors of both the companies passed a resolution approving the scheme of arrangement in their meeting held on 31.03.2016.

The Chairpersons were appointed for convening the meetings of the equity shareholders, OCCRPS holders and creditors by order dated 27.04.2016. The meetings were held on 30.05.2016, 31.05.2016, 31.05.2016, 01.06.2016, 02.06.2016 and 02.06.2016 respectively and the Chairpersons had filed their respective reports.

The meetings of Asmitha were attended by the respective members and approved the scheme of arrangement as follows:

1.	The meeting was attended by 53 Equity Shareholders in person holding 1,49,66,202 equity shares of Asmitha and 42 equity shareholders through proxy holding 86,73,084 equity shares of Asmitha, aggregating to 95 equity shareholders holding 2,36,39,286 equity shares of Asmitha. The said scheme of arrangement was opened for voting at the meeting by the Chairperson, Ms. K. Sumathi. No votes were cast against the proposed scheme of arrangement. The proposed scheme of arrangement was approved unanimously by the equity shareholders.

2.	The meeting was attended by 20 preference shareholders in person holding 16,40,72,140 preference shares of Asmitha and 1 preference shareholder through proxy holding 30,10,000 preference shares of Asmitha, aggregating to 21 preference shareholders holding 16,70,82,140 preference shares of Asmitha. The said scheme of arrangement was opened for voting at the meeting by the Chairperson, Mr. J. Amrutha Rao. 11 preference shareholders (holding 8,72,12,940 preference shares of Asmitha) have voted in favour of the proposed resolution. 4 preference shareholders (holding 2,64,05,250 preference shares of Asmitha) have voted against/opposing the resolution. 6 preference shareholders holding 5,34,63,950 preference shares of Asmitha did not participate in the voting or cast valid votes.

3.	The meeting was attended by 22 creditors in person to whom Asmitha owed a sum aggregating to INR 397,45,46,441 and one creditor through proxy to whom Asmitha owed a sum aggregating to INR 7,33,69,937, aggregating to 23 creditors to whom Asmitha owed a sum aggregating to INR 404,79,16,378. The said scheme of arrangement was read and explained to the meeting by the Chairperson, Mr. JUMV Prasad. 11 creditors (to whom Asmitha owed an amount aggregating to Rs.173,06,78,609/-) have voted in favour of the proposed resolution. 5 creditors (to whom Asmitha owed an amount aggregating to Rs.56,23,47,876/-) have voted against/opposing the resolution. 7 creditors to whom Asmitha owed a sum aggregating to INR 175,48,89,892 did not participate in the voting or cast valid votes.

The meetings of SHARE were attended by the respective members and approved the scheme of arrangement as follows.

1.	The meeting was attended by 28 Equity Shareholders in person holding 4,82,99,709 equity shares of SHARE and 7 equity shareholders through proxy holding 49,16,833 equity shares of SHARE, aggregating to 35 equity shareholders holding 5,32,16,542 equity shares of SHARE. The said scheme of arrangement was read and explained to the meeting by the by the Chairperson, Ms. K.N. Vijaya Lakshmi. No votes were cast against the proposed scheme of arrangement. The proposed scheme of arrangement was approved unanimously by the equity shareholders.
2.	The meeting was attended by 19 preference shareholders in person holding 40,69,54,750 preference shares of SHARE. The said scheme of arrangement was read and explained to the meeting by the Chairperson, Ms. Vangala Poornasri. 13 preference shareholders holding 34,66,20,250 preference shares of SHARE voted for the scheme and 6 preference shareholders holding 6,03,34,500 preference shares of SHARE voted against the scheme.

3.	The meeting was attended by 21 creditors in person to whom SHARE owed a sum aggregating to INR 679,02,04,375. The said scheme of arrangement was read and explained to the meeting by the Chairperson, Mr. P.V. Narsaiah. 14 creditors to whom SHARE owed a sum aggregating to INR 595,93,12,677 voted for the scheme and 7 creditors to whom SHARE owed a sum aggregating to INR 83,08,91,698 voted against the scheme.

Thus, the resolutions of the Board of Directors of both the companies were approved by the equity shareholders, preference shareholders and creditors of both the companies. The final position in the meetings convened by the Chairpersons emerged as under:

CONSOLIDATED RESULTS OF VOTINGS IN THE HC CONVENED MEETINGS OF SHARE and ASMITHA

Sl.No	Meeting for	Meeting heldon	Name of the CourtappointedChairperson/Chairman for the meeting	No.ofShareholeditors participated
1	Shareholders ofAsmitha MicrofinLtd	30th May2016	Mrs.K. Sumathi	95
2	Preferenceshareholders ofAsmitha Microfin Ltd	31st May2016	Mr. J. Amruth Rao	15

3	Creditors ofAsmitha MicrofinLtd	31st May2016	Mr. JUMV Prasad	16
4	Shareholders of SHARE MicrofinLtd	1st June 2016	Mrs. K. VijayaLaxmi	35
5	Preferenceshareholders of SHARE Microfin Ltd	2nd June 2016	Mrs. V. Poorna Sri	19
6	Creditors of SHARE MicrofinLtd	2nd June 2016	Mr. P.V. Narsaiah	21

Section 390 of the Companies Act defines the company meaning any company liable to be wound up under the provisions of the Act.
Relevant portions of Section 391 of the Companies Act reads as follows:

391. Power to compromise or make arrangements with creditors and members.

(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 under section 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 Registrar. The above provision makes it clear that even in the case of a company which is being wound up one can ask for consideration of the proposal for a compromise or arrangement if majority number representing 3/4th in value of the creditors or members present and voting at the meeting agreed to such proposal, the compromise or arrangement can be considered by the Court.

In **Wearwell Cycle Company India Limited v. A.K. Misra and Brahm Arenja** (1998) 94 CampCas 723 Delhi = ILR 1994 Delhi 109), the Delhi High Court was dealing with a company in liquidation which submitted a scheme for revival of the company and the same was sanctioned by the Court. The Company Court recalled the winding up order and cancelled the same in view of the said scheme. The Court appointed a committee of management for implementation of the scheme. It was held that whenever a choice is available to Court between the revival of the company and its winding up, the Court must as far as possible, lean in favour of revival of the company for that will have the prospectus of generating jobs and putting the assets of the company to productive use as against auction of assets and distribution of the proceedings by the official liquidator to various parties. Hence, there is nothing in the Act preventing a company whose financial position is weak from submitting a proposal for the scheme of compromise or arrangement. Thus, point No.1 has to be held in favour of the petitioner companies

and it is accordingly held. The jurisdiction of this Court for approving the scheme of compromise and arrangement as provided under Section 393 of the Companies Act, 1956 came up for consideration before the Hon ble Supreme Court in **Miheer H. Mafatlal v. Mafatlal Industries Limited (**AIR 1997 Supreme Court 506(1)). In the said case the Hon ble Supreme Court was considering the case of a scheme of amalgamation of two public limited companies. After considering the provisions of Sections 391 and 393 of the Companies Act it held as follows:

28. ..On a conjoint reading of the relevant provisions of Sections 391 and 393 it becomes at once clear that the Company Court which is called upon to sanction such a scheme has not merely to go by the ipse dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. This is implicit in the very concept of compromise or arrangement which is required to receive the imprimatur of a court of law. No court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the requisite majority if the Court finds that it is an unconscionable or an illegal scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. Consequently it cannot be said that a Company Court before whom an application is moved for sanctioning such a scheme which might have got requisite majority support of the creditors or members or any class of them for whom the scheme is mooted by the concerned company, has to act merely as rubber stamp and must almost automatically put its seal of approval on such a scheme. This trite to say that once the scheme gets sanctioned by the Court it would bind even the dissenting minority shareholders or creditors. Therefore, the fairness of the scheme qua them also has to be kept in view by the Company Court its sanction. It is, of course, true that so far as the Company Court is concerned as per the statutory provisions of Sections 391 and 393 of the Act the question of voidability of the scheme will have to be judged subject to the rider that a scheme sanctioned by majority will remain binding to a dissenting minority of creditors or members as the case may be, even though they have not consented to such scheme and to

that extent absence of their consent will have to effect the scheme. It can be postulated that even in case of such a Scheme of Compromise and Arrangement put up for sanction of a Company Court it will have to be seen whether the proposed scheme is lawful and just and fair to the whole class of creditors or members including the dissenting minority to whom it is offered for approval and which has been approved by such class of persons with requisite majority vote.

28-A. However further question remains whether the Court has jurisdiction like an appellate authority to minutely scrutinise the scheme and to arrive at an independent conclusion whether the scheme should be permitted to go through or not when the majority of the creditors or members or their respective classes have approved the this aspect the nature of compromise or arrangement between the company and the creditors and members has to be kept in view. It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire.....

The Hon ble Supreme Court quoted with approval the passage in **Bucklay** on the Companies Act. As per the said passage the following points are to be considered in exercising the jurisdiction:

(i) the provisions of the statute have to be complied with;

(ii) it should be seen that the class was fairly represented by those who attended the meeting and the statutory majority was acting bona fide and was not coercing

the minority in order to promote interest adverse to those of the class whom they purport to represent and

(iii) the arrangement is such as an intelligent and honest man, a member of the class concerned and acting in respect of this interest might reasonably approve.

After considering the case law the Hon ble Supreme Court culled out the following points:

1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meeting as contemplated by Section 391(1)(a) have been held.

2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391, sub-section(2).

3. That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just fair to the class as whole so as to legitimately blind even the dissenting members of that class.

4. That all the necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391, sub-Section (1).

5. That all the requisite material contemplated by the provision of sub-Section (2) of Section 391of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view of to satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.

7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.

8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the Court s jurisdiction.

This Court in **IL and FS Engineering and Construction Company Limited v. Wardha Power Company Limited (**2012 Law Suit (AP) 687 = (2012) Supreme (AP) 1025), while considering the point relating to scheme of arrangement involving reduction of share capital and the scope of enquiry observed as follows:

10. Either in the case of a reduction of capital or a scheme of arrangement or both, the Court cannot interfere with the discretion and commercial wisdom of the stakeholders and the Board of Directors. (Re Ratners Group Plc; In Re Hindalco Industries Ltd). If the reduction is one which is properly passed by the shareholders who are treated equitably, have had the facts explained, and

provided the creditors are safeguarded, the court will habitually sanction reductions and exercise its discretion in favour of them unless the act is a pointless and hollow act.

Provided those requirements are satisfied, the company may reduce its capital in any way that it thinks fit. Rafter Group plc, 1988 ChD 685; Re Ratners Group plc; In Re Hindalco Industries Ltd. The court does not exercise any appellate power over the decision of the Company or its management. The Court is required to satisfy itself and see that the procedure, by which the resolution is carried through, is legally correct and the shareholders and creditors are not prejudiced. It is also the duty of the Court to see that the scheme is fair and equitable between the different classes of shareholders, Hindalco Industries Ltd; Hyderabad Industries Ltd., 2004 55 SCL 1, the arrangement is such as a man of business would reasonably approve, Hindustan Lever Employees Union v Hindustan Lever Ltd., 1995 83 CompCas 30; Custina Re Haare, 1933 AER 105 and Butfe Press LIC, 1961 CD 270, and the proposed reduction is within the powers of the company, and for the purposes allowed by the statute. The courts have a 'discretion' to confirm or not to confirm, which it is their duty to apply in 'every proper case,' and this discretion is to be exercised by reference to - whether the scheme would be 'fair and equitable,' 'just and equitable,' 'fair and reasonable' or 'not unjust or inequitable'. Gower's Principles of Modern Company Law (Fourth Edition) Chapter 10; Scottish Insurance Corpn. v. Wilson and Clyde Coal Co., 1948 SC 360). Petitions, for approval of such schemes, are usually matters where the court can sanction the scheme without more than a careful check that all the correct steps have been taken. Although the court must be satisfied that "the proposal is such that an intelligent and honest man, a member of the class ... might reasonably approve" - yet the underlying commercial purposes need not be investigated. The court will not be concerned with their commercial reasons for approval. M B Group plc, 1989 BCLC 672; In re Dorman, Long and Company Limited v. In re South Durham Steel and Iron Company, 1934 1 Ch 635).

11. Where the reduction of capital forms part of the scheme of arrangement, the overall duty of the Court is to satisfy itself that the scheme of arrangement, together with the reduction of capital, is such that an intelligent and honest man, a

member of the class concerned and acting in respect of his interest might reasonably approve and might reasonably consider to be fair and equitable. (Hindusthan Commercial Bank Ltd v. Hindusthan General Electrical Corporation, 1960 30 CompCas 367; Scottish Insurance Corporation Ltd.; Re: Dorman Long and Co. Ltd.. The principles upon which the Court will require to be satisfied are, that all shareholders are treated equitably in any reduction. That usually means that they are treated equally, but may mean that they are treated equally save as to some who have consented to their being treated unequally. The next principle to be applied is that the shareholders, at the general meeting, had the proposals properly explained to them so that they could exercise an informed judgment upon them; that the creditors of the company are safeguarded so that money cannot be applied in any way which would be detrimental to creditors, Ratners Group plc, 1988 BCLC 685; Hindalco Industries Ltd, 2009 151 CompCas 446), and the reduction is for a discernible purpose. "Discernible" means something which is demonstrated by evidence to the court and is something sufficiently solid and near in expectation to be a real prospect. Once those tests have been satisfied the court, which has a discretion whether or not to confirm a reduction, will normally exercise its discretion in favour of confirming the reduction. Thorn EMI plc, 1988 4 BCC 698. The discretion conferred by the section will, however, only be exercised in favour of confirmation of the reduction where the court is satisfied that the cause of the reduction (capital in excess of wants; capital lost; capital not represented by available assets, or as the case may be) was properly put to the shareholders so that they could exercise an informed choice; the cause is proved by the evidence before the court; Jupiter House Investments (Cambridge) Ltd, 1985 BCLC 222; In Re Grosvenor Press Plc., 1985 1 WLR 980; the proposal is one that ought to be sanctioned; and the proposal is fair and equitable to the shareholders as a whole. Ransomes Plc, 1999 2 BCLC 591.

12. Subject to confirmation by the court, which is required and which is the safeguard of the minority, the question of reducing capital is a domestic one for the decision of the majority, and the Act leaves the company to determine the extent, the mode, and the incidence of the reduction and the application of any capital moneys which the reduction may set free. (Buckley on the Companies Acts (14th edn, 1981, Butterworths), Vol. 1, p. 180; Re Ransomes plc15). The power of

confirming or refusing to confirm the special resolution of a company to reduce its capital is conferred on the court to enable it to protect the interest of persons who dissented or even `of persons who did not appear. (In Re OCL India Ltd, 1998 AIR (Ori) 153; Re Rafter Group plc3; In Re Hindalco Industries Ltd2; Indian National Press (Indore) Ltd., 1989 66 CompCas 387).

In **Larson and Toubro Limited s case** (2004) 121 CompCas 523(Bom), the High Court of Bombay while dealing with the objection relating to the reduction of capital held that a combined petition for sanction of a scheme of arrangement and reduction of share capital is maintainable and it relied on **Hindustan Commercial Bank Limited v. Hindustan General Electrical Corporation (**AIR 1960 Cal 637)and the relevant observations are as follows:

73. Sections 100 to 104 of the Companies Act:

In the present case, there is no dispute that the due procedure as prescribed under the Companies Act has been complied with in reference to reduction in capital as referred to and relied on in the present petition and necessary orders dispensing with the various procedures have been granted by the court by order, which is reflected in the minutes of the order dated February 13, 2004. Based on the averments made in para. 26 of the petition, the convening of the meeting of the creditors was dispensed with. Therefore, this objection has no force and the cases cited in relation to the same cannot be made applicable to the facts and circumstances of the present case. The scheme itself, therefore, seeks confirmation for the reduction of the share capital in accordance with Sections 100 to 104 of Companies Act as referred to in paragraph 25 to 27 of the petition. Such a combined petition for sanction of a scheme of arrangement and reduction of share capital is maintainable. Hindustan Commercial Bank Ltd. v. Hindustan General Electrical Corporation.

74. No separate procedure for bringing requisite changes:

The provisions under Sections 391 to 394 of the Act are meant to clear the contemplated scheme and related to or concerning other alterations or changes which may be made effectively to implement the sanctioned scheme. PMP Auto

Industries Ltd., In re [1994] 80 Comp Cas 289 (Bom) has declared that these provisions are in the nature of a single window clearance system to ensure that the parties are not put to avoidable or unnecessary cumbersome procedure for making a representation or application to the court for various other alterations or changes which may be essential or necessary or consequential to implement the sanctioned scheme. In view of this, on this ground also, scheme cannot be halted.

With regard to counting of votes in the creditors meeting, the High Court of Delhi in **Wearwell Cycle Company India Limited s** case (supra) relied on **Palmer s** Company Law, 24th Edition, para 79.16 and quoted the following passage and opined that the following illustration is not based on any judgment of any Court or any authentic judicial pronouncement in interpreting the expression.

I will deal with Objections Nos. (i) and (ii) together.

The main objection which was most vehemently canvassed before me by Mr. J C. Seth, counsel for Mr. H. L. Seth related to the Scheme having not been approved by the requisite majority in terms of Section 391(2) of the Act and that the Court should: not exercise its discretion in favour of the Scheme. Another application being Ca 328190 was filed by one Mr. Subhas Chander raising substantially similar objections to the sanction of Scheme contained in Ca 26185 as modified by Resolution No. 1 in the meeting of the creditors and shareholders of the Company. His objection was mainly based on the plea that notwithstanding the 314th majority of number of shares represented by the persons present and voting under proper proxy and number of votes representing the Scheme should not be sanctioned as there is no majority of the number of persons who were present and who voted at the meeting either in person or by proxy notwithstanding also the fact of poll having been demanded, granted and taken place. Similar is the submission regarding creditors. Mr. Seth has cited a number of authorities on this point including **Palmer's** Company Law 24th Ed. para. 79.16 reading as under :

"The court must be satisfied that those who attended the meeting are fairly representative of the class and that the statutory majority did not coerce the minority in order to promote interests adverse to those of the class whom they purport to represent.

This requirement is, in part, an offshoot of the first. As regards the majority, there are two requirements: the majority who vote in favour of the scheme must be first a majority in number of those members of the class (whether of creditors or shareholders) who are present and voting; and, secondly, it must be three fourths in value of the holding of such person.

Thus, there are 100 members voting of whom (to take an extreme example) one member holds 901 shares and the remainder hold one each, the 99 shareholders holding one share each cannot force a scheme against the vote of the holder of the 901 shares, because they do not muster three-fourths in value. Conversely, that 'shareholder and 49 of the others could not force a scheme against the votes of the remaining 50 because there would not be a majority in number. The same principle applies to creditors.

It will be seen that the majorities are of those who vote, not of those entitled to vote nor of those who are present. Thus, shareholders who are not present in person or by proxy, or who, although present, do not vote, may be ignored."

It was further held that the correct method for counting the votes of the creditors is counting the number of creditors represented by the persons voting including the number of creditors into whose shoes he has stepped. It was held "Number" to mean/convey number of shares/creditors represented by each person present and voting.

A similar view was taken in **Maharashtra Apex Corporation Limited s case** (2005) 124 Comp Cas 637 (Kar.), which is as follows:

29 In the 13th Edition of Buckley on the Companies Act, it has been observed that for the purpose of corresponding provision under the English law, sanction of majority in number representing 3/4th in value of the members of the class present and voting in person or by proxy is sufficient, although it may not represent 3/4th in value, nor semble, constitute a majority in number of the total class. The provisions of section 391(2) of the Act are in pari materia with the section 206(2) of the Companies Act, 1948 which was being interpreted in the aforesaid book. The English Company Law by **Professor Robert R. Pennington** (5th Edition), Page

590 use of the words "present and voting" has been explained as under:

"...It appears that proxies may both speak and vote at meetings of creditors or members, and that the inability of proxies for members to speak at general meetings of a public company does not apply to meetings called to approve scheme of arrangement. The vote on the scheme at each meeting of members or creditors is taken by a poll, and for a resolution approving the scheme to be carried, the persons who are present in person or by proxy at the meeting and who vote in favour of the scheme must comprise a majority in number of all persons who vote in person or by proxy, and they must also hold three-quarters in value of the interests of all such persons. The number and the value of the interests of persons who do not attend and are not represented at the meeting, or who do attend the meeting but abstain from voting, are immaterial, and do not enter into the calculation at all. Likewise, the interests of persons who appoint proxies are disregarded if the proxies do not attend the meeting, or do attend but do not vote..."

This provision has further been explained in the twenty-fourth edition of **Palmer's** Company Law (at page 1145) as under:

"2. The class must have been fairly represented. The Court must be satisfied that those who attended the meeting are fairly representative of the class and that the statutory majority did not coerce the minority in order to promote interests adverse to those of the class whom they purport to represent.

This requirement is, in part, an off shoot of the first. As regards the majority, there are two requirements:

the majority who vote in favour of the scheme must be first a majority in number of those members of the class (whether of creditors or shareholders) who are present and voting; and, secondly, it must be three-fourths in value of the holding of such persons. Thus, if there are 100 members voting of whom (to take an extreme example) one member holds 901 shares and the remainder hold one each, the 99 shareholders holding one share each cannot force a scheme against the vote of the holder of the 901 shares, because they do not muster three-fourths

in value. Conversely, that shareholder and 49 of the others could not force a scheme against the votes of the remaining 50 because there would not be a majority in number. The same principle applies to creditors.

It will be seen that the majorities are of those who vote, not of those entitled to vote nor of those who are present. Thus, shareholders who are not present in person or by proxy, or who, although present, do not vote, may be ignored. However, this is not the whole requirement, because in addition the Court requires to be satisfied that the class is fairly represented. If, for instance, there were altogether 1000 shareholders holding 10,000 shares in all, the Court would be unlikely to be satisfied by the statutory majorities at a meeting at which 10 members holding 100 shares in all were present and voted."

In **Gower's** Principles of Modern Company Law (sixth edition) (at page 585) the scope and meaning of the concept of "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" has been explained by giving an illustration as under:

"An ordinary resolution is one passed by a simple majority of those voting, and is used for all matters not requiring another type of resolution under the Act or the articles. An extraordinary resolution is one passed by a three-fourths majority but no special period of notice is needed. Under the Act an extraordinary resolution is required only for certain matters connected with winding up, or when class meetings are asked to agree to a modification of class rights. A special resolution is also one passed by a three-fourths majority, but 21 days notice must be given of the meeting at which it is to be proposed. A special resolution is required before any important constitutional changes can be undertaken; and as a result of the legislation in the 1980s the number of such cases has greatly increased. In the case of both extraordinary and special resolutions the notice of the meeting must specify the intention to propose the resolution as an extraordinary or a special resolution, as the case may be.

In all these three cases the requisite majority is of the members entitled P to vote and actually voting cither in person or by proxy where proxy voting is allowed. This

may and, in the case of a public company normally will, be much less than a majority of the total membership, and may even be less than a majority of the members present at the meeting, for those who refrain from voting are ignored. To take an extreme case: A meeting of a company with 5,00,000 preference shares without voting rights, and 5,00,000 ordinary shares each with one vote, is attended only by five ordinary shareholders, four with one share each and one with hundred shares. If on a poll a resolution is voted for by three of the holders of one share and against by the fourth shareholder with one share, the holder of the hundred shares abstaining, the resolution will have been duly carried even if it is an extraordinary or special resolution, notwithstanding that only three out of a total of one million shares, three out of 5,00,000 total votes and three out of 104 votes exercisable at the meeting, have actually been polled in its favour. As we shall see later the procedure of voting on a show of hands, unless a poll is effectively demanded, may produce even greater anomalies."

In Bessemer Steel and Ordinance Co., In re [1875-76] 1 Ch. D 251, wherein identical provisions of the English Law have been interpreted as under: (page 252):

"The only question is, whether the agreement has been approved by the proper number of creditors required by the Act. The second section of the Act provided that the meeting of the company's creditors may approve and sanction the agreement: 'If a majority in number representing three- fourths in value of such creditors, or class of creditors, present either in person or by proxy at such meeting, shall agree to the arrangement or compromise, and the agreement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors (as the case might be) and also on the liquidators and contributories of the company'. The question, therefore, is whether 'the majority representing three-fourths in value' is to be the majority of all the creditors in which case the Pounds 1,20,002,12s, 3d. does not constitute three-fourths of funds 1,70,000, or the majority representing that value of the creditors present at the meeting? In the latter case, all the creditors but one, for a very small amount, approved the agreement. We say that the clause in the Act is satisfied by the sanction of three- fourths in value of the persons present at the meeting, and this

was decided by your Lordship in re **Tunis Railway Company** (May 22, 1874) affirmed on appeal (before the Lords Justices, July 11, 1874).

Carson, for Dixon said he was desirous that the arrangement should be carried into effect.

MALLINS, V.C. :

I think the agreement should be carried into effect. All the creditors of the company received notice of this meeting, and it must be presumed that those who did not attend left it to those who did to decide whether the agreement was advantageous or not, or they took so little interest in the matter that they did not think it worth their while to attend. At all events, I think that under the Act of Parliament only those creditors who were present at the meeting are to be attended to, and that three-fourths in value of those present are sufficient to sanction the contract."

Before the Karnataka High Court in **Kirloskar Electric Co. Ltd., In re** [2003] 116 Comp. Cas. 413, 43 SCL 186, the question for consideration was as to whether the proposed arrangement had been approved by the requisite majority at the meeting of the secured creditors within the meaning of section 391(2) of the Act. The meeting was attended by 18 secured creditors and the total value of their debt was Rs. 2,53,36,43,491. Out of the 18 present, one abstained from voting and the value of his debt was Rs. 30,98,21,941. Thus, the total value of secured creditors present and voting was Rs. 2,22,38,21,550. Two votes representing value of Rs. 3 8,98,62,275 were found to be invalid. The scheme was, therefore, approved by vote of 15 creditors and the value of their debt was Rs. 1,83,39,59,275. There was no difficulty as far as the majority in number is concerned because 15 creditors had voted in favour of the scheme. The question, however, was as to whether they represented three-fourths value of the creditors present and voting. The High Court held that the three-fourths majority required under Sub-section (2) of section 391 of the Act was of the value represented by the members who were not only present but who had also voted. In fact, it went a step further to hold that the creditors who were present and had even voted but whose votes had been found to be invalid, could not be said to have voted because casting an invalid vote is no voting in the eyes of law.

30. In the aforesaid case of **Kirloskar Electric Co. Ltd.** (supra) this Court had an occasion to consider the meaning of the words "present and voting" and it was held as under:

"Sub-section (2) of section 391 requires that a scheme of compromise or arrangement must be approved by majority of creditors/members representing three-fourths in value of the creditors or class of creditors, or members or class of members, present and voting either in person or where proxies are allowed, by proxy. There is no difficulty in understanding the word 'present' as the creditors or members should be physically present in person or through their proxy in the meeting. The problem arises in the context of the word 'voting'. Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue in question. Voting is explained as the expression of ones will, preference, or choice in regard to the decision to be made by the body as a whole upon any proposed measure or proceeding. Right to vote means right to exercise the right in favour of or against the motion or regulation. A member present and voting may remain neutral, indifferent, unbiased or impartial not engaged on either side. Voting has to be either in the affirmative or negative, i. e., 'yes' or 'no' on the ballot paper or voting paper. One is not supposed to write anything except putting 'yes' or 'no' either in favour of the proposition or against the proposition. In addition to the same, if any suggestion, condition, reservation or stipulation is written stating that the expression of the will or opinion either for or against the proposition is subject to those things, then, the votes have to be necessarily treated as invalid or void, as such votes are no votes leading either way. A vote cast without indicating the mind of the voter either for or against the resolution is no voting at all. Similarly, voting for or against the motion subject to the conditions stipulated in the vote is no voting in the eye of law. Therefore, voting understood in a proper perspective, it could be either in the affirmative or in the negative. Therefore, in construing whether a resolution is passed by three-fourths majority present and voting, what is to be taken into consideration in calculating the majority is not the number of persons present and voting, but the number of valid votes polled in such meeting. The number of valid votes includes only votes which are indicating the mind of the voter for or against the resolution.

Therefore, by 'voting', the mind, intention, preference of the voter must be clearly expressed. There should not be any ambiguity and scope for interpretation. It should be clear, unqualified and pointing. In this context, a voter who is not present at the meeting, who is present and not voting, present and voting by casting a blank ballot, and casting a ballot with conditions and stipulations, all stand on the same footing. It is no 'voting' in the eye of law. Therefore, in my opinion, the proper construction to be placed in calculating whether any resolution is approved or passed by a three-fourths majority present and voting necessarily mean the value of the valid votes and out of the same whether the resolution has been passed with three-fourths majority...." (p. 436)

31. The Full Bench of the Punjab and Haryana High Court in the case of **Swift Formulations (P.) Ltd., In re [2004] 121 Comp. Cas. 27, 53 SCL 433**. dealing with the identical situation, after reviewing the entire case law on the point has held that to interpret the requirement of majority under section 391(2) of the Act to mean three-fourths majority of the total value of shares/credit would not only render the expression "present and voting" as redundant but also make the provision totally unworkable and impractical. It was also held that for the purpose of section 391(2) of the Act, the requirement of majority of three-fourths has to be seen in relation to the value of shares/credit represented by the persons who are present and voting in the meeting, either in person or by proxy. This provision cannot be interpreted to mean that the three-fourths majority has to be of the total value of the creditors/shareholders of the company. It was also held that section 391(2) of the Act has also been enacted so as to ensure that, a compromise or arrangement should receive substantial support from the creditors/shareholders. It is for this purpose that a two fold requirement has been prescribed. Firstly, it must be approved by a majority in number of the members present and voting and in addition, such majority should also represent three-fourths value of the creditors/shareholders who are present and voting. This ensures that the persons representing nominal value of shares or credits though may be in majority, may not take a decision which adversely affects the rights of the persons who have substantial shareholding or credit, but are in minority in numbers. Conversely, it also protects the rights of the small creditors/shareholders against persons holding large shareholdings or representing substantial credit.

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39. Therefore, if the creditors who have been duly served with the notices of the meeting which was also accompanied by the scheme, if they do not chose to be present in the meeting and express their view one way or the other, the only inference that could be drawn is prima facie, they have no objection for the said scheme being approved. Any other interpretation in this regard would make it impossible for any company to get any of the schemes approved. If a mere absence of the shareholder or a creditor of the company has to be construed as opposition to the scheme which is proposed, then it would render section 391(2) of the Act redundant and certainly that was not the intention of the Legislature. When the persons who had ample opportunity to oppose such a scheme, who are invited to attend the meeting and to cast their vote against the said scheme, do not chose to attend the meeting, participate in the meeting or express their views by casting vote against it, it only means that they have no objection for sanction of the scheme, and by absence and not opposing the scheme, they have given their implied consent, though not an express consent by being present in the meeting and voting for the scheme.

It is clear from the above decisions that this Court cannot act as a rubber stamp for approving the scheme of arrangement, even though the same was approved by the Board of Directors of the companies, its shareholders and creditors. This Court has to see that the proposed scheme is not violative of any provisions of the Act and also not contrary to the public policy. It has also to see and satisfy itself that the majority of the members or creditors were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter.

Apart from the above, the scheme must be fair and reasonable and viable taking every thing into consideration. The conduct of the propounder of the scheme is also a relevant consideration. However, the law is settled that when a scheme is found to be reasonable and fair, it is not the function of the Court to substitute its judgment for the collective wisdom of the shareholders of the companies involved. In **Sidhpur Mills Co. Ltd., In Re (**AIR 1962 Guj 305)**,** the learned single Judge of

the Gujarat High Court, while pointing out the correct approach for the sanctioning of a scheme for amalgamation, says that the scheme should not be scrutinized in the way a carping critic, a hair-splitting expert, a meticulous accountant or a fastidious counsel would do it. But, it must be tested from the point of view of an ordinary reasonable shareholder, acting in a businessman-like manner, taking within his comprehension and bearing in mind all the circumstances prevailing at the time when the meeting was called upon to consider the scheme in question. It is pointed out that, before the scheme is sanctioned, it would be the duty of the court to see that the proposed scheme is a fair and reasonable one, but the initial burden in this respect would be on the petitioner to show that, prima facie, the scheme is a fair and reasonable one, such as a prudent and reasonable shareholder would approve of and not object to.

Followed in **Navjivan Mills Ltd., Re** (1972) 42 Com Cases 265 at 320 (Guj).

As stated above, the scheme of compromise and arrangement was approved by the requisite 3/4th majority of the members and creditors who attended the meeting. Now an objection is raised by the two creditors who did not attend the meeting and raised any objection, but pursuant to the notice published in the Newspapers, appeared before this Court and raised the above objections.

The creditor who raised an objection in respect of Asmitha is HDFC Bank Limited which advanced a term loan of Rs.85.00 Crores under facility agreement dated 29.07.2010. The total principal loan amount outstanding as on 31.03.2015 was Rs.26,85,70,850/-. As stated above, in view of the financial difficulties faced by the company it proposed a Corporate Debt Restructuring Package (CDR) and the said package was approved on 29.06.2011. The applicant in Company Application No.1277 of 2016 i.e., HDFC Bank is one of the creditors who approved the same. The CDR documents were executed on 16.09.2011 and out of the total liability of Rs.1156.79 Crores of all lenders an amount of Rs.350.00 Crores was converted as OCCRPS. Those instruments were to be redeemed along with redemption premium at an yield of 12% p.a., on a quarterly basis over 16 quarterly instalments commencing from June 2013 to March 2018. It appears that the terms of CDR proposal was not complied with and the Company failed to repay the outstanding

loan amount to the creditors. When the scheme of arrangement was placed before the CDR Empowered Group (CDR EG) it was not approved due to lack of requisite mandates from the lenders in the meeting dated 22.06.2016. The present controversy related to the approval of the scheme of arrangement by the creditors. A similar application was filed by the HDFC Bank in respect of SHARE company in Company Petition No.201 of 2016 also stating that it lent an amount of Rs.110.00 Crores vide facility agreement dated 05.08.2010 and the total principal amount outstanding as on 31.03.2015 was Rs.36,27,28,828/-. In respect of the said company also the CDR proposal was accepted by the Bank along with other creditors on 21.06.2011 and CDR documents were executed on 29.06.2011. Out of the total debt of Rs.1940.94 Crores of all lenders an amount of Rs.700.00 Crores was agreed to be converted as OCCRPS. The said instruments were to be redeemed along with redemption premium at an yield of 12% p.a., on a quarterly basis over 16 quarterly instalments commencing from June 2013 to March 2018. In the case of the said company also the CDR Cell did not approve the scheme of arrangement and informed vide its letter dated 30.07.2016. In spite of the said letter, now the scheme of arrangement was approved by the requisite majority of creditors who attended the meeting.

The value of the HDFC Bank interest in SHARE Company is 4.27% aggregating to INR 418,646,368, whereas in Asmitha it is 5.12% aggregating to INR 296,301,250. The other objector, Aditya Birla Finance Limited is not having any interest in Asmitha, but its interest in SHARE company is 1.74% and of the value of INR 170,323,420. The objections of the HDFC Bank relate to its non-participation in the meeting due to improper communication of the notice of the meeting, the very nature of the scheme and repayment schedule provided to the creditors. The objections of the Aditya Birla Finance Limited who is also one of the creditors is with regard to majority secured in the meeting of the creditors by taking the vote of SIDBI and coming down of the equity of the SHARE company from 644,13,50,000 to 32,20,67,500.

The composite scheme of arrangement affects the OCCRPS. As a part of the scheme, 57,45,71,293 OCCRPS issued by SHARE to its CDR lenders under the SHARE Master Restructuring Agreement representing 89.2004% of the total

outstanding OCCRPS issued by SHARE shall be cancelled and on such cancellation the cancelled capital will be moved to the Securities Premium Account and/or Capital Reserve Account in the balance sheet of SHARE. The OCCRPS amount shall be treated as repayments made by the SHARE to the holders of such OCCRPS on debt owed by SHARE to such holder of OCCRPS and shall be applied (i) first any priority debt to be repaid to such lender and (ii) thereafter to any CDR debt repayable to such lender. It was also stated that the consent expressed by the equity shareholders, preference shareholders and creditors of SHARE shall be deemed to be their consent for cancellation of preference share capital under Sections 100 to 102 of the Companies Act, 1956 and no separate resolution, act, application, petition or deed would be required. It was also stated that as a part of the scheme 3,73,56,959 OCCRPS that were issued by SHARE to its CDR lenders under the SHARE Master Restructuring Agreement representing 5.7996% of the total outstanding OCCRPS issued by SHARE would be converted as 59,07,887 equity shares of SHARE each having a face value of Rs.10/-. The scheme of arrangement also proposes to write off the advances lent by SHARE aggregating 3,18,83,82,981 pertaining to its AP business.

As a part of the scheme a total of Rs.2,47,06,65,820/- of the outstanding debt of Asmitha is converted into 24,70,66,582 OCCRPS issued by Asmitha having face value of Rs.10/-. It appears that the total aggregate term loans under CDR debt of Asmitha was Rs.4,22,98,77,843/- The new OCCRPS shall have a preferential dividend of 0.001% per annum and the redemption period is 12 years redeemable in 12 quarterly instalments starting from 30th June 2024 and they would convert into equity shares of Asmitha in accordance with the terms of and in the same manner and to the extent as the OCCRPS issued by Asmitha pursuant to the Asmitha Master Restructuring Agreement. It was also stated that an aggregate of 98,910 OCCRPS that were issued by Asmitha under Asmitha Master Restructuring Agreement to Asmitha OCCRPS conversion lenders, representing 0.0320% of the total outstanding OCCRPS issued by Asmitha would be converted into 98,910 equity shares of Asmitha each having a face value of INR 10 each.

As per the information furnished by the petitioners, the position is as follows:

I. ESSENTIAL FEATURES OF THE SCHEME OF ARRANGEMENT

* SHARE demerges its Andhra Pradesh/Telangana States business into a demerged undertaking which merges into Asmitha.

* Asmitha demerges its rest of India business (except AP/TS business) into a demerged undertaking which merges with SHARE.

* If this Hon ble Court were to accord sanction to the scheme the resultant companies will have the following present businesses of the two companies

- Asmitha Andhra Pradesh and Telangana State business

- SHARE Rest of India business

II. SITUATION POST SANCTION (If accorded by this Hon ble Court)

Equity Shareholders:

* Shareholders of Asmitha would be allotted equity shares in SHARE in the ratio of 1:1.956 as consideration for transfer of Asmitha s rest of India business to SHARE.

* Shareholdersl of SHARE would be allotted equity shares in Asmitha in the ratio of 1:1.1541 as consideration for transfer of SHARE s AP/TS business to Asmitha.

OCCRPS Shareholders:

Note:- The Optionally Convertible Cumulative Redeemable Preference Shares are held by Banks/Financial Institutions for a total value of INR 644 Crores in SHARE and INR 309 Crores in Asmitha.

* **SHARE**

* 89.2004% of the total outstanding OCCRPS issued by SHARE to be cancelled (**Note** corresponding OCCRPS being issued in Asmitha)

* 5.7996% of the total outstanding OCCRPS issued by SHARE to be converted to equity shares.

* **Asmitha**

* Out of the total outstanding debt of Asmitha (INR 422,98,77,843), an amount of INR 247,06,65,820 to be converted to 24,70,66,582 OCCRPS.

* 0.0320% of the total outstanding OCCRPS issued by Asmitha to be converted to equity shares

* In lieu of cancellation of OCCRPS issued by SHARE as mentioned above, 57,45,71,293 OCCRPS to be issued by Asmitha to the CDR lenders of SHARE.

However, it is sought to be supported by the petitioners stating that the arrangement of allotting more number of OCCRPS in Asmitha was consensually worked out as the Banks/Financial Institutions are desirous of retaining a larger portion of the debt in SHARE as such the arrangement would ensure recovery of monies irrespective of future performance of Asmitha. But there is no evidence of involvement of the Banks/Financial Institutions in such an arrangement.

It is not denied by the applicant in Company Application No.1277 of 2016 that its branch office at Secunderabad received a notice on 02.05.2016 and the said branch office is a servicing branch. The meeting was convened on 31.05.2016 and nothing prevented the applicant from participating in the said meeting. No cogent reason was given for not communicating to the Head Office in time. In view of the objection that had it attended the creditors meeting and opposed the resolution whether it got any impact on the total voting has to be seen. As could be seen from the consolidated results of voting, in view of around 5% stake in both the companies held by the applicant, if the applicant had voted against the resolution it definitely would not have secured the requisite majority. Though this Court is not in agreement with the plea of the applicant with regard to non-service of notice, in view of the objection raised by the applicant before this Court in the present Company Petitions it has to be considered whether the objection of the applicant should be taken into account in spite of non-participation in the meeting convened

for the purpose. The learned counsel for the petitioners in the Company Petitions submitted that it is not open to the applicant to raise the objection that the scheme was unfair to it in view of its remaining absent in the meeting conducted. Learned counsel for the petitioners relied on the observations of the Hon ble Supreme Court in **Mafatlal Industries Limited s** case (supra) and that of the High Courts of Karnataka and Bombay reported in **Maharashtra Apex Corporation Limited s** case (supra), **Alstom Power Boilers Limited v. State Bank of India** (Company Petition Nos.337 and 338 of 2002 in Company Application Nos.116 and 117 of 2002 of Bombay High Court decided on 31.10.2002), and **Larsen and Toubro Limited s** case (supra). However, learned counsel, by relying on the observations made in the last two cases agreed that the applicant can raise objection before this Court and the only thing that has to be satisfied is with regard to unfairness of the scheme. In the light of the above, it has to be seen whether the case set up by the objector before this Court can be entertained in spite of its nonparticipation in the meeting convened for the purpose of approving the scheme of arrangement. The objector states that the main purpose of the scheme is transferring the healthy part to one entity and unhealthy part to other entity resulting in the unhealthy company to have its natural death. The conduct of the companies in not adhering to the terms of the CDR package approved on 29.06.2011 and reduced into writing on 24.09.2011 under the CDR mechanism, and the challenges faced by both the companies were not appreciated and a Joint Lenders Meeting was called after two years. In the Senior Level Bankers Meeting held on 22.08.2013 the merger - de-merger plans of both the companies were discussed, but it appears that nothing concrete has emerged as could be seen from the latest communication made by the CDR Cell on 08.11.2016. The relevant resolution of the CDR EG meeting held on 27.09.2016 and confirmed in the meeting held on 26.10.2016 as communicated to the SIDBI on 08.11.2016 reads as follows.

Asmita Microfin Ltd.

The review note in respect of Asmitha Mecrofin Limited submitted by SIDBI, the MI was taken up for discussion. The review contained matters for information based on meetings held on January 19 2016 March 03, June 13, 2016 and August 09, 2016.

MI updated the forum about the Merger Demerger proposal. They informed that the High Court approval for this proposal is still pending and it would take further 3 to 4 months to compete the process. It was mentioned that the above proposals alongwith tranche C funding was recommended by the MI to CDR EG for approval in the CDR EG meeting dated January 22, 2016 and has been discussed in several meetings till June 22, 2016. Requisite mandates for achieving super majorit was not received from the lenders and hence the proposals couldnot be approved. However, it was felt b the forum that the proposals could be re-opened and can be taken up in the ensuing CDR EG meeting by the MI after receipt of requisite approvals from High Court instead of setting aside decision of CDR EG.

MI further informed that the bilateral funding was discussed extensive in the JLMs held in August 2015, October 2015 and January 2016. However, there was no consensus among lenders for bilateral funding They informed that a separate note on bilateral funding shall be submitted to CDR EG for approval after discussions at JLM.

Thereafter, Shri R. Jayasurya (CEO Asmitha Microfin Ltd.) was invited to the CDR EG meeting. The forum enquired about the status of the merger-demerger proposal. Shri Jayasurya mentioned that the proposal on demerger has been referred to High Court and the outcome of the same is awaited. He mentioned that they have approached RBI for seeking forbearance and special dispensation for asset classification in the books of lenders.

Thereafter, CDR EG gave the following decision.

Decision:

CDR EG noted the above matters for information and directed the MI to bring a review note after seeking high court approval.

Learned counsel for the petitioners submitted that the matter was not pursued at the level of CDREG regarding merger - demerger as requisite majority of lenders had already approved the scheme in the board convened meeting and Sections 391 and 394 of the Act provide a complete mode and manner in which scheme of

arrangement between a company, its shareholders and its creditors are to be proposed, considered, scrutinized, approved and sanctioned. It is further submitted that the proceeding before CDREG cannot have any effect on a scheme proposed. It is admitted that the CDR mechanism operates as follows.

The RBI has issued detailed **guidelines** on the Corporate Debt Restructuring System on 23.08.2001 for implementation by the banks and financial institutions. The Corporate Debt Restructuring (DCR) Mechanism provides for a voluntary, non-statutory system based on the principle of approvals of debt restructuring packages by super majority of 75% creditors **by value**, which makes the CDR EG decisions binding on the remaining 25% creditors. The CDR Mechanism is based on a three tier structure comprising of the CDR Standing Forum, CDR Empowered Group (**CDR EG**) and CDR Cell.

The CDR EG is the second tier structure in the CDR Mechanism which decides individual cases of corporate debt restructuring. CDR EG, in respect of each individual case, comprises of Executive Director level representatives of IDBI Ltd., ICICI Bank Ltd., and SBI as standing members in addition to Executive Director level representatives of financial institutions and banks which have an exposure to the concerned company.

Though it was stated that the details of the scheme was shared with all the lenders including the HDFC Bank in October 2015 and November 2015, the actual scheme was prepared much later and was approved by the Board of Directors only in their meeting held on 31.03.2016. Hence, it cannot be said that the details of the scheme were available to the lenders prior to the said meeting of the Board of Directors. Coming to the impact of the scheme on the objector, as stated above the petitioners did not comply with the CDR terms of agreement and there is truth in the averments made by the objector that the non-Telugu State business is transferred to the company in Company Petition No.201 of 2016 and the business of Telugu States is given to the petitioner in Company Petition No.200 of 2016. The business in Telugu states had already suffered due to challenges posed by the AP Micro Finance (Regulation of Money Lending) Act, 2010 which resulted in CDR package. The payment of the outstanding amount envisaged under the

scheme would start after an initial moratorium period of 3 years and the OCCRPS issued to the lenders cannot be redeemed in the next 12 years. The majority of the shareholders are common to both the companies and this Court is not concerned with their interest as there was no objection from that group. This Court is concerned only with the interest of the preference shareholders and the creditors. As stated above, though 11 creditors consented securing the technical requisite majority , in view of the substantial objection raised by the objectors, it has to be seen whether the scheme secured the requisite majority (the scheme of arrangement proposed cannot be approved without the approval of the CDR Cell, though the same is a voluntary body of lenders).

The other objection raised by the objector in Company Application No.1342 of 2016 relates to the vote cast by SIDBI based on the letter dated 02.06.2016 issued to the Chairperson. The letter issued by SIDBI to the Managing Director of Share Microfin Limited dated 02.06.2016 reads as follows.

With regard to the Scheme of Arrangement between Share Microfin Limited and Asmitha Microfin Limited, SIDBI has received notice from the Hon ble High Court, Hyderabad, for providing mandate at the meeting of the Creditors of Share Microfin Limited.

In this connection, we would like to inform you that we are agreeable for proposed Scheme subject to increasing your offer of debt allocation in Company to SIDBI from existing offer to higher amount to our satisfaction. Please bring this to kind attention of Chairperson, Creditors Meeting of Share Microfin Ltd, and record the same in his report to Hon ble High Court.

The apprehension with regard to recovery of an amount of Rs.18.18 Crores by transferring the said amount to the petitioner in Company Petition No.200 of 2016 which was given the unhealthy part as stated above cannot be said to be without basis. There is no answer to the objection that the proposed scheme of arrangement reduces the equity of the share from 6,44,13,50,000 to 32,20,67,500 and the shares of OCCRPS would be converted into ordinary shares giving up their preferential and security coverage. Though this Court is not in agreement with the contention raised by the objector that the procedure prescribed for

reduction of share capital was not valid, the reduction of share capital as aforesaid and conversion of OCCRPS into ordinary equity shares would have major impact on the status of the lenders.

It can be seen from the consolidated results of the voting in the meetings convened by this Court that in respect of Asmitha Microfin Limited 75.48% creditors voted in favour of the resolution, whereas 24.52% creditors voted against the resolution. The percentage simply satisfies the technical compliance of the Section. One of the objectors, HDFC is having an exposure of 5.12% in Asmitha. I already held that the objector had sufficient notice, but did not attend the meeting. However, its absence in the meeting does not disentitle it to raise an objection before this Court and accordingly filed the above applications and raised the objections. It is one of the members of the CDR Group and there is no clarity with regard to stand taken by the CDR Group as a whole, though some of the members attended the meetings of creditors convened by this Court and supported the resolution. As stated above, we cannot go by the technicalities and by taking into consideration the voting percentage approving the scheme of arrangement based on the said voting percentage. The creditors are none other than the Bankers who do business with the money of the public. In the recent times, people are witnessing big borrowers committing defaults and in some cases the Banks themselves writing off the loans. In this present scenario, the Court has to cautiously examine the scheme of arrangement and this Court considers the tenability of the objection with regard to transfer of business relating to Telugu States to one company and non-Telugu States in another company exposing the business in Telugu States to greater risk. This Court has no expertise to evaluate the risk. It is also noticed that Asmitha Microfin Limited is not a member of Micro Finance Institutions Network, whereas SHARE is a member. There is reduction in the equity, conversion of OCCRPS into ordinary equity shares involved in the present scheme of arrangement. In the absence of any expertise, this Court cannot give any conclusive finding except placing before the CDR EG for a decision on the scheme of arrangement, though legal requirements are met substantially, as the CDR EG itself deferred its decision in view of the pendency of the present Company Petitions before his Court.

The Corporate Debt Restructuring Mechanism was evolved by the Reserve Bank of India to ensure timely and transparent mechanism for restructuring of corporate debts of viable entities facing problems, for the benefit of all concerned. It is also intended to minimize the losses to the creditors and other stock holders through an orderly and coordinated restructuring programme. It is a voluntary non-statutory system based on Debtor-Creditor Agreement and Inter-Creditor Agreement and the principle of approvals by super majority of 75% creditors which makes it binding on the remaining 25% to fall in line with the majority decision. It consists of three tiers, namely, CDR Standing Forum, CDR Empowered Group and CDR Cell. In view of the petitioner company having an Inter-Creditor Agreement, which is binding on the Companies, any order passed by this Court approving the scheme of arrangement would have an impact on such agreement. Though, the banks or creditors to the Companies are part of CDR mechanism, the scheme was not evaluated by the CDR mechanism as such. Some banks attended the creditors meeting and some banks did not. The HDFC Bank raised objections.

In the circumstances, the scheme of arrangement is tentatively sanctioned subject to approval by the CDR EG and if the CDR EG approves the scheme by evaluating the financial implications, the present order along with the decision of the CDR EG shall be delivered to the Registrar of Companies, A.P., Hyderabad within thirty (30) days from the date of receipt of decision of CDR EG and he shall take all necessary consequential action in accordance with law. In case the CDR EG does not approve the scheme and suggest any modifications, the same shall be taken into account and the modified scheme of arrangement shall be placed before this Court for its sanction.

Both the Company Petition Nos.200 and 201 of 2016 are, accordingly, disposed of. Consequently, Company Application No.1277 of 2016 in C.P.No.200 of 2016 and Company Application Nos.1278, 1342 and 1442 of 2016 in C.P.No.201 of 2016 are also disposed of.