

In Re: Telesound India Ltd.

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Court : Delhi

Decided On : Dec-05-1980

Reported in : [1983]53CompCas926(Delhi)

Judge : H.L. Sound, J.

Acts : Industrial Finance Corporation Act - Sections 30; [Income Tax Act, 1961](#) - Sections 2(1A), 72(3), 72A and 72A(1); Income Tax (Amendment) Act, 1977; Companies Act - Sections 3, 4, 390, 391 to 394, 394A, 394(1) and 394(4), 397(2) and 433; Monopolies and Restrictive Trade Practices Act - Sections 23; Companies (Court) Rules - Rules 82, 83 and 392; Delhi Rent Control Act - Sections 2(1), 14, 14(1) and 48(2); Transfer of Property Act - Sections 2

Appeal No. : Company Petition No. 54 of 1980

Appellant : In Re: Telesound India Ltd.

Judgement :

1. Telesound (India) Ltd., for short, 'the transferor-company', was incorporated in the year 1966, inter alia, for the manufacture and sale of radio-receivers, record-players, record-changers, tape-recorders, valves and commercial apparatus. The subscribed and paid up capital of the company was Rs. 99,45,455 at all material times. It was initially an Indo-German collaboration and following the reverses suffered by it and on heavy losses, the German collaborator withdrew and it became a wholly owned Indian company in 1973 but was unable to recover and

was compelled to lay off the workers by 1976. By the year 1976, the liabilities of the company exceeded its assets, the accumulated losses exceeded the share capital and the capital reserves, the industrial activity of the company came to a halt and the company was unable to pay its creditors, which included, secured creditors, consisting of financial institutions and banks, unsecured creditors, such as, trade creditors, landlords and large number of depositors. In December, 1976, M. L. Sondhi carrying on business under the name and style of Laxmi Finance Exchange, for short, Sondhi, who claimed a sum of over Rs. 12 lakhs from the company, sought its winding-up by C.P. No. 90/76 inter alia, on the ground that the company was unable to pay its debts. The claim was contested on behalf of the company on the ground that Sondhi was not a creditor of the company, but it was not disputed that the company was otherwise in shambles and unable to meet its liabilities. The petition was admitted and this court appointed the official liquidator as the provisional liquidator by an order made on May 4, 1977, in C.A. No. 751 of 1976. The petition is still pending. Meanwhile, the Industrial Finance Corporation of India, for short, the Corporation, one of the secured creditors of the company, sought the intervention of this court under s. 30 of the Industrial Finance Corporation Act for the sale of the mortgaged assets of the company for the realisation of its heavy outstandings and for the appointment of a receiver by a petition being C.M. (M) (IFC) 56/77 and by an order made by this court on March 28, 1977, a receiver was appointed to take possession of the mortgaged assets of the company, including land, building, machinery, etc. The assets of the company included a tenanted commercial premises in South Extension Part I, New Delhi, in which were housed the registered office and the commercial offices of the company. This was among the assets which was taken over by the receiver appointed by this court. This petition is also pending.

2. During the pendency of these proceedings, efforts were being made by some of the promoters of the company with the co-operation of the Corporation and some of the other institutions, which were the secured creditors of the company, for the amalgamation of the company with any other company which may be able to take advantage of s. 72A. of the I.T. Act, introduced in the year 1977, in that Act, so as to reduce the latter's tax liability. The efforts apparently bore fruit with the willingness of Dalmia Cement (Bharat) Limited, for short, the transferee-company,

to be a party to a scheme for the amalgamation of the transferor-company with the transferee-company and to a scheme of compromise between the creditors of the transferor-company and the transferee-company for the payment to the creditors on amalgamation by the transferee-company in terms of the schemes of amalgamation and compromise.

3. By C.A. 480 of 1979, directions of this court were sought under s. 391 of the Companies Act for convening separate meetings of the secured and unsecured creditors of the transferor-company to consider and, if thought fit, to adopt, with or without modification, the proposed scheme of compromise between the company and the creditors concerned. The scheme of compromise, as then proposed, inter alia, envisaged that the secured creditors of the company would be paid their principal amount in full with the arid interest up to June 30, 1976, and all the unsecured creditors, except depositors with interest-bearing deposits, would be paid 50 per cent. of the principal sum due to them without any interest and that depositors having interest bearing deposits would be paid 50 per cent. of the principal amount of deposit with full interest up to June 30, 1976. It was further provided that on the scheme being sanctioned, the transferee-company would meet the liabilities of the transferor-company in terms of and in the manner provided in the scheme of amalgamation whereby the transferor-company was proposed to be amalgamated with the transferee-company. The scheme refers to the preferential creditors, which includes employees, secured creditors and the landlords but provides that they would be paid in full and would, therefore, not be affected by the scheme.

4. By C.A. 481/79, directions of this court were sought under s. 391 to convene separate meetings of the equity and preference shareholders of the transferor-company to consider and, if thought fit, to approve with or without modifications, the scheme for the amalgamation of the transferor-company with the transferee-company. The scheme of amalgamation, inter alia, visualises that in consideration of the vesting of the undertaking of the transferor-company in the transferee-company in terms of the scheme, the transferee-company would issue and allot to the members of the transferor-company, twelve 11% cumulative redeemable preference shares of Rs. 10 each in the transferee-company as fully paid up for

every 10 cumulative redeemable preference shares of Rs. 100 each and twenty 11% cumulative redeemable preference share of Rs. 10 each as fully paid up for every 100 equity shares of Rs. 10 each held in the transferor-company. It is further provided that the payment by the transferee-company to the secured and unsecured creditors of the transferor-company under the scheme of compromise referred to above, will be related to the tax benefits that are received under s. 72A of the I.T. Act by the amalgamated company and that the amount of tax benefit actually received shall be exclusively utilised for payment to the creditors and for the business needs of Telesound unit with the stipulation that, subject to actual receipt of tax benefits, the creditors shall be paid within a maximum period of 7 years from the date of amalgamation. A further direction was sought to convene a joint meeting of all the shareholders of the transferor-company to consider and, if thought fit, to approve the scheme of compromise referred to above.

Before making directions convening the meetings, this court issued notices to the various interests likely to be affected by the schemes with a view to give an opportunity to them of being heard before the schemes were referred to the meetings and with a view to explore the possibility of an improvement of the schemes in certain features. In the course of elaborate hearings at that stage various suggestions made with regard to the schemes were considered and the propounder, with the concurrence of the transferee-company, inter alia, agreed that the unsecured creditors would be paid 55 per cent. instead of 50 percent., that depositors, having interest-bearing deposits of Rs. 1,000, would be paid 100 per cent. of the principal amount and full interest up to June 30, 1976, and all other depositors would be paid 55 per cent. of the principal amount of the deposit and full interest up to June 30, 1976, that the amount of tax benefit actually received by the amalgamated company shall be exclusively utilised for payment to the secured and unsecured creditors and that the amount on actual receipt of tax benefits, would be disbursed within a maximum period of three years by quarterly installments, the first installment to commence within three months of the receipt of the first tax benefit. The concurrence of the transferee-company was assured by an affidavit filed on its behalf. The consideration of some of the other suggestions made to improve the scheme and to protect various interests was deferred till after the outcome of the meetings had become known.

5. Pursuant to the directions made by this court, separate meetings of the secured and unsecured creditors, preferential and equity shareholders and a joint meeting of all the shareholders of the transferor-company were held and the schemes were approved by the shareholders, the secured creditors and the unsecured creditors subject, however, to the modification of the scheme of amalgamation that the amount of tax benefits actually received shall be utilised, firstly, for payment to the secured creditors pro rata and, thereafter, to the unsecured creditors prorata and that such payments will be synchronised with and made out of the receipts of the actual tax benefits which will be available to the amalgamated company. This modification was proposed by the corporation and was adopted in all the meetings. The approval of the schemes by the shareholders was unanimous. The approval by the secured creditors was dissented from by the Haryana Financial Corporation even though it had approved of it earlier. The approval of the unsecured creditors was by near unanimity. Even though the creditors of the transferor-company were entitled and called upon to consider the scheme of compromise, a copy of the proposed scheme of amalgamation was enclosed with the notice of the meetings to the creditors concerned, apparently because the manner in which and the fund out of which the creditors were to be paid by the amalgamated company, on the scheme of amalgamation and the scheme of compromise becoming effective, though referred to in the scheme of compromise, was set out in the scheme of the proposed amalgamation. The result has, therefore, been that the creditors while approving the scheme of compromise have also approved the scheme of amalgamation. This is, as it should be, because the two schemes, even though different in character, must form part of a package. There is no point in the compromise if there is no amalgamation and, if the amalgamation does not facilitate payment to the creditors, part of the object is frustrated.

6. By C.P. 54 of 1980, sanction of this court is sought to the aforesaid schemes of amalgamation and compromise and further directions of the court are sought under s. 394 of the Act so as to give effect to the schemes. Notices of this petition were duly given and published in accordance with law. The Central Govt. and the official liquidator were also notified. The Central Govt. has made its representation and the official liquidator has submitted his report. Objections have been filed on

behalf of Sondhi, the landlord and certain depositors as well as by the Haryana Financial Corporation, one of the secured creditors. The Central Govt. has no objection to the schemes being sanctioned. Clearance under s. 23 of the M.R.T.P. Act has also been received. The official liquidator has certified that the affairs of the company had not been conducted in a manner prejudicial to the interest of its members or to public interest and there appears nothing objectionable to the dissolution of the company. The scheme of amalgamations had been duly submitted to the specified authority under sub-s. (3) of s. 72A of the I.T. Act and it has signified its satisfaction that the conditions referred to in sub-s. (1) of that section would be fulfilled if the amalgamation is effected in accordance with the scheme and that after the amalgamation is effected in accordance with the schemes, it would make a recommendation to the Central Govt. under sub-s. (1) of that section. A meeting of the members of the transferee-company was also convened pursuant to the directions made by the Madras High Court, within whose jurisdiction that company had its registered office, and the scheme of amalgamation and compromise, have been approved by the meeting as also by the board of directors of the transferee-company and the petition for sanction of the said High Court is said to be scheduled to come up for disposal later this month.

7. I have heard learned counsel for the various parties at considerable length on the various facts of the schemes, the validity of the proceedings, leading to the approval at the meetings, the nature and effect of the amalgamation, its impact on the assets of the transferor-company, including its tenancy rights, the desirability of effecting improvement in certain features of the scheme of compromise with the creditors and generally with regard to the desirability of modifying the scheme of compromise between the company and certain class of its creditors and giving appropriate directions so as to give effect to the schemes and to safeguard various interests including the interests of the preferential creditors, the depositors and the landlord. By a short order made on November 5, 1980, I sanctioned the schemes, as prayed, and as modified by the members of the transferee-company, subject, however, to modifications, directions and for the reasons to be recorded. By this order, I propose to deal with the various matters which were raised, to make the modifications and give directions considered by me to be necessary and to set out

my reasons.

8. There was no challenge either to the validity of the proceedings leading to the approval to the schemes of amalgamation and compromise or to either of the schemes by or on behalf of any interest entitled to participate in the process of approval of the schemes. So far as the scheme of amalgamation is concerned, it was unanimously approved by the equity and preference holders of the transferor-company and they had no objection to the same being sanctioned. So far as the scheme of compromise between the transferor-company and various creditors of the company are concerned, there was no objection either on behalf of the secured creditors or on behalf of the unsecured creditors, including the depositors, who alone were entitled to participate in the process of approval. Certain objections were, however, raised to the scheme of amalgamation on behalf of the landlord of the premises housing the registered office and the commercial offices of the company with a view to save the premises and the tenancy rights of the company in relation thereto, whether contractual or statutory, being transferred, consequent on amalgamation, to the transferee-company. An attempt was also made to void the scheme or the approval to it so that the company goes in winding-up necessitating the surrender of the tenancy or the possession of the premises to the landlord since on a winding-up, the tenancy rights, whether contractual or otherwise, would be incapable of assignment or disposal without the consent of the landlord. Sondhi, who claimed to be creditor of the company belonging to the preferential category, as defined in the scheme, raised objections to the amalgamation on the ground that on amalgamation, he would be compelled to deal with c company, the transferee-company, of which the registered office is located outside the jurisdiction of this court. These objections were raised with a view to ensure that adequate safeguards are provided which may enable him to have his claim against the company appropriately adjudicated without unnecessary delay and to keep the amalgamated company within the reach of the direction-jurisdiction of this court under s. 392 of the Companies Act. While the secured creditors and the unsecured creditors, other than the depositors, were fully satisfied with the schemes approved by them unanimously, a minor point was raised on behalf of the Haryana Financial Corporation, with regard to interest and an attempt was made on behalf of some depositors to improve the scheme so as

to eliminate and at least soften down, the obvious inequity in the scheme between the treatment of the secured creditors and the unsecured creditors as also between the preferential creditors, who are outside the scheme, and the unsecured creditors. There was, however, no representation on behalf of the unsecured creditors, other than the depositors, and having approved the scheme, they were apparently satisfied with whatever the scheme offered.

9. Whether the creditors of a transferor-company, and any other persons having interest in the transferor-company, or interested in its business assets or any contract with it, other than the members of it, were entitled to vote on a scheme for its amalgamation with another, by virtue of the fact that on amalgamation, their interest may in some way be affected, in that on amalgamation they would all be compelled to deal, in substitution of the transferee-company, with the amalgamated company, and in the case of formation of a new company on amalgamation of two companies with a new entity This contention which was raised on behalf of the landlord and, to an extent, on behalf of Sondhi, has to be answered in the negative. A bare reading of s. 391 of the Act leaves little doubt that a compromise or arrangement is either between a company or its creditors, or between a company and its members. An arrangement in the nature of amalgamation is the result of an agreement between the amalgamating company and its members, as well as a corresponding agreement between the transferee-company and its members, and there is, therefore, no provision for the participation of persons other than the members of the two companies to vote on an arrangement of amalgamation proposed between a company and its members. In the case of *Union of India v. Asia Udyog P. Ltd.* : [1974]95ITR229(Delhi) , I had an occasion to consider the scheme of provisions of the Act of 1913, corresponding to ss. 391 to 394 of present Act, in a slightly different context and had pointed out that although the provisions contained in Chap. V of the present Act, inter alia, with regard to compromise or arrangement and reconstruction of companies were a considerable improvement on the corresponding provisions in the previous Act and a number of safeguards have been provided, notably by the provisions of ss. 392 and 394A, an anomaly appears to exist in the Act inasmuch as the creditors of the transferor-company which is being amalgamated, were not entitled as of right at any stage to participate in the process of the consideration or

the sanction of any compromise or arrangement proposed between the company and its members, which may eventually result in the amalgamation of the Company by its absorption in the other or by merger of the two to create the third. There is no provision of notice to the creditors of any such proceedings at any stage, either prior to the making of the order, or subsequent thereto, except in so far as the creditors may have notice of it by public advertisement, although the creditors of a company, which is sought to be merged in any other, and completely absorbed in the transferee-company would, by the process of amalgamation, be compelled to deal with and become the creditors of another company, whether the existing company or a new company, that may come into existence, even though the creditors of some of them may have had no dealings with such new entity and may have, therefore, no confidence in its management. I still hold that view. What is true of the creditors of the transferor-company is equally true of others who may be interested in the transferor-company or in its assets in various ways. Those interests, however, have not been given any right to vote on the proposed amalgamation, even though there are ample provisions in s. 392, as indeed, in s. 394 and rr. 82/83 of the Companies (Court) Rules, which would enable the court to safeguard these interests in diverse ways. The result, therefore, is that no interests other than those of the members of a company were entitled to vote on the proposed amalgamation even though there may be nothing to prevent a court in a fit case to give an opportunity to the creditors of the transferor-company and others, who may be interested in it, in its business or assets, of being heard either at the initial stage before the scheme is referred to the meeting of the members or subsequently when the scheme is sought to be sanctioned or at any stage thereafter for the purpose of giving effect to the scheme or for its implementation or otherwise under various provisions of the Act and the Rules. In any event, in the Present case, the secured and unsecured creditors, who were sought to be affected by the scheme of compromise have had an opportunity to consider and approve the scheme of amalgamation as well, because the scheme of amalgamation was indirectly incorporated in the scheme of compromise because the manner of payment, etc., are set out in the scheme of amalgamation. Neither the landlord, nor Sondhi can, however, be heard to make a grievance in that behalf, in that, neither of them stated at the preliminary stage that they were

entitled to vote on the scheme of amalgamation. They wanted to be heard, both at the preliminary stage as also at the sanction stage and were not only heard at considerable length in respect of various facets of the scheme, its implication, its impact on their rights and as to the desirability of appropriate directions to protect their interests on amalgamation. Lastly, this court making appropriate directions, to the extent possible, to protect diverse interests other than the members of the transferor-company and it would be open to those interests to invoke the appropriate provisions of the Act and the Rules, should any subsequent directions for the purpose be found to be called for. It is, however, necessary to bear in mind that even though the creditors and other interests affected are not entitled to vote on the scheme of amalgamation, the court is bound in law, when dealing with a petition for a sanction of the scheme, to consider if the amalgamation would prejudicially affect the public interest, interest of the amalgamated company, the creditors of the transferor-company and various other interests affected by amalgamation and as to the best way in which their interests could be protected, even while sanctioning the scheme of amalgamation.

10. The scheme of amalgamation was sought to be voided on the ground that the proposed transferee-company was outside the expression 'company', as defined in s. 390(a) of the Act, in that it was admittedly a flourishing company and could not, therefore, be said to be 'liable to be wound up under this Act'. This contention, which is inspired by the decision of the Lahore High Court in the case of Traders' Bank, AIR 1949 Lah 48, and of the Bombay High Court in the case of Seksaria Cotton Mills Ltd. v. A. E. Naick [1967] 37 Comp Cas 656, is, however, based on a misconstruction of the expression 'liable to be wound up under this Act' in s. 390 of the Act, which defines the expression 'company' for the purpose of ss. 391 and 393. The expression 'company' as defined by s. 3 means a company formed and registered under the Act or an existing company, i.e., a company formed and registered under any of the previous Companies Acts. If the expression 'company' for the purpose of ss. 391 and 393 were to be understood as meaning a company in terms of s. 3 of the Act, a large number of companies, such as, unregistered companies and foreign companies, would have been outside the purview of the provisions contained in Chap. V of the Act, with regard to compromise, arrangement and reconstruction including amalgamation, even

though these categories of companies would be within the winding-up sweep of the Act by virtue of the provisions in Part X of the Act. It is for this reason that the expression 'company' is redefined in s. 390(a) for the purpose of ss. 391 and 393, so as to bring these categories of companies within Chap. V and, inter alia, to enable these companies to become parties to schemes of amalgamation, etc. While it is true that ordinarily a prosperous company would not enter into a compromise with its creditors, that could not be said either of reconstruction or of amalgamation. Ordinarily, an amalgamation would involve at least one sound company, which is capable on amalgamation of reviving the industrial activities of a sick company. The expression 'liable to be wound up under this Act' cannot, therefore, be given a restricted meaning that the conditions for the winding-up of the company have been satisfied, but must be widely construed so as to mean that the company was capable of being wound up under the Act. The expression 'liable to be wound up' has nothing to do with the satisfaction of the conditions for a winding-up order or the objective conditions of a company and the expression must be construed to mean a company which, on the conditions for winding-up being satisfied, could be wound-up under the Act. This is how the Madras High Court looked at the corresponding provisions in the Act of 1913 in the case of Travancore National and Quilon Bank [1939] 9 Comp Cas 14 (Mad); AIR 1939 Mad 318. This view did not find favor with the Lahore High Court in the case of Traders Bank, AIR 1949 Lah 48, and the Bombay High Court in the case of Seksaria Cotton Mills Ltd. [1967] 37 Comp Cas 656. The Bombay High Court, however, dissented from this view in a later decision in the case of Khandelwal Udyog Ltd. [1977] 47 Comp Cas 503, in which on an examination of the scheme of Chap. V, and the etymology of the expression 'liable', it was held, and rightly in my view, that the expression was designed to enlarge the scope of ss. 391 and 393 and was not intended to restrict the provisions to companies which faced financial difficulties. It is significant to point out that in defining the expression 'company' in s. 390(a), there was a deliberate departure from the phraseology of the provisions regarding winding-up, such as, ss. 397(2)(b) and 433 of the Act. Section 397(2)(b) uses the expression 'the facts would justify the making of a winding-up order'. Section 433, which deals with the cases in which the company may be wound up by a court, provides that 'a company may be wound up'. Section 390(a), on the

other hand, advisedly uses the expression 'liable to be wound-up'. It is interesting to notice in this context that s. 72A of the I.T. Act, 1961, is a legislative recognition of the scope of ss. 391 and 393 of the Companies Act, when it provides that on amalgamation the amalgamated company would be entitled to take advantage of the accumulated losses of the transferor-company to reduce its tax liability. If both the companies sought to be amalgamated must be sick, who would take advantage of the accumulated losses. The definition of the expression 'amalgamation' in s. 2(1A) of the I.T. Act leads one to the same conclusion. The expression 'company' must, therefore, be held to mean a company whether financially sound or otherwise, which, if conditions for winding-up were satisfied, could be wound up under the Act.

11. What, if any, is the impact of a scheme of amalgamation on the rights and obligations of the landlord and the tenant, qua the property held by the transferor-company under a contract of lease, which it may continue to occupy by virtue of the protection against eviction available to it under s. 14 of the Rent Control Act, is the next question that is posed on behalf of the landlord of the commercial premises in which are housed the registered office and the commercial offices of the transferor-company. This question raises a number of subsidiary legal problems. Are the tenancy rights of the transferor-company 'property' within the meaning of s. 394(4)(a) of the Act and, therefore, capable of being transferred to the transferee-company on amalgamation? Does such a transfer tantamount in law to an assignment of the tenancy by or on behalf of the company, or amount to parting with possession, etc., and would, therefore, be within the mischief of s. 14(1)(b) of the Rent Control Act? If it is tantamount to an assignment, etc., would it be valid notwithstanding that the consent of the landlord has not been obtained? Would such an assignment, etc., constitute an offence under s. 48(2) of the Rent Control Act? Would the court in such circumstances sanction an amalgamation or give effect to such a transfer? If the amalgamation is to be sanctioned, what directions would be necessary to protect the interest of the landlord, who, on amalgamation, would be compelled to deal with the transferee-company? Whether the vesting of the assets of the transferor-company in the transferee-company on amalgamation is an act of the transferor company or has the statutory genesis and, therefore, a vesting by an operation of law? How far is such vesting

distinguishable from vesting in the trustee in bankruptcy, transfer by the official liquidator in winding-up, and transfer by a tenant to a partnership composed of himself and another. If the dissolution of the company without being wound up as a consequence of amalgamation is analogous to the death of a natural person involving succession to the estate and the effect of such succession on the statutory tenancy. These are some of the subsidiary questions that arise for consideration.

12. Amalgamation of a company with another or an amalgamation of two companies to form a third is brought about by two parallel schemes of arrangements entered into between one company and its members and the other company and its members and the two separate arrangements bind all the members of the companies and the companies when sanctioned by the court. Amalgamation is, therefore, an absorption of one company into another or merger of both to form a third, which is not a mere act of the two companies or their members but is brought about by virtue of a statutory instrument and to that extent has statutory genesis and character, and to that extent it is distinguishable from a mere bilateral arrangement to merge or join in a common endeavor, an undertaking or enterprise. *J. K. (Bombay) P. Ltd. v. New Kaiser-i-Hind Spg. & Wvg. Co. Ltd.* : [1969]2SCR866 . Once the court sanctions the amalgamation, the amalgamation is made effective and binding by virtue of statutory power, inter alia, by the transferor to the transferee-company of the whole or any part of the undertaking, property rights and liabilities of the transferor-company by virtue of the provisions of s. 394 of the Act, which are intended to facilitate the process of amalgamation : *Sailendra Kumar Ray v. Bank of Calcutta Ltd.* [1948] 18 Comp Cas 1 (Cal). The expression 'property' and 'liabilities', which can be transferred on amalgamation, under s. 394(1) have been defined in very wide terms by sub-s. (4)(a) of that section, so as to include 'rights and powers of every description' and 'duties of every description' respectively. The expression 'property' would, therefore, be wide enough to include rights under a contract, including a contract of tenancy. These are co-extensive with the property and right which the transferor-company has in relation to its assets, but could not be wider than what the transferor-company was entitled to enjoy. The rights, property, as indeed the liabilities of the transferor-company, become the rights, property and liabilities of

the transferee-company by virtue of the order of vesting made by the court consequent on amalgamation. It is neither an assignment of right or property, nor an assignment of property by the company. It is the transfer of rights, property and liabilities along with the company itself and it is only as a result of confusion of thought that it could be described as an assignment by the company to another person, which is independent and distinct from the company. Such a notion ignores the peculiar position of amalgamation in company law and its true legal incident. It is for historical reasons that the device of amalgamation was built into the company law for facilitating the merger of companies, inter alia, with a view to help restoration of sick units to health, better, more effective and economical management of the corporate sector to ensure continued production, increased employment avenues and generation of revenues. Section 72A of the I.T. Act is one of the incentives for this kind of absorption of one company into another. On amalgamation the transferor-company merges into the transferee-company shedding its corporate shell, but for all purposes remaining alive and thriving as part of the larger whole. In that sense the transferor-company does not die either on amalgamation or on dissolution without winding-up under sub-s. (1) of s. 394. It is not wound up because it has merged into another. Winding-up is unnecessary. It is dissolved not because it has died, or ceased to exist, but because for all practical purposes, it has merged into another forming part of one corporate shell. The dissolution is the death of its independent corporate shell, because a company cannot have two shells. It is, therefore, dissolved because the independent shell or corporate name is superfluous. The company in its essence means its members, who compose it, the assets, property and rights that it had, its liabilities, its undertaking, business or other activity. It is not synonymous with the shell or name. On amalgamation and consequential dissolution all these attributes continue to live as part of a larger entity. The only part that dies is the shell and the name. It is unlike the death of a natural person and yet in a larger and deeper sense the same. It is unlike it, because a natural person, as ordinarily understood, does not survive the death in any physical form. The transferor-company, however, does survive, in that there is a continuity even after dissolution of its members, its assets, undertaking, etc. The estate of a natural person continues in the hands of the successor for a limited period. In a larger and a deeper sense

even a natural person survives his physical death in the continuation of a being, which is supposed to merge in the wider cosmic whole. That, however, is an area of study of life after death, or what is sometimes described as life after life, where the process is of a different dimension and defies description and is, in any event, too deep and wide for the narrow compass of this judgment. The analogy, therefore, between the death of a natural person and dissolution without winding-up is inappropriate.

13. True, in a winding-up, the tenancy rights of the company do not constitute a transferable asset and it was so held by this court in the case of *Globe Associates* [1971] 1 2nd Delhi 149. This is because on a winding-up there is no vesting of the property of the company in the official liquidator. The act of the official liquidator in dealing with the property is an act of the company in its name and on its behalf and any transfer of such property would not be saved by s. 2(d) of the Transfer of Property Act. The position would, however, be different in bankruptcy, because there the estate of the insolvent vests on insolvency by virtue of statutory provisions in the trustees and this vesting by itself has never been held to be an assignment or a transfer by the insolvent. Such vesting is by operation of law. The position of vesting on amalgamation is analogous to vesting in insolvency. The vesting in amalgamation is by operation of law and that is clear in the scheme of s. 394. Such vesting in the transferee-company on amalgamation is neither an act of the transferor-company, nor an assignment by it, but is the result of a statutory instrument. This is how the Calcutta High Court looked at the vesting of property on amalgamation in the transferee-company in the case of *Sailendra Kumar Ray v. Bank of Calcutta Ltd.* [1948] 18 Comp Case 1. It was held that actual transfer on amalgamation was brought about by the order of the court operating with the force conferred on it by the corresponding provision of the Act of 1913 and was, therefore, transfer otherwise than by an assignment. It was further held that this was tantamount to transfer by operation of law. On such a vesting in the transferee-company, a question of assignment could only arise in the eventuality in which the transferee-company seeks to make an assignment of the property. If the transfer or vesting on amalgamation is neither an assignment nor an assignment by the transferor-company, no further question as to the transferability of any tenancy rights or permission of the landlord or of the impact on it of s. 14 or

any other section of the Rent Control Act could possibly arise.

14. In the case of *Nokes v. Doncaster Amalgamated Collieries Ltd.* [1941] 11 Comp Case 83; [1940] 3 All ER 549, which was the sheet-anchor of the case set up on behalf of the landlord, the question was whether the right of the amalgamating company in a contract of service between it and an employee was on amalgamation transferred to the transferee-company as part of its property. The House of Lords answered the question in the negative, Lord Romer dissenting. It is, however, clear from the majority opinion of the Lord Chancellor that it was a case of application of well settled principles in amalgamation to an unusual and difficult situation involving compulsion for an employee, who had entered into a contract of personal service, to continue to serve what may be described as a new master in spite of his volition to the contrary. The Lord Chancellor left no manner of doubt that all the transferable assets of the company get transferred on amalgamation and the only exception was found in the case of a contract of personal service because to hold to the contrary would have been 'at complete variance with a fundamental principle of our common law, namely, that a free citizen in the exercise of his freedom is entitled to choose the employer whom he promises to serve, so that right to his services cannot be transferred from one employer to another without assent'. The decision, therefore, turned on compulsion and fear of perpetuation of serfdom and comprises a class apart, because of the unenforceability of a contract of personal service. Even in England the fear of serfdom of the 40s has since given place to the necessity for job security and if the pronouncement of that great English judge, perhaps the greatest judge of our times, is an index, there is talk of reinstatement and of dismissal only for good cause in a land which gave birth to the concept of absolute pleasure of the sovereign and the unenforceability of the contract of personal services. The changing economic and industrial scene has changed the emphasis and that is why in the case of *Hill v. C. A. Parsons & Co. Ltd.* [1971] 3 All ER 1345, Lord Denning granted reinstatement in spite of the doctrine which had held the field centuries. The majority judgment also had no possible answer as to what would have happened if instead of amalgamation, there was a simple takeover of the amalgamating company. Could the employee still have successfully asserted his right to deny to serve a new management Obviously not. The true concept and

incident of amalgamation and the transferability of the totality of property and rights of the amalgamating company were correctly brought out by Lord Romer, in his minority opinion, with which I respectfully concur. Later decisions both in England and in India do not appear to have taken that restricted meaning of property even in respect of contracts of service. In any event, the considerations that weighed with the majority have no possible application to the case of a landlord in relation to the tenancy and this is amply borne out by the observation of the Lord Chancellor. Whatever be the position of the transfer or vesting on amalgamation, the rights of the company were still its rights and could be transferred.

15. The transferability of the rights in the tenancy would be unaffected by the mere fact that contractual tenancy had been determined and the right of assignment was subject to the consent of the landlord. Contractual tenancy has always been held to be a heritable estate on the death of a tenant. Some doubt had arisen in India, following the principles of English law, if the protection provided by rent legislation in India, subsequent to the determination of the contractual tenancy, or what is sometimes described as statutory tenancy, was also heritable or not. In the case of *Anand Niwas P. Ltd. v. Anandji Kalyanji's Pedhi* : [1964]4SCR892 , it was held, following the principles laid down in English law, that on the determination of a contractual tenancy, the so-called statutory tenant, who had the protection of the Rent Act, did not on his death leave any heritable estate in relation to the tenancy and that the statutory protection available to him during his life, as if it were, died with him. In the confusion that arose in the law following this decision, it was lost sight of that whether the contractual tenant, who died after the determination of the contractual tenancy, left any heritable estate or not was not dependent on any general principle but on the nature of the statute that regulates the eviction of the tenant with the result that in Delhi as elsewhere, the dependents of the tenant as may be described as statutory tenants were left with no rights in the erstwhile tenanted premises and a large number of them were evicted while still larger were threatened with eviction. It was this situation which was causing great hardship and evoked legislative intervention, first by ordinance and later on by an amending Act, and the definition of the expression 'tenant' in s. 2(1) of the Rent Act was amended by the addition of clause (3) to it, which ex facie introduced an element

of limited heritability in relation to a certain class of residential tenancies. The subsequent pronouncement of the Supreme Court in the case of *Damadi Lal v. Parashram* : AIR 1976 SC2229 , however, restored the true legal position, while dealing with the Madhya Pradesh Act, and it was held that the nature and the tenure of the tenant, whose contractual tenancy had been determined, was not dependent on any principle of English law, but on the provisions of the statute concerned and in the context of the Madhya Pradesh Statute, it was held that the expression 'tenant' in that Act was wide enough to include a person who continued in possession of the demised premises even after the termination of the contractual tenancy and that, therefore, the heritability was unaffected, whether such a tenant died before or after the determination of the contractual tenancy. *Damadi Lal* : AIR 1976 SC2229 , remedied the situation that led to the amending Act and made all tenancies heritable irrespective of the fact whether a tenant died before or after the determination of the contractual tenancy. The amendment of the expression 'tenant', however, continues to remain a part of the Delhi Act and if restoration of the legal position by *Damadi Lal*, called for further legislative action, as it apparently does, it is still to come. The resultant position appears to create a controversy, as indeed, may lead to certain peculiar anomalies. In view, however, of the decision in the case of *Damadi Lal*, the commercial tenancies would be heritable without any limitation in spite of the amendment of the Delhi Act. If, therefore, one treats the case of dissolution without a winding-up of the company as analogous to the death of a tenant and succession of the estate by the heirs, the position would be no different in the case of commercial tenancies for they would come to the hands of the heirs or successors by a succession without being hit by the constraint of assignment. The Full Bench decision of this court in *Haji Mohd. Din*, : AIR1979 Delhi186 would not, therefore, be of any avail to the landlord, assuming the analogy to be correct, even though the true position seems to be that the dissolution of a company without being wound up consequent on amalgamation is not analogous to the death of a tenant because of certain continuity referred to above, which is not there in the case of a natural person.

16. It is, however, unnecessary for the present purpose to carry the matter any further. *Prima facie*, the rights of the transferor-company in the tenancy, contractual or statutory, are transferable on an amalgamation by virtue of the

vesting order to be made by the court while sanctioning the scheme of amalgamation or thereafter and having regard to the nature of such a vesting it would not require the consent of the landlord and would be outside the mischief of the provisions of s. 14(1)(b) of the Rent Control Act. This court is, however, not concerned at this stage if the transfer by or consequent on amalgamation by the order of the court would nevertheless be tantamount to the assignment of a tenancy and if without the consent of the landlord would render the company or the transferee-company liable to eviction under s. 14(1)(b) of the Rent Control Act or otherwise be actionable in a regular civil action against them. Such a matter has to be examined and decided in accordance with the special jurisdiction created by that Act or on a regular civil action, if maintainable. No cause of action accrues to the landlord before the amalgamation and consequential vesting. The cause of action, if any, follows the amalgamation and the vesting. Neither the amalgamation nor the vesting would deprive the landlord of any plea based on alleged assignment which may be open in law to the landlord. If there is any assignment in law, which may attract the provisions of the Delhi Rent Control Act, the landlord would be free to take recourse to the proceedings under that Act or in a regular civil action and such proceedings would be dealt with and decided by the appropriate authority in accordance with law.

17. A contention was raised on behalf of some of the objectors that the amalgamation would not be complete and effective unless both the companies, i.e., the transferor and transferee-company are before the same court. This contention is based on a misconception. The scheme of amalgamation is the result of two distinct arrangements, one between one company and its members and the other between the other company and its members. It is only when the scheme as approved by the members of each of the companies is sanctioned by the court that the amalgamation has legal force. What is necessary is that each of these schemes must be sanctioned by the court. If both the companies are in one jurisdiction, both the companies and their respective members would naturally be before the same court. If the two companies are under different jurisdictions, they cannot seek sanction from the same court, because the court for the purposes of the Companies Act, as indeed, s. 391 and the sections that follow is a court having jurisdiction and that is defined in s. 10 as having relation to the place where the

registered office of the company is situated with the result that if the two amalgamating companies are under two different jurisdictions, they have to go to the two different High Courts and the amalgamation becomes effective only after the schemes have been sanctioned by both the High Courts, even though material may and should be placed before each High Court on the steps that have been taken with reference to the other company. There is, however, no requirement that both the companies must go to the same High Court even though one of them is outside its jurisdiction. This contention does point to a defect existing in the law and it certainly would be desirable that in cases of amalgamation appropriate changes are made with regard to the jurisdiction of a court so that all matters relating to amalgamation are dealt with by any one of the two High Courts within whose jurisdiction the registered office is situated. Such an amendment would also eliminate the anomaly that may be created on amalgamation with regard to exercise of the directory power of the High Court under s. 392 of the Act, a subject to which I would presently advert. In the present case, the resolution passed by the Board of Directors of the transferee-company has been placed on record and it has been pointed out that members of that company had since approved the scheme of amalgamation and a petition for its sanction has since been made to the Madras High Court in whose jurisdiction the registered office of that company is situated. There is no further requirement.

18. The proposed scheme of amalgamation is sought to be voided on the further ground that having regard to the provision in the scheme with regard to the issue of shares of the transferee-company to the existing members of the transferor-company the association of the members of the transferor-company in the transferee-company would be wholly illusory, which would neither satisfy the requirement of s. 391 and the sections that follow, not that of s. 72A of the I.T. Act. There is no force in this contention. In terms of the scheme of amalgamation, certain cumulative redeemable preference shares have to be allotted by the transferee-company to the existing members, whether equity or preference holders, in lieu of the shares held by them in the transferor-company as a result of which the members of the transferor-company would become the members of the transferee-company on the amalgamation becoming effective. How much shares would be allotted and in what ratio or proportion to their existing holding, is a

matter entirely between the company and its members and the other company and its members. There is no further requirement of the Companies Act for the purpose of a valid scheme of amalgamation. I am not concerned with the requirement of s. 72A for the purpose of sanction even though it would be desirable that these requirements are satisfied because that is the sole object of amalgamation and the incentive behind it, as also, to an extent, the source from which the funds would flow. It is sufficient for my present purpose that the specified authority under s. 72A has already certified that on an examination of the proposed scheme of amalgamation, it was satisfied that the conditions referred to in sub-s. (1) of s. 72A would be fulfilled if such an amalgamation is effected in accordance with the scheme and that it would make recommendations to the Central Govt. under sub-s. (1) of that section in relation to the said scheme. Moreover, on the scheme of amalgamation becoming effective, all the three requirements of s. 2(1A) of the I.T. Act, which defines the expression 'amalgamation' would be satisfied. This is how the expression 'amalgamation' is defined :

'2(1A). 'amalgamation', in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that -

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation becomes the liabilities of the amalgamated company by virtue of the amalgamation;

(iii) shareholders holding not less than nine-tenths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated

company or its subsidiary) become share-holders of the amalgamated company by virtue of the amalgamation.'

Clause (iii) deals with the shares and the only requirement is that the shareholders holding not less than 9/10th in value of the shares in the amalgamating company or companies become 'shareholders if the amalgamated by virtue of the amalgamation'. This requirement would be satisfied. A contention was sought to be raised that redeemable cumulative shares could be redeemed by the company after a specified number of years and in that event the shareholders of the transferor-company may cease to be the shareholders of the transferee-company. That they would be members of the company in perpetuity is not the requirement. All that the law requires is that they become shareholders. No shareholder can be compelled to remain a member of a company apart from the peculiar requirement of redeemable preferential share. Such an eventuality may happen at any future time even with regard to equity shareholders. There is a right to transfer and there can be no restriction. The nature of the provision in the scheme with regard to the allotment of shares cannot be held, therefore, to be destructive of any necessary characteristic of amalgamation or of any of the requirements of the Companies Act or of s. 72A of the I.T. Act.

19. Whether this court should withhold sanction either because the scheme of amalgamation and compromise are not in public interest or their provisions are not in public interest or their provisions are so unreasonable as not to deserve sanction, are the further questions that require consideration. As for the scheme of amalgamation the members if both the companies have unanimously adopted it. Monopoly clearance has also been given. Central Govt. has blessed the scheme of amalgamation and it has also been approved by the appropriate authority for the purpose of benefit under s. 72A. The scheme of amalgamation is also consistent with the policy underlying s. 72A. It has the blessing of a number of financial institutions, who certainly would know better. Even from the point of view of the creditors of the company, the prospect that the amalgamation offers is much better than the bleak future they have if they merely look to the assets of the company with the obvious threat of secured creditors alone to eat up virtually the entire assets of the company. A comparative study of the balance-sheets of the

two companies during the last three years leaves no manner of doubt that as against the bankrupt-company the creditors could look to a healthy company with a share capital of Rs. 318.12 lakhs, reserves and surplus at Rs. 455.19 lakhs. As against the accumulated losses of the transferor-company, the profit of the transferee-company after tax have varied from Rs. 63 lakhs in 1979 to 92 lakhs in 1978 and Rs. 114 lakhs in 1977. The fixed assets of the transferee-company gross to 990.42 lakhs in 1979. The unsecured creditors, the preferential creditors and the secured creditors are, therefore, definite gainers by the scheme of amalgamation. There has been some controversy as to the true worth of the assets of the transferor-company but whichever way one looks at the value of its assets, there is little scope for the unsecured creditors, including preferential creditors, getting a substantial amount out of the assets on a winding-up even after a lapse of more than a decade of the commencement of the process of the winding-up. The value of all the assets of the transferor-company at cost is Rs. 135 lakhs, the comparative written down value is Rs. 59 lakhs and value assessed by the valuer is Rs. 178 lakhs. The secured creditors have a claim of Rs. 116 lakhs. The preferential creditors claim Rs. 40.26 lakhs. The unsecured creditors claim Rs. 52.72 lakhs. These liabilities total to Rs. 209.90 lakhs. If one takes into account the value assessed by the valuer, the entire assets would be insufficient to meet the liabilities of the company and there would be a shortfall of at least Rs. 30 lakhs odd. Even if one were to assume that the market value of the assets may be higher than the value assessed by the valuer, there would be a number of imponderables which would introduce an element of uncertainty and in any event the process of payment could not possibly commence before another decade has gone by, even though on account of the time factor the value of land may perhaps show an upward increase. A scheme of compromise which on amalgamation promises payment of 100 per cent. to all the secured creditors and the preferential creditors and of 55 per cent. to unsecured creditors, even though out of the benefit that may be made available under s. 72A of the I.T. Act could not, therefore, be said to be either contrary to public interest or be so unreasonable as not to deserve to be sanctioned. Such a conclusion would also be inconsistent with the unanimous approval of the scheme by the members, secured creditors, trade creditors and near unanimous approval by the preferential creditors as well as the

depositors. It is, however, true that the dissolution without winding-up on amalgamation would leave little scope for any enquiry into the conduct of the affairs of the transferor-company, but it cannot be ignored that even so, the scheme of amalgamation has been approved by the Government as well as the financial institutions and the official liquidator has certified that the affairs of the company were not conducted in a manner prejudicial to the interest of its members or to public interest and there was no objection to the dissolution of the company without winding-up and that the winding-up of the company would not be beneficial to the unsecured creditors, its members and employees. It is, therefore, not possible to hold that the scheme of amalgamation and compromise are not in public interest or that they are so unreasonable as not to deserve a sanction, even though there is scope to improve the scheme of compromise with the creditors so as to remove certain inequities and to give a better deal to the depositors among unsecured creditors of the company, a subject to which I would presently advert. If it is possible to modify the scheme of compromise with that object in view, it would be unfair to withhold sanction.

20. What then are the inequities or unfavorable features of the scheme of compromise and what modifications, if any, are necessary to remove these and to ensure a better deal to the weakest class of unsecured creditors, are the further questions that have to be dealt with. In the first instance, the preferential creditors, who are referred to in the scheme, but by its terms are outside it, would be entitled to be paid the claim without any scaling down and that no limitation of time of payment or restrictions scaling down and that no limitation of time of payment or restriction as to the source of funds out of which they are to be paid, but the secured and unsecured creditors, including depositors, have been subjected to the two-fold limitation that they would be paid only out of the benefit received under s. 72A of the I.T. Act implying thereby that if the transferee-company does not get the benefit, the liability of the transferee-company to these creditors would stand effaced. The other limitation is with regard to the time by which they may be paid subject to the availability of benefit under s. 72A of the Act. Secondly, the entire liability of the transferor-company is sought to be met out of the benefit likely to be received by the transferee-company by virtue of s. 72A of the Act with the consequence that the transferee-company gets the entire assets of the transferor-

company unencumbered if s. 72A benefit is received by it. If s. 72A benefit is not received by it, then it gets all the assets of the company for a mere payment of Rs. 40 lakhs to the preferential creditors but subject to the mortgage in favor of the secured creditors. If it gets the full benefit under s. 72A, the assets of the company are transferred virtually without any consideration. Thirdly, while the secured creditors and the preferential creditors are entitled to 100 per cent. of their claims, the entitlement of the unsecured creditors, including depositors, is confined to 55 per cent., except the depositors whose claim do not exceed Rs. 1,000. Lastly, the unsecured creditors, including depositors, would be paid only after all the secured creditors have been paid out of the benefit received under s. 72A of the Act with the result that there would be no prospect of the unsecured creditors getting any payment until 1984. While there is little doubt that, having regard to the accumulated losses of the transferor-company and the state of profitability of the transferee-company during the last many years, the benefit under s. 72A of the I.T. Act, available to the transferee-company on amalgamation, would be sufficient to meet the claims of all the creditors of the transferor-company, it is neither reasonable nor proper to place limitation on the source out of which the claims of the secured and unsecured creditors have to be paid. The secured creditors are not aggrieved because even if they do not get the benefit, they have still the securities to look to. The trade creditors did not feel concerned because having dealt with the company for many years, they treat the outstandings as an ordinary incident of trade. It is, however, a matter of concern for the depositors. They have no doubt approved the scheme with near unanimity but that is because they are in a very weak bargaining position and, therefore, out of sheer desperation. It is significant to point out in this context that as against the total liability of the company to the various creditors of the order of Rs. 209 lakhs, the liability of the company to the depositors is only Rs. 21 lakhs. Most of these are small depositors. 658 out of these claim less than Rs. 1,000 each and the scheme provided that they would be paid in full. A bulk of the rest of the claim is between Rs. 1,000 and Rs. 5,000 and if all of the depositors are required to be paid in full, whether or not the benefit under s. 72A has been received, it should not make any material difference to the transferee-company. It is, however, reasonable that in case s. 72A benefit is not received by the company in laying down the schedule as well as

the manner of payment due regard may be had not only to the value of the assets sought to be transferred but also the projected income of the Telesound unit of the transferee-company. According to the figures made available on behalf of the transferee-company, the Telesound unit would suffer a loss of Rs. 16 lakhs in the first year, i.e., in 1981, but would make profits in the subsequent years, the profit in 1982 being Rs. 8.35 lakhs and in the years, thereafter, increasing to Rs. 50 lakhs in 1987. There is scope to provide for an alternative mode of conversion of claims into interest bearing deposit with the transferee-company. Fortunately for the depositors, the management of the transferee-company was not averse to try within the broad parameters on which their projection of amalgamation were based. It would, therefore, be reasonable to make appropriate modifications in the scheme with a view to secure a better deal for the depositors but in such a way that the projection prepared by the experts of the transferee-company are not drastically disturbed so as to make the project uneconomic or less viable.

21. What are the directions called for so as to protect different interest and make the scheme of amalgamation and compromise effective and workable. In the first instance, it is necessary to ensure that the assets to be transferred on amalgamation are adequately preserved and are not allowed to be dealt with in any manner which may possibly prejudice the interest of the creditors until all the creditors of the transferor-company have been fully paid. To an extent this safeguard is provided because in terms of the scheme the existing instruments are kept alive. Certain other safeguards can also be built in to ensure the protection of the interests of other creditors. Secondly, it is necessary to provide a mechanism to generally supervise the implementation of the scheme, to oversee the working of the company, in particular the Telesound unit, to deal with various problems that may arise between creditors and the transferee-company and to protect the interest of unsecured creditors, particularly the depositors. Such a mechanism could consist of an implementation committee comprised of a representative of transferee-company, representative of unsecured creditors, with an independent chairman of known integrity and competence, who may function as a watch-dog of the interest of the unsecured creditors. Certain other directions could also be made with a view to ensure that the transferee-company, which has its registered office outside the jurisdiction would continue to have a nucleus of establishment

within the jurisdiction of this court as an office of the implementation committee or otherwise which may facilitate the making of directions by this court from time to time with a view to proper implementation of the scheme. As far as the right of the landlord to be paid as a preferential creditor, it is not affected either by the scheme of amalgamation or the scheme of compromise. The landlord is clearly outside the scheme of compromise and his claim for arrears of rent remains unaffected by the scheme of compromise and his claim for arrears of rent remains unaffected by the scheme by its very terms. As a preferential creditor, the landlord is entitled to be paid on demand and default in the payment of rent would naturally render the company liable to be evicted in accordance with law. The landlord has not yet filed any action for eviction on ground of non-payment of rent. The stay granted by this court earlier against any such proceedings was subsequently made conditional and the time for satisfying the condition was extended. The company has since deposited the amount representing the arrears of rent due until the date of the order and the condition of the order of stay has, therefore, been satisfied. The landlord is, therefore, assured payment of the arrears of rent and is entitled in law to continue to receive the rent from the transferee-company. If the amalgamation gives to the landlord any cause of action for eviction of the transferor or the transferee-company, law would have its own course and it would be open to the landlord to initiate appropriate proceedings. Parties would at that stage be at liberty to seek such directions of this court as may be called for. The problem of Sondhi is, however, slightly more complicated. According to the scheme of compromise, subject to adjudication of his claim, he would be a preferential creditor entitled to pursue his remedies in law for the satisfaction of his claim, subject to the computation of the quantum. This court has held that prima facie he is a creditor, but there are counter-claims arising out of alleged liability to render accounts. A suit by the company is pending and Sondhi has yet to seek his legal remedies against the company. He heavily relies on the present proceedings to provide him either the relief of adjudication or at least a forum for more economical and expeditious determination of the company's liability to him in all the accounts in which he has had dealings with the company. He is referred to in the scheme of compromise but by its terms he is outside the scheme, in that, he is not bound to either look to a particular fund for payment or under any obligation to wait for the

payment to him. There is also no question of scaling down his claim as a preferential creditor. He is not an ordinary creditor and even though outside scheme he is nevertheless not a complete stranger to the scheme, because he is elevated to the position of a preferential creditor by an artificial definition given to that expression by the scheme itself. He could not in any other sense be termed a preferential creditor virtue of any provision of the Companies Act or any other law. He cannot, therefore, be held to be completely outside the directory jurisdiction of this court under s. 392 or r. 83 of the Companies (Court) Rules which clearly make a provision for any enquiry as to any creditor and for proceedings that may be initiated in that behalf. His difficulties appear to be genuine. He claims to have large outstandings and would be compelled to deal with a totally new management. He has had a very long association with the company and has been managing its deposits over a period of time. There have been misunderstanding of late between him and the management of the company, but there has been no lack of understanding of the important role that he played in generating funds for the company during its worst phase of financial crises. If he is to seek a winding-up of the transferee-company after his claim has been adjudicated, he would obviously be at a disadvantage in having to invoke the jurisdiction of the Madras High Court, if it is eventually held that this court has no such jurisdiction even though this court is one of the courts which sanctioned the scheme of amalgamation and compromise. Fortunately, the transferee-company has not been averse to the entire process of adjudication of his claim taking place in Delhi, if possible, in appropriate proceedings under the Companies Act itself, either under r. 83 under the general directory jurisdiction of this court under s. 392 of the Act, as the court which sanctioned the scheme. On account of this helpful attitude of the transferee-company, much of the hardship that is envisaged on behalf of Sondhi as a consequence of the amalgamation could perhaps be relieved. While leaving Sondhi free to take appropriate legal steps to enforce the liability of the company, it would be reasonable and proper that appropriate directions are made so as to provide him an economical and expeditious mechanism for the adjudication of his disputed claims so that this court remains seized of the matter of Sondhi vis-a-vis the company and is able to give appropriate relief to him and he is referred to a civil court or arbitration only if such a course is indispensable. It

would also be necessary to initiate proceedings under r. 83 with a view to determine the status of Sondhi and to provide a necessary forum for the adjudication of his claim and to generally facilitate the task of reconciling conflicting claims of various interests including the landlord and the transferee-company to the extent possible within the directory jurisdiction of this court under s. 392 of the Act. The other directions that need to be made relate to the transfer of the assets, the effective date and the dissolution of the company without winding-up.

22. Having regard to all the circumstances, I would make the following modification in the schemes and give the following directions in relation to the matter :

A. Modification :

1. All the unsecured creditors of the transferor-company, holding interest bearing deposits in it, would be paid the principal amount in full and agreed interest up to June 30, 1976, in the following manner :

(a) In case the benefit under s. 72A is received by the amalgamated company;

(i) 55% in terms of the scheme, as approved or by December 31, 1984, whichever is earlier.

(ii) 45% by December 31, 1985.

(b) If the benefit under s. 72A is not received by the amalgamated company;

(i) 25% by December 31, 1985.

(ii) 25% by December 31, 1986.

(iii) 50% by December 31, 1987.

B. Directions :

1. Subject to any directions that may be made in the proceedings being C. M. (Main) IFC-56/77 filed by then Industrial Finance Corporation of India all the assets, property and rights of the transferor-company including the rights in

relation to the tenanted premises stand transferred to and vest in the transferee-company, become the liabilities of the transferee-company.

2. The amalgamated company would not, in any manner, alienate any part of the aforesaid assets, property or rights except in the ordinary course of business without the prior permission of this court.

3. Liberty to the amalgamated company to enter into such further instruments or deeds with regard to the aforesaid assets, property or rights in favor of the financial institutions, as may be necessary to give effect to the scheme of amalgamation.

4. An Implementation Committee composed of a representative of the amalgamated company and Shri P. V. S. MURTHY, Advocate, a representative of the unsecured creditors, with Dr. J. D. Sethi, eminent economist and former Member of the Planning Commission, as its Chairman, would supervise the implementation of the scheme by the amalgamated company and take all steps that may be necessary to protect that interests of the unsecured creditors. The Committee would be entitled to call for such information and particulars with regard to the Telesound project of the amalgamated company and any matter affecting the progress of the project as well as touching the implementation of the scheme from time to time, as the Committee may consider necessary. The Chairman of the Implementation Committee would be entitled to attend any meeting of the Board of Directors of the amalgamated company as an observer and shall attend all such meetings which are scheduled to consider any matter with regard to the progress of the Telesound project or which may otherwise affect the interests of the unsecured creditors or a speedy and effective implementation of the scheme. The amalgamated company would provide all reasonable facilities to the Committee and its Chairman to discharge their functions. The amalgamated company would submit to this court through the Chairman a six-monthly report of the progress of the Telesound project and of the implementation of the scheme. The Chairman and the members of the Committee would be paid such remuneration as may be agreed between the Chairman and the management of the amalgamated company. The Implementation Committee would have an office

in the establishments of the amalgamated company in New Delhi and such office as well as the establishment would be treated as the registered office of the company, inter alia, for the purpose of making any directions under s. 392 of the Act or the Rules.

5. Sondhi would have the liberty to initiate appropriate proceedings under r. 83 of the Companies (Court) Rules and under other enabling provisions of the Act and Rules with a view to facilitate an expeditious adjudication of his claims against the company, as indeed, the counter-claim that the company may have against him so as to ensure that all his legitimate claims would be paid to him at the earliest in accordance with law.

6. Liberty to the landlord to initiate appropriate proceedings under the enabling provisions of the Act or the Companies (Court) Rules or in case the landlord has a cause of action for the purpose, under provisions of the Delhi Rent Control Act with a view to ensure expeditious settlement of any dispute that he may have with the amalgamated company in respect of the tenancy of the demised premises, the arrears of rent and rate of rent and matters incidental thereto.

7. Liberty to the parties, as indeed, the Chairman of the Implementation Committee and the amalgamated company to seek further directions of the court from time to time to facilitate expeditious implementation of the scheme and to give effect to the schemes of amalgamation and compromise.

8. Liberty to the parties to seek modification of the scheme and in particular in the schedule of payment, in case the benefit under s. 72A of the I.T. Act is not received by the amalgamated company and the projection of the profit of the Telesound unit is for other reasons disturbed.

9. The account of the transferor-company were made out up to December 31, 1978, for the purpose of convening the meeting of the creditors. That date would be the effective date of the scheme of compromise.

10. Directions for convening the meeting of the creditors and the members were sought in September, 1979. The meetings were convened by an order of March 4,

1980. The schemes were approved on May 31, 1980. The transfer date, i.e., the effective date of amalgamation, would be January 1, 1980.

11. Possession of the factory has already been ordered to be delivered by the Receiver appointed by this court to the management of the amalgamated company, subject to the undertaking with regard to further instruments and deeds to be executed by the amalgamated company in favor of the financial institutions. The receiver would deliver possession of the remaining assets and property of the company to the management of the amalgamated company, subject to the aforesaid undertaking.

12. Liberty to the transferee-company and the unsecured creditors to negotiate for a settlement for the conversion of the entitlement under the scheme into interest bearing deposits in the amalgamated company on such terms as may be agreed upon between them, jointly or severally.

13. Appropriate directions would be made in C.M. (Main) IFC-56/77 and C.P. No. 90/76 with regard to their disposal.

14. The transferor-company is dissolved without winding-up.

15. The Registry would draw up formal orders, certified copies of which would be filed with the Registrar of Companies in accordance with law.

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