MIHEER H. MAFATLAL

v.

MAFATLAL INDUSTRIES LTD.,

SEPTEMBER 11, 1996

[N.P. SINGH AND S.B. MAJMUDAR, JJ.]

Company Law :

Companies Act, 1956 : Sections 391 to 393.

Amalgamation—Scheme of—Sanction—Granting of—Factors to be considered—By Company Court—Jurisdiction of—Broad contours laid down—Creditors or members must arrive at informed decision based on relevant material for approving scheme—Scheme as a whole was to be just, fair and reasonable to creditors or members without coercing minority.

Amalgamation—Scheme of—Approved by majority shareholders—Sanction of—By Company Court—Alleged bona fide action of majority shareholders or supression by the minority shareholders—Consideration for—Held : Bona fides of majority shareholders acting as group to be examined—Not bona fides of person whose personal interest might be different from that of voters as a class—Further, grievance of bona fides of majority voiced before General Body meeting itself—In the circumstances of the case, Scheme of Amalgamation could not be said to be unfair to minority shareholders.

Amalgamation—Scheme of—Minority equity shareholders—Convening of separate meeting of—Held : No separate meeting of the sub-class of minority shareholders to be convened unless different type of scheme of compromise offered to them—If same scheme offered to entire class of equity shareholders no separate meeting of minority shareholders required to be convened.

The respondent transferee-company was a large multi- Division, multi-locational company carrying on diversified activities including manufacturing and sale of textiles. The appellant was a director in the transferor-company which had been carrying on the business of manufacture and sale of textile piece goods and chemicals.

A The transferee-company moved an application before the High Court for sanctioning of a scheme of Amalgamation of the transferor-company with the transferee-company. It was at this stage that the appellant who was one of the shareholders of the transferee-company filed his objections under Section 391 of the Companies Act, Earlier the High Court directed convening of a meeting of equity shareholders of the respondent trans-
B feree-company. In the meeting an overwhelming majority of equity shareholders approved the scheme of Amalgamation. Thereafter the respondent transferee-company filed Company Petition before the High Court under Section 391(2) of the Act. The Single Judge sanctioned the said scheme of Amalgamation which was confirmed in appeal by the
C Division Bench of the High Court. Being aggrieved the appellant preferred the present appeal.

On behalf of the appellant it was contended that the respondent transferee-company was guilty of hiding the special interest of its director
D from the shareholders thereby the voting by the equity shareholders got vitiated; that the scheme of Amalgamation was unfair, unreasonable and amounted to supression of minority shareholders represented by the appellant and hence liable to be rejected; that a separate meeting of minority shareholders represented by the appellant was required to be convened on the basis that the appellant's group represented a special class of equity
E shareholders; and that the exchange ratio of equity shares of the transferor and transferee companies was *ex facie* unfair and unreasonable to the shareholders of the transferee-company.

On behalf of the respondent transferee-company it was contended
F that the personal disputes between the directors of the transferee and transferor companies were out of consideration of the equity shareholders and in any case non-disclosure of such disputes had no adverse effect on the decision of the majority shareholders who had approved the Scheme with a thumping majority of a about 95% and the appellant who was objecting to the Scheme was in microscopic minority of 5% of the total voting strength;
G that the appellant never cared even to be present at the meeting of the equity shareholders to put forward his objection and he only sent proxies who had no right to speak at the meeting; that the exchange ratio was suggested by experts and approved by an overwhelming majority of the equity shareholders; and that the appellant himself who was the director of the
H transferor-company had approved the scheme of Amalgamation.

Dismissing the appeal, this Court A

HELD : 1.1. The provisions of Sections 391 and 393 of the Companies Act, 1956 show that compromise or arrangement can be proposed between a company and its creditors or any class of them or between a company and its members or any class of them. Such a compromise would also take in its sweep any scheme of amalgamation/merger of one company with another. When such a scheme is put forward by a company for the sanction of the Court in the first instance the Court has to direct holding of meeting of creditors of class of creditors or members or class of members who are concerned with such a scheme to accord their approval. 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. A Company Court before whom an application is moved for sanctioning such a scheme which might have got the requisite majority support of the creditors or members or any class of them for whom the scheme is mooted by the concerned company, cannot act merely as a rubber stamp and automatically put its seal of approval on such a scheme. [24-A-G; 25-B] B C D

1.2. The following broad contours of the jurisdiction of the Company Court in granting sanction to the scheme have emerged : E

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 meetings as contemplated by Section 391(1)(a) have been held. [31-H; 32-A]

F

2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391(2). [32-B]

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 and fair to the class as a whole so as to legitimately bind even the dissenting members of that class. [32-C] G

4. That all necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplates by H

A Section 391(1). [32-C-D]

5. That all the requisite material contemplated by the proviso to Section 391(2) of 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. [32-D]

B

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 to be satisfied on this aspect, the Court, if necessary, can pierce the C veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same. [32-E]

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 D in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent. [32-F]

8. That the scheme as a whole is also found to be just, fair and reasonable from the point of vies of prudent men of business taking a E commercial decision beneficial to the class represented by them for whom the scheme is meant. [32-G]

9. Once the aforesaid board parameters about the requirements of the 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 F 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 G the Court exercising appellant jurisdiction over the scheme rather than its supervisory jurisdiction. [32-H; 33-A-B]

1.3. 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 H 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 game 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 umprie. The supervisory jurisdiction of the Company Court can also be culled out from the provisions of Section 392 of the Act. Of course this Section deals with post- sanction supervision. But the said provisions itself clearly earmarks the field in which the sanction of the Court operates. The supervisor cannot ever treated as the author or a policy maker. Consequently the propriety and the merits of the Compromise or arrangement have to be judged by the parties who as *sui juris* their open eyes and fully informed about the pros and cons of the Scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement. 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.

[25-H; 26-A-C; 27-A-B]

Alabama New Orleans Texas and Pacific Junction Railway Company, Re, **(1891) 1 Chancery Division 213 and** *Anglo- Continental Supply Co. Ltd., Re,* **(1992) 2 Ch. 723, referred to.**

Mankam Investments Ltd. and Others, Re., **(1995) 4 Comp. LJ 330 (cal.), approved.**

Hindustan Lever Employees' Union **v.** *Hindustan Lever Ltd. and Other,* **[1995] Supp. 1 SCC 499, relied on.**

Hoare & Co. Ltd., Re, **(1933) All ER Rep. 105, Ch. D and** *Bugle Press Ltd., Re,* **(1961) Ch. 270, cited.**

Bucklay on the Companies Act, **14th Edition, referred to.**

2.1. Section 393(1)(a) of the Act shows that the special interest of

A director which is required to be brought home to the voters must satisfy the following requirements of the Section before it can be treated to be a relevant special interest of the director which is required to be communicated to the voters : [34-E-F]

1. The director's interest must be a special interest different from the
B interest of other members who are the voters at the meeting. [34-E-F-G]

2. The compromise or arrangement which is put to vote must have an effect on such special interest of the director. [34-G]

3. Such effect must be different from the effect of compromise and
C arrangement on similar interest of other persons who are called upon to vote at the meeting. [34-F-H]

2.2. When a scheme of Compromise and Arrangement which involves two companies, namely, the transferor-company and the transferee-com-
D pany and their shareholders and creditors is on the anvil of scrutiny before the sanctioning Court, the Court has to see that the interest of the class of creditors or shareholders to whom the Scheme is offered for approval is any way likely to be affected by the suppression of special interest of the director in connection with such a scheme which is on the anvil. Two independent bodies which are represented by their shareholders or
E creditors as a class, as the case may be, have to take commercial decisions strictly with a view to seeing that the concerned Scheme of Compromise or Arrangement is beneficial to the shareholders or creditors as a class vis-a-vis the company which is a corporate entity in so far as company's relations with these class of creditors and shareholders are concerned. If
F the special interest which the director has is in any way likely to be affected by the Scheme and if non-disclosure of such an interest is likely to affect the voting pattern of the class of creditors or shareholders who are called upon to vote on the scheme, then only such special interest of the director is required to be communicated to the voters as per Section 393(1)(a) of
G the Act. [36-E-G]

2.3. The personal family dispute between the appellant on the one hand and his uncle, director or the transferee-company on the other regarding the right to hold shares in the company cannot have any linkage or nexus with the Scheme of Amalgamation of these two companies which
H was put to vote before the equity shareholders. The equity shareholders of

the transferee-company had to decide in their commercial wisdom whether it is worthwhile to have a larger body of shareholders on account of the merger so that apart from the share-holding of the transferee-company its objects would also get diversified and its field of operation would be enlarged with the prospect of hike in the dividend available to these shareholders after the economic and Industrial activities of both the companies so amalgamated would get elongated and whether the value of their shares in such consolidated companies were likely to get a boost in the stock market. While deciding whether transferor-company should be merged with the transferee-company and the transferee company's economic and industrial activity should be permitted to be enlarged as a result of such merger the equity shareholders least concerned whether the appellant would purchase in future the share of his uncle, the present director or vice versa. That was entirely their personal dispute which was still not adjudicated upon and its decision one way or the other had no impact on the pattern of voting of the equity shareholders of the respondent- company as a class of prudent businessmen and investors so far as the Scheme was concerned. Consequently, it must be held that mention about the personal interest was outside the statutory requirements of Section 393(1)(a) of the Act. [36-H; 37-A; C; H; 38-A-B; C]

3.1. While considering the question of *bona fides* of the majority voters and whether they were unfair to the appellant it has to be kept in view that *bona fides* of the majority acting as a group has to be examined vis-a-vis the Scheme in question and not the *bona fides* of the person whose personal interest might be different from the interests of the voters as a class. *Bona fide* of person can only be relevant if it can be established with reasonable certainty that he represents majority or is controller of majority. The director of the transferee-company cannot be visited with such a charge. The question of *bona fide* of the majority shareholders or the alleged suppression by them of the minority shareholders or their attempt to suffocate their interest has to be judged from the point of view of the class as a whole. Question is whether the majority equity shareholders while acting on behalf of the class as a whole had exhibited any adverse interest against the appellant's minority shareholders also having similar interest as members of the same class, while approving the Scheme or had acted with any oblique motive to whittle down such a class interest of the minority. [41-E-F]

A *Hellenic and General Trust Limited, Re,* (1976) 1 WLR 123, referred to.

3.2. In the instant case it cannot be said that the voting pattern was dominated by the share-holding of the director of the transferee-company and his group. Nor could it be said that the Scheme as put to vote was in B any way unfair to appellant or that the majority shareholders acting as a class had not behaved in a *bona fide* manner for protecting the interest of the class as a whole and were in any way inimical to the appellant. It was not the contention of the appellant that while voting by majority in favour of the Scheme the majority had acted with any oblique motive to fructify C any adverse commercial interest qua him and his group when it consisted of outsiders like financial institutions or that there was any possibility of their surrendering their economic interest in the scheme at the dictates of shareholder-director of the transferee-company and his group. The Board of Directors of the respective companies, namely, the transferor-company as well as the transferee-company had approved that Scheme of Amal- D gamation before it was put to vote. The appellant was himself one of the directors of the transferee-company who had no objection to the Scheme of Amalgamation from the point of view of the transferor-company. So far as the transferee-company is concerned though appellant was not a director he was 5% shareholder who did not think it fit to personally remain present E at the time of voting and simply relied upon proxy. If the appellant was feeling that the Scheme was unfair to him or was not going to protect his interest as shareholder in the respondent-company nothing prevented him from remaining present and voicing his grievance before the General Body of the equity shareholders and to apprise them of the alleged pernicious effect of the Scheme. It is, therefore, too late in the day for him to contend F that the Scheme was unfair to him and that the family of the director of transferee-company had tried to dominate and engineer any adverse pattern of voting at the meeting of the equity shareholders. Apart from the pattern of voting at the meeting of the equity shareholders, even the share-holding pattern of the respondent-company belies the submission put for- G ward on behalf of the appellant that the group of the transferee-company's director dominated the constitution of the company and could control the decisions of the shareholders. The scheme of the Amalgamation cannot be said to be unfair and amounting to suppression of minority shareholders represented by the appellant. [41-D; 42-C-F; 43-G]

H 4. Even though the Companies Act or the Article of Association do

not provided for such a class within the class of equity shareholders, in a given contingency it may be contended by a group of shareholders that because of their separate and conflicting interests vis-a-vis other equity shareholders with whom they formed a wider class, a separate meeting of such separately interested shareholders should have been convened. On the express language of Section 391(1) it becomes clear that where a compromise or arrangement is proposed between a company and its members or any class of them a meeting of such members or class of them has to be convened. This clearly presupposes that if the Scheme of Arrangement or Compromise is offered to the members as a class and no separate Scheme is offered to any sub- clause of members which has a separate Scheme to consider, no question of holding a separate meeting of such a sub-class would at all survive. In the instant case when one the same Scheme is offered to the entire class of equity shareholders for their consideration and when commercial interest of the appellant so far as the Scheme is concerned is common with other equity shareholders he would have a common cause with them either to accept or to reject the Scheme from commercial point of view. Consequently there was no occasion for convening a separate class meeting of the minority equity shareholders represented by the appellant and his group. [46-G-H; 47-E; G-H]

Palmer on Company Law 24th Edition, referred to.

5. Valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the filed of accountancy. Many imponderables enter the exercise of valuation of shares. Which exchange ratio is better is in the realm of commercial decision of well informed equity shareholders. It is not for the Court to sit in appeal over this value judgment of equity shareholders who are supposed to be men of the world and reasonable persons who know their own benefit and interest underlying any proposed scheme and who with open eyes have okayed this ratio and the entire Scheme. [49-D; 50-A; 51-B]

Kamala Sugar Mills Ltd. 55 Company Cases, 308 (Guj), approved.

CWT. v. *Mahadeo Jalan,* [1973] 3 SCC 157, relied on.

Penington : *Principles of Company Law,* referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11879 of 1996.

From the Judgment and Order dated 12.7.96 of the Gujarat High Court in O.J.A. No. 16 of 1994.

B Shanti Bhusan, Miheer Thakur, Darshan Parekh, Jay Salve, and J.K. Das for the Appellant.

Soli J. Sorabjee, S.B. Vakil, S. Ganesh, P.N. Kapadia, U.A. Rana and Rajiv Tyagi for Gagrat & Co. for the Respondent.

C The Judgment of the Court was delivered by

S.B. MAJMUDAR, J. Leave granted.

By consent of learned advocate of parties this appeal was taken up for final hearing. We have heard the learned advocates of parties. The D appeal is being disposed of by this judgment.

This appeal by special leave arises out of the judgment and order of a Division Bench of High Court of Gujarat in Original Jurisdiction Appeal No. 16 of 1994 decided on 12 July 1996. The Division Bench by the said E impugned judgment dismissed the appeal of the appellant and confirmed the order of the learned Single Judge in Company Petition No. 22 of 1994 and sanctioned a Scheme of Amalgamation of two Public Limited companies, namely Mafatlal Industries Limited ('MIL' for short) being the transferee-company with which Mafatlal Fine Spinning and Manufacturing Company Limited ('MFL' for short) being the transferor-company was to F be amalgamated. The learned Single Judge granted requisite sanction to the applicant transferee-company MIL to amalgamate in it the transferor-company MFL under Section 391(2) of the Companies Act, 1956 (hereinafter referred to as 'the Act'). In order to appreciate the grievance of the appellant who objected to the Scheme moved by the respondent-G company MIL, as ventilated before us by its learned senior counsel Shri Shanti Bhusan, assisted by learned counsel Shri M.J. Thakore, it will be necessary to glance through a few relevant background facts.

Background Facts

H The respondent-company MIL which was the petitioner before the

learned Single Judge has its registered office at Ahmedabad in Gujarat State. It was incorporated on 20th January 1913 under the name 'The New Shorrock Spinning & Manufacturing Co. Limited' and its name was subsequently changed to 'Mafatlal Industries Limited' as per the fresh Certificate of Incorporation dated 24 January 1974 consequent upon change of name, as sanctioned by the Registrar of Companies, Gujarat, Ahmedabad. The objects of the transferee-company MIL as per its Memorandum of Association, *inter alia*, included activity of carrying on all or any of the businesses such as cotton spinners and doublers, wool, silk, flax, jute and hemp spinners and doublers, linen manufactures, to work spinning and weaving mills, cotton mills, jute mills and mills of any other description. The Authorised Share Capital of the respondent-company was Rs. 100,00,00,000 (Rupees one hundred crores only) divided into 30,05,500 equity shares of Rs. 100 each and 69,94,500 unclassified shares of Rs. 100 each. The subscribed Share Capital of the respondent-company as on 31st March 1993 was Rs. 26.30 crores (Rupees twenty six crores thirty lacs only) divided into 26,90,000 equity shares of Rs. 100 each.

The respondent-company commenced the business of textiles and had been carrying on the same since incorporation. The respondent-company is a large multi-Division, Multi-locational company carryiny on diversified activities including manufacturing and sale textiles, dyes intermediates and chemicals, professional grade connectors, plastic processing machineries and promoting various companies through Project Promotion Division.

The MFL being transferor-company was incorporated on 20th April 1931 under the Baroda State Companies Act and had been carrying on the business of manufacture and sale of textile piece goods and chemicals. Its registered office was situated at Mafatlal Centre, Nariman Point, Bombay. It was engaged in the manufacture and sale of textiles and fluorines based chemicals. There were three units of the Textiles Division situated at (1) Vejalpur Road, Navsari, (2) Mazagon, Bombay and (3) Lower Parel, Bombay and the unit of the Chemicals Division was situated at Bhestan, District Surat.

The Authorised Share Capital of the transferor-company as on 31st March 1993 was Rs. 30 crores (Rupees thirty crores only) divided into 30,00,000 ordinary shares of Rs. 100 each. The Subscribed Share Capital

A of the transferor-company as on 31st March 1993 was Rs. 26,25,77,100 (Rupees twenty six crores twenty five lacs seventy seven thousand and one hundred only) divided into 26,25,771 ordinary shares of Rs. 100 each. Subsequent to 31st March 1993 the the transferor-company had allotted 382 ordinary shares of Rs. 100 each. The transferor-company had also issued and allotted further 1,00,000 ordinary shares of Rs. 100 each at a B premium of Rs. 200 per share on conversion of 1,00,000 Partly Convertible Debentures of the face value of Rs. 2,000 each issued to Financial Institutions with effect from 1st February 1994 by the transferor-company.

The transferor-company MFL is proposed to be amalgamated with C the respondent-company MIL under the following circumstances and for the following reasons :

(1) The proposed amalgamation will pave the way for batter, more efficient and economical control in the running of operation.

D

(2) Economies in administrative and management costs will improve in combined profitability.

(3) The amalgamated company will have the benefit of the combined reserves, manufacturing assets, manpower and E cashflows of the two companies. The combined technological, managerial and financial resources are expected to enhance the capability of the amalgamated company to invest in larger and sophisticated projects to ensure rapid growth.

F (4) The amalgamated company will have a strong and large re source base. With a strong resource base, the risk bearing capacity of the amalgamated company will be substantial. Hitherto, with limited resources and capacity, either company had to forego business opportunities which would otherwise have been profitable to the group.

G

(5) "Exports" have been identified a 'thrust' area for both the companies and response in time to customers needs is considered to be critical in this area of operations. An amalgamated company will be strategically better placed to reduce H the response time. Customers' confidence in dealing with such

a mega company ensures timely delivery of large orders. A

(6) The amalgamated company will be able to source and absorb new technology and spend on Research and Development, Market Surveys etc. More comprehensively.

(7) More particularly in the Textiles Division, with 5 operating units at the company's disposal, the flexibility in operations will be very much pronounced. The Managers will not be inhibited by capacity constraints and will have the freedom of choosing from various options. B

(8) Both the companies have been subject to the pressures of raw material price fluctuations and of adverse market conditions in their respective product mix. Hence, the amalgamation will neutralise the adverse effects of contrary business cycles. The operations of one unit will be complementary to the other and a stable profitability will be achieved. C D

The director of the respondent-company MIL and transferor- company MFL approved the proposal for amalgamation of the MFL with MIL and pursuant to the respective Resolutions passed by them the detailed Scheme of Amalgamation was finalised. The directors of both the companies of the opinion that such amalgamation was in the interest do both the companies. E

It is pertinent to note at this stage that the appellant who has objected to the amalgamation before the High Court in the present proceedings so far as the amalgamation of the transferee-company is concerned, is himself one of the directors of the transferor- company being MFL. So far as the transferor-company MFL is concerned as its registered office is located at Bombay the corresponding application on behalf of the transferor-company for sanctioning this very Scheme of Amalgamation was moved in the Bombay High Court. The appellant at this stage did not object to this very Scheme for amalgamation on behalf of the transferor-company of which he was one of the directors and party to the Resolution approving the said amalgamation. Learned Single Judge of the Bombay High Court sanctioned the said Scheme on behalf of transferor-company. It is not in dispute between the parties that Bombay High Court had already sanctioned this very Scheme on behalf of the transferor-company. F G H

A As the registered office of the transferee-company is located at Ahmedabad the respondent transferee-company had approached the High Court of Gujarat for sanctioning this very Scheme of Amalgamation on behalf of the transferee-company and that application was moved on 8th February 1994. It is at this stage that the appellant who was one of the shareholders of the transferee-company filed his objection to the Scheme B of Amalgamation moved under Section 391 of the Act. Earlier the learned Single Judge directed convening of meeting of equity shareholders of the respondent-company. In the meeting of equity shareholders convened pursuant to the order of the High Court, overwhelming majority of the equity shareholders approved the Scheme in the meeting of 22nd January 1994 C convened at Premabhai Hall, Bhadra, Ahmedabad. The said meeting was attended by 5522 members present in person or by proxy, holding 20, 48, 513 fully paid equity shares of Rs. 100 each aggregating to Rs. 20,48,51,300. At the said meeting, resolution was passed without modification by the requisite majority as 5298 members holding 19, 36, 964 fully paid equity shares voted in favour of the Scheme and 143 members holding 86, 061 D fully paid equity shares voted against the Scheme. In short, the said meeting by requisite majority approved the proposed Scheme of Amalgamation and report of the Chairman was submitted to the High Court. Thereafter the respondent-company MIL filed Company Petition No. 22 of 1994 under Section 391(2) of the Act. That application was ordered to be published in local newspapers as well as in the Bombay edition of the said newspaper. E Notice was also issued to Regional Director, Company Law Board, Western Region, Bombay.

In response to the notice issued to the Central Government under Section 394A of the Act the learned Additional Central Government F Standing Counsel appeared before the High Court and submitted to the orders of the Court making it clear that the Central Government is not to make any representation in favour or against the proposed Scheme.

Pursuant to the public advertisement only the present appellant, the G shareholder of transferee-company holding 40, 567 share in MIL filed affidavit opposing the Scheme of Amalgamation and Arrangement between the respondent transferee-company MIL and transferor-company MFL of which, as noted earlier, he himself was one of the directors and the High Court of Bombay which sanctioned this very Scheme on behalf of the transferor-company had sanctioned the Scheme without any objection H being taken by the appellant at that stage.

Nine objections were raised by the appellant against the proposed Scheme of Amalgamation as shareholder of the transferee-company. At this stage we may not mention all these nine objections as ultimately only four objections have survived for our consideration in the present proceedings and to which we will make a detailed reference hereinafter. Suffice it to state at this stage that after a prolonged hearing the learned Single Judge S.D. Shah, J., over-ruled these objections and by a detailed as exhaustive judgment running over 254 pages covering various aspects of the matters canvassed before him sanctioned the said Scheme moved on behalf of the respondent transferee-company.

The Division Bench of the High Court to which the appellant carried the matter in appeal confirmed the aforesaid decision of the learned Single Judge by well considered Judgment which also ran into 136 pages and that is how the appellant, original objector, is before us in this appeal.

Family History

In order to properly appreciate the grievance of the appellant against the proposed Scheme and his role as an objector it will be necessary to note the family history of the appellant and two of the directors of the respondent transferee-company who have a common ancestor Mafatlal Gagalbhai. The Family Tree of Mafatlal Gagalbhai projects the following picture :

Family Tree of Mafatlal Gagalbhai

Seth Mafatlal Gagalbhai
(Died on 19.07.1944)

<table>
<tr><td colspan="4">Navinchandra
(Died 31.08.1955)</td><td>Bhagubhai
(Died
30.09.1944)</td><td>Pransukhlal
(Deceased)
(No issues)</td></tr>
<tr><td colspan="2">Arvind</td><td>Yogindra</td><td>Rasesh</td><td rowspan="2">Hemant
(Died on
16.08.1971)</td><td></td></tr>
<tr><td>Padmanabh
(Died on
29.07.1990)</td><td>Hrishikesh</td><td>Atulya</td><td>Pradeep</td><td></td></tr>
<tr><td></td><td></td><td></td><td></td><td>Miheer
(Born on
27.05.1958)</td><td></td></tr>
</table>

A As the aforesaid Family Tree shows, the appellant Miheer is the son of cousin brother of Arvind Navinchandra who is said to be at the helm of affairs of the transferee-company along with his son Hrishikesh. As seen from the Family Tree the common ancestor Mafatlal Gagalbhai who was himself a very astute businessman and entrepreneur had three sons Pran-
B sukhlal. Navinchandra and Bhagubhai. The eldest son Pransukhlal got out of the family prior to the death of Mafatlal Gagalbhai and he died without leaving any issue. Mafatlal Gagalbhai expired on 19th July 1944 and was survived by his two sons Navinchandra and Bhagubhai. On 30th September 1944, the said Bhagubhai died leaving him surviving Hemant, then aged 9 as his only male issue. On 31st August 1955, Navinchandra Mafatlal died
C leaving him surviving the three sons. Arvind Mafatlal. Yogindra Mafatlal and Rasesh mafatlal as his male issues. On 16th August 1971, said Hemant expired leaving behind him only male issue, present objector Miheer, them aged 13.

D The said Mafatlal Gagalbhai started different business undertakings and with passage of time, the family of said Mafatlal consisting to Navinchandra and Bhagubhai expanded their business undertakings. The said family held controlling interest in different business concerns run through public limited or private limited companies and the members of the family were also partners in partnership firms. The pattern which was
E maintained throughout was that the two sons Navinchandra and Bhagubhai and their families would respectively have an equal interest in companies or in partnership firms. At the time of the death of the said Bhagubhai the said Hemant was just 9 years of age. The business of Mafatlal Group was therefore for all practical purposes managed by the said Navinchandra. At
F the time to the death of Navinchandra the shareholding of the branch of Hemant Mafatlal in Mafatlal Group of Industries was equal to aggregate shareholding of Arvind Mafatlal, Yogindra Mafatlal and Rasesh Mafatlal. On the death of Navinchandra, the Mafatlal Group was managed by Arvind Mafatlal, Yogindra Mafatlal, Rasesh Mafatlal and late Hemant Mafatlal. Arvind Mafatlal was, however the eldest male member in the family who
G was always looked upon by Yogindra, Rasesh and late Hemant as an elder in the family and respected.

On 16th August 1971, Hemant Mafatlal died at the young age of 36 years leaving behind him his widowed mother, his wife, his son Miheer
H (then aged 13) and his two daughters (then aged 11 and 6). At that time,

the Mafatlal family, i.e., the families of Navinchandra and Bhagubhai were running 3 apex companies (1) Mafatlal Gagalbhai & Company Private Limited, (2) Surat Cotton Spinning and Weaving Mills Private Limited and (3) Pransukhlal & Company Private Limited.

It is the case of Miheer that when his father expired, the New Shorrock Spinning and Manufacturing Co. Limited was being controlled and managed by Mafatlal Gagalbhai & Co. Limited in which his father and his family had 46.47% shares vis-a-vis 43.66% shares held by the family of Navinchandra Mafatlal. After the death of his father, when Miheer was minor, it was decided to amalgamate Mafatlal Gagalbhai & Co. Pvt. Limited with the New Shorrock Spinning & Manufacturing Co. Limited on 24th January 1974 January 1974 and the name of the company was changed to present name i.e. MIL.

According to the appellant Miheer in or around 1979, there were certain disputes and difference amongst Arvind Mafatlal, Yogindra Mafatlal and Rasesh Mafatlal and it was felt that some arrangement should be worked put, whereby there would be a separation and division of the family business concerns amongst the four branches viz. Miheer Branch known as MHM Group, family of Arvind Mafatlal known as ANM Group, family of Yogindra Mafatlal known as YNM Group and family of Rasesh Mafatlal known as RNM Group. It is his further case that Shri C.C. Chokshi, a reputed chartered accountant was requested to prepare a Scheme for division of family business concerns. According to the appellant. Shri C.C. Chokshi prepared Note dated 23rd February 1979 making six suggestions for the division of Mafatlal Group of Industries into four groups as there were four family groups. The appellant contends that as per the aforesaid family arrangement the transferee-company, i.e., MIL was agreed to be put to his share and the other groups which were holding shares in the said transferee-company were to transfer their share-holdings in favour of the appellant. The appellant contends that however because of some family disputes the appellant fell from the grace of Shri Arvind Mafatlal who was the eldest male member monitoring all these industries belonging to all the groups of the same family, and consequently the family arrangement was not give effect to and that the transferee-company was not handed over in management to the appellant.

On the other hand the case of the other group headed by Shri Arvind

A Mafatlal was to the effect that the said family arrangement of 1979 was given a go-by and the appellant himself agreed to sell his share-holding in the transferee-company MIL in favour of Arvind Mafatlal's Group. Number of litigations took place between the parties in the second half of 1980s. That on 6th April 1987 Arvind Mafatlal filed Suit No. 10 of 1987 in the
B High Court of Judicature at Bombay for a declaration that there was a valid, subsisting and binding contract to sell shares held by Rasesh Mafatlal, Yogindra Mafatlal and Miheer Mafatlal, the appellant herein, groups to Shri Arvind Mafatlal's group and for a direction that they should sell that shares at a price to be determined by the arbitrator. In the said suit the appellant Miheer filed a counter-claim praying that the family arran-
C gement of 1979 should should be enforced and the share-holding of Shri Arvind Mafatlal's group and other groups in the transferee- company MIL should be sold by way of specific performance to the appellant. The aforesaid suit by Arvind Mafatlal and the counter- claim by the appellant are pending for adjudication in the High Court of Judicature at Bombay.
D It is in the background of the aforesaid history of family feud between these warring groups descended from the common ancestor Shri Mafatlal Gagalbhai that the grievance voiced by the appellant in these proceedings has to be appreciated.

Rival Contentions

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As noted earlier though a battle royal was fought between the contesting parties before the learned Single Judge wherein nine objections were raised for adjudication by the appellant, at this stage, the dispute centered round a limited number of contentions which were canvassed for
F our consideration by learned senior counsel for the appellant. Four-fold submissions for opposing the Scheme were canvassed on behalf of the appellant before us by Shri Shanti Bhushan, learned senior counsel. In the first place he contended that the respondent-company while putting the Scheme for approval of the equity shareholders in their meeting did not disclose the interest of the directors, namely, Shri Arvind Mafatlal and Shri
G Hrishikesh Mafatlal belonging to the camp of Arvind Mafatlal in the explanatory statement supporting the Scheme and consequently the shareholders were misled and could not come to an informed decision regarding the approval of the said Scheme with the result that the approval by the majority of equity shareholders to the said Scheme has got vitiated;
H (2) The Scheme as proposed was unfair to the minority shareholders

represented by the appellant and consequently it ought not to have been sanctioned by the Court; (3) The Scheme was otherwise unfair to the equity shareholders as the exchange ratio of equity shares of the transferor and transferee companies was *ex facie* unreasonable and unfair to the shareholders of the transferee-company MIL in so far as it provides under the Scheme that two equity shares of the transferee company will be allotted against five equity shares of the transferor-company at their respective face value of Rs. 100 per share; and (4) That the appellant represented a distinct class of equity shareholders so far as the respondent transferee-company is concerned and consequently separate meeting so far as his group is concerned should have been convened by the Company Court and as that has not been done the Scheme is liable to be rejected.

As a corollary to the aforesaid contention Shri M.J. Thakore, learned counsel appearing for the appellant in addition submitted that the voting pattern as adopted in the meeting of equity shareholders which had approved the Scheme by majority, resulted in coercing the minority represented by the appellant and that has rendered the Scheme unfair and unreasonable and consequently it is required to be rejected.

On the other hand learned senior counsel Shri Sorabjee appearing for th respondent transferee-company contended that there was to illegality either procedural or substantive vitiating the Scheme and that there was no suppression of relevant material from the shareholders when the Scheme was put to vote. That the personal disputes between the worring groups of the family, namely, Arvind Mafatlal on the one hand and the appellant on the other and which were subject-matter of the pending litigation in Bombay High Court had nothing to do with the question of sanctioning the Scheme for its better economic viability with which the shareholders were concerned and that as the transferor-company and the transferee-company were juristic persons and corporate bodies, while considering the question of approving the said Scheme such personal disputes between the directors of the transferee-company and the director of transferor-company were completely irrelevant and were out of consideration of the equity shareholders who were not at all concerned with this type of internal feuds and in any case non-disclosure of such disputes had no adverse effect on the decision of the majority shareholders who had approved the Scheme with a thumping majority of about 95% and the appellant who was objecting to the Scheme was in microscopic minority of

A 5% of the total voting strength. It was also contended by learned senior counsel for the respondent that it is wrong to assume that the transferee-company was family concerned and was managed by families. That Shri Arvind Mafatlal and Hrishikesh Mafatlal were only two directors out of thirteen directors of respondent-company. These eleven directors did not belong to his family. That even shareholding of Arvind Mafatlal's group in the respondent-company was not substantial and on the contrary about 40% shares were held by outside financial institutions. Even otherwise there was no question of any unfairness underlying the proposed Scheme or that in any way it was unfair to the appellant who never cared even to remain present personally at time of the meeting of the equity shareholders to put forward his objections and he only sent proxies who had no right to speak at the meeting. That therefore all these objections which he ultimately raised before the High Court were an afterthought. It was also contended that there was nothing wrong with the exchange ration as C.C. Chokshi & Co., a firm of reputed chartered accountants, had considered all the pros and cons underlying the Scheme and had suggested the exchange ratio and such an expert opinion was endorsed by another financial institution ICICI. That the appellant had not chosen to controvert this expert opinion by leading any evidence in rebuttal by any other expert in the field who could have suggested the exchange ratio differently. That the appellant's contention that the exchange ratio should have been one share of transferee company against six shares of the transferor company was in the realm of mere conjecture and *ipse dixit*. It was not supported by any expert opinion. Consequently the High Court was justified in taking the view both at the stage of learned Single Judge as well as in appeal by the Division Bench that the exchange ratio could not be said to be unfair or unreasonable especially when by as overwhelming majority the equity shareholders approved the said Scheme along with said exchange ratio and had no objection to the allotment of two equity shares of the transferee-company in exchange for five equity shares of transferor-company. It was also contended that the appellant himself who was the director of the transferor-company had approved the same exchange ratio while he acted on behalf of the transferor-company. He was, therefore, playing hide and seek when it came to the enforcement of the very same exchange ratio at the end of the transferee-company wherein he was not a director but only shareholder of merely 5% shares.

H It was next contended that the appellant was also an equity

shareholder and so far as the other equity shareholders were concerned they constituted the same class as the appellant. That there was no *inter se* conflict between the rest of the equity shareholders representing 95% of the voting strength which approved the Scheme and the appellant who represented dissenting 5% votes and consequently there was no question of holding as separate meeting so far as the appellant was concerned. Even otherwise such a separate meeting would not have made any impact on the voting pattern projected by the equity shareholders approving the said Scheme by overwhelming majority. Repelling the additional contention canvassed by learned counsel for the appellant it was submitted by Shri Sorabjee learned senior counsel for the respondent that there was no question of coercing any minority by the majority as in the meeting of the equity shareholders the appellant had not thought fit even to remain present personally and had only got represented through proxy for submitting his objection by voting against the Scheme without having any right to address the meeting. Thus the contention regarding alleged suppression by the majority was purely an afterthought especially when in the meeting the group of Arvind Mafatlal had not represented an absolute majority and 40% of the voting was by financial institutions who had no axe to grind against the appellant and who had voted by keeping in view purely commercial and economic interests of equity shareholders and had approved the Scheme in that light. It was, therefore, submitted that the contention raised on behalf of the appellant deserve to be rejected and the appeal consequently also deserve to be dismissed.

A B C D E

In view of the aforesaid rival contentions the following points arise for our determination :

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1. Whether the respondent-company was guilty of hiding the special interest of its director Shri Arvind Mafatlal from the shareholders while circulating the explanatory statement supporting the Scheme and whether thereby the voting by the equity shareholders got vitiated.

2. Whether the Scheme is unfair and unreasonable to the minority shareholders represented by the appellant.

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3. Whether the proposed Scheme of Amalgamation was unfair and amounted to suppression of minority shareholders represented by the appellant and hence liable to be rejected.

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A 4. Whether separate meeting of minority shareholders represented by the appellant was required to be convened on the basis that the appellant's group represented a special class of equity shareholders.

5. Whether the exchange ratio of two equity shares of MIL for five equity shares of MFL was *ex facie* unfair and unreasonable to the equity B shareholders of MIL and consequently the Scheme of Amalgamation on that account was liable to be rejected.

However before we deal with the aforesaid points for determination seriatim, it will be necessary to keep in view the limited scope of the C jurisdiction of the Company Court which is called upon to sanction the Scheme of Amalgamation as per the provisions of Section 391 read with Section 393 of the Act.

Scope of interference by the Company Court in sanction proceedings

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The relevant provisions of the Companies Act, 1956 are found in Chapter V of Part VI dealing with 'Arbitration, Compromises, Arrangements and Reconstructions'. In the present proceedings we will be concerned with Sections 391 and 393 of the Act. The relevant provisions thereof read as under :

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

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

(b) between a company and its members or any class of them;

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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.

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(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,

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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.

393. (1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 391,-

(a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect : and in particular, stating any material interests of the directors, managing director, managing agent, secretaries and treasurers or manager of the company, whether in their capacity as such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and in so far as, it is different from the effect on the like interests of other persons; and

(b) in every notice calling the meeting which is given by advertisement, there shall be included either such a statement as aforesaid on a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid."

The aforesaid provisions of the Act show that compromise or arrangement

A can be proposed between a company and its creditors or any class of them or between a company and its members or any class of them. Such a compromise would also take in its sweep any scheme of amalgamation/merger of one company with another. When such a scheme is put forward by a company for the sanction of the Court in the first instance B the Court has to direct holding of meetings of creditors or class of creditors or members or class of members who are concerned with such a scheme and once the majority in number representing three-fourths in value of creditors or class of creditors or members or class of members, as the case may be, present or voting either in person or by proxy at such a meeting C accord their approval to any compromise or arrangement thus put to vote, and once such compromise is sanctioned by the Court, it would be binding to all creditors or class of creditors or members or class of members, as the case may be, which would also necessarily mean that even to dissenting creditors or class of creditors or dissenting members or class of members D such sanctioned scheme would remain binding. Before sanctioning such a scheme even though approved by a majority of the concerned creditors or members the Court has to be satisfied that the company or any other person moving such an application for sanction under sub-section (2) of Section 391 has disclosed all the relevant matters mentioned in the proviso to sub-section (2) of that Section. So far as the meetings of the creditors E or members, or their respective classes for whom the Scheme is proposed are concerned, it is enjoined by Section 391(1)(a) that the requisite information as contemplated by the said provision is also required to be placed for consideration of the concerned voters so that the parties concerned before whom the scheme is placed for voting can take an informed and F objective decision whether to vote for the scheme or against it. 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 by go by the *ipse dixit* of the majority of the shareholders or creditors or their respective classes who G 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 H is required to receive the imprimature 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 shareholder 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 the 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 a rubber stamp and must almost automatically put its seal of approval on such a scheme. It is 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 while putting its seal of approval on the concerned scheme placed for 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 a scheme and to that extent absence of their consent will have no effect on 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 required majority vote.

A B C D E F

However further question remains whether the Court has jurisdiction like an appellate authority to minutely scrutinies 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 scheme as required by Section 391 sub-Section (2). On 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 and informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept

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A in view by the Court. The Court certainly would not act as a court of appeal nd 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 umprie in a game of cricket who has to see that both the teams play their game 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 supervisory jurisdiction of the Company Court can also be culled out from the provisions of Section 392 of the Act which reads as under :

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> "392. (1) Where a High Court makes an order under Section 391 sanctioning a compromise or an arrangement in respect of a company, it -
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> (a) shall have power to supervise the carrying out of the compromise or arrangement; and
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> (b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.
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> (2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.
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> (3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 (7 of 1913), sanctioning a compromise or an

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arrangement." A

Of course this Section deals with post-sanction supervision. But the said provision itself clearly earmarks the filed in which the sanction of the Court operates. It is obvious that the supervisor cannot ever be treated as the author or a policy maker. Consequently the propriety and the merits of the compromise or arrangement have to be judged by the parties who as *sui juris* with their open eye and fully informed about the pros and cons of the Scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement. The Court cannot, therefore, undertake the exercise of scrutinising the scheme place for its sanction which a view to finding out whether a better scheme could have been adopted by the parties. This exercise remains only for the parties and is in the realm of commercial democracy permeating the activities of the concerned creditors and members of the company who in the their best commercial and economic interest by majority agree to give green single to such a compromise or arrangement. The aforesaid statutory scheme which is clearly discernible from the relevant provisions of the Act, as seen above, has been subjected to a series of decisions of different High Courts and this Court as well as by the courts in England which had also occasion to consider schemes under *pari materia* English Company Law. We will briefly refer to the relevant decisions on the point. But before we do so we may also usefully refer to the observations found in the *oft-quoted* passage in Bucklay on the Companies Act, 14th Edition. They are as under :

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> "In exercising its power of sanction the Court will see, *first* that the provisions of the statute have been complied with, *second*, that the class was fairly represented by those who attended the meeting and that statutory majority are acting *bona fide* and are not coercing the minority in order to promote interest adverse to those of the class whom they purport to represent, and *thirdly*, that the arrangement is such as an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve. F G
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> The court does not sit merely to see that the majority are acting *bona fide* and thereupon to register the decision of the meeting, but at the same time, the court will be slow to differ from the meeting, unless either the class has not been properly consulted, H

A or the meeting has not considered the matter with a view to the interest of the class which it is empowered to bind, or some blot is found in the Scheme."

In the case of Re. *Alabama, New Orleans Texas and Pacific junction Railway Company* reported in 1891 (1) Chancery Division 213 the relevant B observations regarding the power and jurisdiction of the Company Court which is called upon to sanction a scheme of arrangement or compromise between the company and its creditor or shareholders were made by Lindley, L.J. as under :

C "What the court has to do is to see, *first of all*, that the provisions of that statute have been complied with; and, *secondly*, that the minority has been acting *bonafide*. The court also has to see that the minority is not being overriden by a majority having interests of its own clashing with those of the minority whom they seek to coerce. Further than that, the court has to look at the scheme and D see whether it is one as to which persons acting honestly, and viewing the scheme laid before them in the interests of those whom they represent, take a view which can reasonable be taken by businessmen. The court must look at the scheme, and see whether the Act has been complied with, whether the majority are acting *bonafide*, and whether they are coercing the minority in order to E promote interests adverse to those of the class whom they purport to represent; and then see whether the scheme is a reasonable one or whether there is any reasonable objection to it, or such an objection to it as that any reasonable man might say that he could not approve it."

F To the similar effect were the observations of Fry, L.J., which read as under:

"The next enquiry is-Under what circumstances is the court to sanction a resolution which has been passed approving of a com- G promise or arrangement? I shall not attempt to define what elements may enter into the consideration of the court beyond this, that I do not doubt for a moment that the Court is bound to ascertain that all the conditions required by the statute have been complied with; it is bound to be satisfied that the proposition was made in good faith; and, further, it must be satisfied that the H proposal was at least so far fair and reasonable, as that an intel-

> ligent and honest man, who is a member of that class, and acting alone in respect of his interest as such a member, might approve of it. What other circumstances the court may take into consideration I will not attempt to forecast."

In *Anglo-Continental Supply Co. Ltd.*, Re. (1992) 2 Ch. 723 Ashtury, J., a century later reiterated the very same propositions as under :

> "Before giving its sanction to a scheme of arrangement the court will see firstly that the provisions of the statute have been complied with; secondly that the class was fairly represented by those who attended the meeting and that the statutory majority are acting *bona fide* and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and, thirdly, that the arrangement is such as a man of business would reasonably approve."

Learned Single Judge of the Calcutta High Court in the case of Re. *Mankam Investments Ltd. and Others* (1995) 4 Comp LJ 330 (Cal.) relying on a catena of decisions of the English Courts and Indian High Courts observed as under on the power and jurisdiction of the Company Court which is called upon to sanction a scheme of merger and amalgamation of companies :

> "It is a matter for the shareholders to consider commercially whether amalgamation or merger is beneficial or not. The court is really not concerned with the commercial decision of the shareholders until and unless the court feels that the proposed merger is manifestly unfair or is being proposed unfairly and/or to defraud the other shareholders. Whether the merged companies will be ultimately benefited or will be able to economise in the matter of expenses is a matter for the shareholders to consider. If three companies are amalgamated, certainly, there will be some economies in the matter of maintaining accounts, filing of returns and various other matters. However, the court is really not concerned with the exact details of the matter and if the shareholders approved the scheme by the requisite majority, then the court only looks into the scheme as to find out that it is not manifestly unfair and/or is not intended to defraud or do injustice to the other shareholders."

A We may also in this connection profitably refer to the judgment of this Court in the case of *Hindustan Lever Employee's Union* v. *Hindustan Lever Ltd. and Others,* [1995] Supp. 1 SCC 499 wherein a Bench of three learned judges speaking through Sen, J. on behalf of himself and Venkatachaliah, CJ., and with which decision Sahai, J., concurred. Sahai, J., in his concurring judgment in the aforesaid case has made the following pertinent observations in this connection in paras 3 and 6 of the Report :

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> "But what was lost sight of was that the jurisdiction of the Court in sanctioning a claim of merger is not to ascertain with mathematical accuracy if the determination satisfied the arithmetical test. A company court does not exercise an appellate jurisdiction.
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> Section 394 casts an obligation on the court to be satisfied that the scheme for amalgamation or merger was not contrary to public interest. The basic principle of such satisfaction is none other than the broad and general principles inherent in any compromise or settlement entered between parties that it should not be unfair or contrary to public policy or unconscionable. In amalgamation of companies, the courts have evolved, the principle "prudent business management test" or that the scheme should not be a device to evade law. But when the court is concerned with a scheme of merger with a subsidiary of a foreign company then test is not only whether the scheme shall result in maximizing profits of the shareholders or whether the interest of employees was protected but it has to ensure that merger shall not result in impeding promotion of industry or shall obstruct growth of national economy. Liberalised economic policy is to achieve this goal. The merger, therefore, should not be contrary to this objective. Reliance on English decisions *Hoare & Co. Ltd.*, Re 1933 All ER Rep 105, Ch D and *Bugle Press Ltd.*. Re. 1961 Ch 270 that the power of the court is to be satisfied only whether the provisions of the Act have been complied with or that the class or classes were fully represented and the arrangement was such as a man of business would reasonably approve between two private companies may be correct and may normally be adhered to but when the merger is with a subsidiary of a foreign company then economic interest of the country may have to be given precedence. The

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jurisdiction of the court in this regard is comprehensive." A

Sen, J., speaking for himself and Venkatachaliah, CJ., also towed the line indicated by Sahai, J., about the jurisdiction of the Company Court while sanctioning the scheme and made the following pertinent observations in paragraph 84 at page 528 of the Report : B

> "An argument was also made that as a result of the amalgamation, a large share of the market will be captured by HLL. But there is nothing unlawful or illegal about this. The Court will decline to sanction a scheme of merger, if any tax fraud or any other illegality is involved. But that is not the case here. A company C may, on its own, grow up to capture a large share of the market. But unless it is shown that there is some illegality or fraud involved in the scheme, the Court cannot decline to sanction a scheme of amalgamation. It has to be borne in mind that this proposal of amalgamation arose out of a sharp decline in the business of TOMCO. Dr. Dhavan has argued that TOMCO is not yet a sick D Company. That may be right, but TOMCO at this rate will become a sick Company, unless something can be done to improve its performance. In the last two years, it has sold its investments and other properties. If this proposal of amalgamation is not sanctioned, the consequence for TOMCO may be very serious. The E shareholders, the employees, the creditors will all suffer. The argument that the Company has large assets is really meaningless. Very many cotton mills and jute mills in India have become sick and are on the verge of liquidation, even though they have large assets. The Scheme has been sanctioned almost unanimously by the shareholders, debenture-holders, secured creditors, unsecured F creditors and preference shareholders of both the Companies. There must exist very strong reasons for withholding sanction to such a scheme. Withholding of sanction may turn out to be disastrous for 60,000 shareholders of TOMCO and also a large number of its employees." G

In view of the aforesaid settled legal position, therefore, the scope and ambit of the jurisdiction of the Company Court has clearly got earmarked. The following broad contours of such jurisdiction have emerged :

1. The sanctioning court has to see to it that all the requisite statutory H

A procedure for supporting such a scheme has been complied with and that the requisite meetings 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).

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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 and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.

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4. That all 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).

D 5. That all the requisite material contemplated by the proviso of sub-Section (2) of Section 391 of the Act is placed before the Court by the concerned appllicant 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 E 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 to be 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.

F 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.

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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.

H 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 courts jurisdiction.

In the light of the aforesaid settled legal position we will now proceed to deal with the main points for determination indicated hereinabove.

Point No. 1

So for as this point is concerned it was vehemently contended by learned senior counsel Shri Shanti Bhushan that the explanatory statement placed for consideration of the meeting of equity shareholders was not a complete statement and relevant material indicating the interest of the director of MIL Shri Arvind Mafatlal was not placed before the voters with the result that the majority vote supporting the scheme got vitiated. The explanatory statement which came to be circulated to the voters, namely, the equity shareholders of the transferee-company MIL alleged as under :

> "It is proposed to amalgamate MF with MIL so as to enable the carrying on of the combined business more economically and advantageously. Amalgamation of both the companies would lead to substantial benefits in view of synergy of operations. The amalgamation of both the companies would give improved capital structure which would lend better flexibility in capital gearing which would enable the amalgamated company to raise required finance at better terms. A larger company would generate more confidence in the investors and with the persons dealing with the company and will afford access to resources easily and at lower costs. The amalgamation of M.F. with MIL will pave the way for

A better, more efficient and economic control in the running operations and would lead to economy in the administrative and management cost, resulting in improving profitability. The amalgamated company will have a strong and large resource funds. The combined Technological Managerial and financial resources would enhance the capability of the amalgamated company to invest in larger and sophisticated projects to ensure rapid growth. The amalgamated company's Textiles Division with five operative units at its disposal will have flexibility in its operation."

So far as the aforesaid explanatory statement is concerned it gives sufficient indication regarding the pliability and usefulness of the proposed Scheme of Amalgamation of transferor-company MFL with the transferee-company MIL. However the special grievance of the appellant voiced by his learned counsel is to the effect that the real interest underlying the scheme of merger was that of the director Shri Arvind Mafatlal and his group who were at the helm of affairs of the transferee-company. Learned senior counsel Shri Shanti Bhushan in this connection submitted that under Section 393(1)(a) of the Act the company is enjoined to mention in the statement material interest of the director Shri Arvind Mafatlal in the Scheme which is of a special nature as compared to the interest of other shareholders and it was also necessary to mention the effect of the compromise and arrangement on such special interest of Shri Arvind Mafatlal and as that was not mentioned in the explanatory statement along with which the copy of the Scheme was circulated to the members the majority vote became vitiated. Now a mere look at Section 393(1)(a) shows that the special interest of the director which is required to be brought home to the voters must satisfy the following requirements of the Section before it can be treated to be a relevant special interest of the director which is required to be communicated to the voters :

1. The director's interest must be a special interest different from the interest of other members who are the voters at the meeting.

2. The compromise or arrangement which is put to vote must have an effect on such special interest of the director.

3. Such effect must be different from the effect of compromise and arrangement on similar interest of other persons who are called upon to vote at the meeting.

When we enquired of Shri Shanti Bhushan, learned senior counsel for the appellant as to which special interest, according to him, of director Arvind Mafatlal was required to be communicated to the voters as per Section 393(1)(a), he stated that there was a pending litigation between the appellant on the one hand Shri Arvind Mafatlal on the other in Bombay High Court. That Shri Arvind Mafatlal had sought a declaration in a pending suit against the appellant that the latter was required to sell off his share-holding in the transferee-company MIL to the plaintiff Arvind Mafatlal who was director of MIL. In this very suit the appellant had filed a counter-claim to the effect that Shri Arvind Mafatlal and his group was required to transfer their share-holding in the transferee-company in favour of the appellant as per the Family Arrangement of 1979. Shri Shanti Bhushan in this connection submitted that though the learned Single Judge had taken the view that this type of special interest of director Arvind mafatlal was not relevant and germane to the requirement of Section 393(1)(a), the Division Bench in appeal had taken a contrary view and held that such a special interest was required to be communicated to the equity shareholders in their meeting as per the said provision. In this connection our attention was invited by Shri Shanti Bhushan to the observation of the Division Bench of the High Court at page 325 of the paper book wherein the Division Bench observed as under :

> "Mihir H. Mafatlal was to get exclusive control to MIL to the exclusion of Arvind N. Mafatlal and his two brothers. Under the proposed family arrangement M. Fine was to be hived off from MIL and the control and management of the M. Fine was to be held by Arvind N. Mafatlal and that of MIL was to be handed over to objector Mihir H. Mafatlal. This family arrangement has suffered rough weather. Suit No. 1010 of 1987 was filed by Arvind N. Mafatlal against Mihir H. Mafatlal and others before the Bombay High Court alleging that another agreement subsequent to the said family arrangement has come into existence under which Mihir H. Mafatlal and other brothers of Arvind had agreed to transfer all their holdings in MIL to A.N. Mafatlal, drawing a curtain on the family arrangement of 1979. Mihir H. Mafatlal has filed counter claim in that suit claiming enforcement of family arrangement of 1979. The said dispute and the outcome thereof will have direct effect on the respective interest of the shares held by A.N. Mafatlal, Mihir H. Mafatlal and other members of the Mafatlal family, and

A trusts under them."

He also invited our attention to the observations of the Division Bench at page 328 of the paper book to the effect that having considered the rival contentions and closely examined the scheme of Section 393, they were unable to sustain the conclusion that the facts about the interests under the B alleged family arrangements and the effect of proposed arrangement for amalgamation on such interests were not required to be disclosed under section 393(1)(a).

In our view the aforesaid observations of the Division Bench are not C quite apposite in the light of the proposed Scheme of Compromise and arrangement which was sought to be got sanctioned by the Court. On the other hand the learned Single Judge was quite justified in taking the view that this type of interest which was of personal nature so far as director Arvind Mafatlal on the one hand and appellant on the other hand were D concerned was not at all germane to the question relating to sanctioning of the Scheme of Compromise and Arrangement with which the Court was concerned. It is obvious that when a Scheme of Compromise and Arrangement which involves two companies, namely the transferor- company and the transferee-company and their shareholders and creditors is on the anvil of scrutiny before the sanctioning Court, the court has to see that the E interest of the class of creditors or shareholders to whom the Scheme is offered for approval is any way likely to be affected by the suppression of special interest of the director in connection with such a scheme which is on the anvil. Two independent bodies which are represented by their shareholders or creditors as a class, as the case may be, have to take F commercial decisions strictly with a view to seeing that the concerned Scheme of Compromise or Arrangement is beneficial to the shareholders or creditors as a class vis-a-vis the company which is a corporate entity in so far as company's relations with these class of creditors and shareholders are concerned. If the special interest which the director has is in any way likely to be affected by the Scheme and if non-disclosure of such an interest G is likely to affect the voting pattern of the class of creditors or shareholders who are called upon to vote on the scheme, then only such special interest of the director is required to be communicated to the voters as per Section 393(1)(a). We fail to appreciate how the personal family dispute between the appellant on the one hand and Arvind Mafatlal, director of the trans- H feree-company MIL on the other regarding the right to hold shares in the

company can have any linkage or nexus with the Scheme of Amalgamation of these two companies which was put to vote before the equity shareholders. It is easy to visualize that if the suit filed by Arvind Mafatlal against the appellant succeeds and the appellant's counter-claim fails then all that would happen is that the appellant will have to sell his share-holding which is only 5% in the transferee-company to the plaintiff Arvind Mafatlal. That has nothing to do with the equity shareholders as a class which was called upon to decide whether the scheme of merging the transferor-company MFL with the transferee-company was for the benefit of the shareholders as a class. The equity shareholders of the transferee-company had to decide in their commercial wisdom whether it is worthwhile to have a larger body of shareholders on account of the merger so that apart from the shareholding of the transferee-company its objects would also get diversified and its filed of operation would be enlarged with the prospect of hike in the dividend available to these shareholders after the economic and industrial activities of both the companies so amalgamated would get elongated and whether the value of their shares in such consolidated companies were likely to get a boost in the stock market. This was the commercial decision which the equity shareholders of the transferee-company had to take. For taking this informed decision they were least concerned whether 5% share-holding of appellant in the company remained or did not remain with him in future. Consequently if Arvind Mafatlal's suit ultimately succeeded before the Bombay High Court and the appellant lost in his counter-claim that would have no effect whatsoever on the informed decision which the equity shareholders were called upon to take while approving the scheme in question.

Conversely if the appellant succeeded in his counter-claim and director Arvind Mafatlal lost in his suit then all that would happen is that Arvind Mafatlal will have to transfer his share- holding and share-holding of his group in favour of appellant so far as the transferee-company is concerned. That future possibility would have no impact on the decision making process which the equity shareholders of transferee-company had to undertake at this stage while approving the Scheme. Consequently such an eventuality was totally irrelevant for being brought to the notice of the equity shareholders before whom the scheme was put to vote. While deciding whether transferor-company should be merged with the transferee-company and the transferee-company's economic and industrial activity should be permitted to be enlarged as a result of such merger the

A equity shareholders were least concerned whether the appellant would purchase in future the share of the present director Arvind Mafatlal or vice versa. That was entirely their personal dispute which was still not adjudicated upon and its decision one way or the other had no impact on the pattern of voting of the equity shareholders of the respondent-company as a class of prudent businessmen and investors so far as the Scheme was concerned. The Scheme of Compromise and Arrangement which was put to vote was of such a nature that it had no impact or effect on the personal interest of the director Arvind Mafatlal in connection with his present share-holding in the transferee-company. Consequently it must be held that mention about such an interest was outside the statutory requirements of Section 393(1)(a) as rightly held by the learned Single Judge whose view was erroneously upset by the Division Bench. However in any case we are in entire agreement with the subsequent reasoning of the Division Bench for approving the decision of the learned Single Judge on this aspect, namely, that such non-disclosure of interest had no impact on the voting pattern adopted at the meeting by the equity shareholders who are called upon to approve the scheme. It may also be noted in this connection that the resolution of the equity shareholders approving the Scheme of Amalgamation was passed with overwhelming majority by members including through proxies, present and voting. It projected the following picture :

		In favour	Against	Total
(i)	No. of Members	5,298	143	5,441
(ii)	No. of valid votes	19,36,964	86,061	20,23,025

From the pattern of voting it became apparent that out of 100% of the share capital 75.75 per cent in value participated of which 95.75 per cent voted in favour of the proposed Scheme. Out of 95.75 per cent of the votes in value, a paltry 8.43 per cent votes had been attributed to Arvind Mafatlal group consisting of individuals and trust. 39.45 per cent were the votes attributable to financial institutions which can be said to have no interest other than their own interests as men of business in considering the proposed Scheme. Over 23 per cent votes have been attributed to public limited companies or private limited companies which held the shares of MIL and in which Arvind Mafatlal was also alleged to have interests. Thus non-mentioning of the private dispute between Arvind Mafatlal and objector in connection with the holding of shares in the transferee-company had

in fact no impact on the voting pattern of equity shareholders including the financial institutions which had nothing to do with this personal feud between the warring groups. Consequently the non-mentioning of the pending dispute between the appellant on the one and Arvind Mafatlal on the other which was pending adjudication in the Bombay High Court had in fact no impact whatsoever on the result of the voting undertaken by the equity shareholders in their class meeting. Thus the requisite statutory majority of votes approving the scheme could not have been adversely affected by the non-mentioning of this pending litigation in the explanatory note even assuming that the Division Bench was right in holding that it was required to be informed to the voters as per the requirements of Section 393(1)(a). In either view of the matter, therefore, the non-mentioning of the pending litigation between the director of the transferee-company Arvind Mafatlal on the the one hand and the appellant on the other, had no vitiating effect on the majority decision of the equity shareholders who approved the Scheme with overwhelming majority of 95.75 per cent of votes and when the dissenting vote on behalf of the appellant's group was in microscopic minority of less than 5%. It is also pertinent to note in this connection that appellant who being a party to the civil litigation before the Bombay High Court and who was very much keep to get more share-holding in transferee-company and who had already filed his counter-claim for enforcing the family arrangement of 1979, had not thought it fit to remain present in the meeting of equity shareholders and on the contrary he got himself represented through proxy who had no night to speak. Thus in substance the appellant himself never though that information about the pendency of the litigation between Arvind Mafatlal, director or the respon-dent-company and himself was so important that it was required to be brought to the voters' notice even though he had opportunity to do so by remaining personally present in the meeting for that purpose. It, therefore, clearly appears to be an afterthought when he put forward such an objec-tion for the sake of it at the time of opposing the Scheme which was put for sanction of the Court.

It may also be kept in view that the explanatory statement no way emphasised that it is the management of the transferee-company by Shri Arvind Mafatlal which is going to be better monitored and managed by him after the merger in question. In other words management of the company is not at all a germane consideration for the Scheme. Consequent-ly whether the management remains with Arvind Mafatlal or in future may

A met get changed and go in the hands of the appellant is not a consideration which has any linkage or nexus with the Scheme. Consequently the interest of Arvind Mafatlal in the share-holding or likely future impact thereon by the litigation was *de hors* the Scheme in question and was not required to be placed before the voters. The first point for determination is, therefore,
B answered in the negative.

Point No. 2

So far as this point is concerned Shri Shanti Bhushan, learned senior counsel for the appellant, submitted that in modern days corporate bodies
C even though public limited companies are mostly controlled by big, influential and economically powerful families, which have inherited entrepreneurial skill and expertise from earlier generations which had controlled such enterprises in past. That in the present case also the director of the respondent-company Shri Arvind Mafatlal, the eldest male
D member of the family, had descended from the common ancestor Mafatlal Gagalbhai who had established this empire and which has further grown with passage of years. That when such a powerful director who is the eldest male member of the family of the family is at the helm of affairs the minority interest of the appellant who, according to him, was entitled to 50% share in the family concerns as per the 1979 family settlement was
E likely to be voted out and cornered by the influence of such a towering personality as Arvind Mafatlal in the meeting of equity shareholders. Therefore, unfairness of the Scheme has to be judged also from the point of view of its impact on the minority shareholder who has a common ancestor Mafatlal Gagalbhai and who is sought to be cornered and
F deprived of his just share in the family concerns by the machinations of Shri Arvind Mafatlal. The Court has, therefore, to see whether the Scheme of Amalgamation which is sought to be put through at the behest of the director of the respondent-company is fair to the minority group of the appellant who claims 50% share in the family concerns against the director of the respondent-company Shri Arvind Mafatlal and his group. So far as
G this submission is concerned Shri Sorabjee, learned senior counsel for the respondent joined issues and submitted that factually there is no basis for such a contention as respondent-company is not controlled by Shri Arvind Mafatlal who is one of the directors along with his son Hrishikesh but there are eleven outside directors and the share-holding of Arvind Mafatlal and
H his group is not even 50% even including the share-holding of other

subsidiary companies in which also Arvind Mafatlal and his group may be shareholders. We find considerable force in the aforesaid contention of learned senior counsel for the respondent. The evidence produced in the case shows that out of total majority vote of 95.75 per cent which supported the Scheme at the meeting of equity shareholders even according to the pattern disclosed by the appellant himself individual trust controlled by Arvind Mafatlal and private companies accounted to only 16% of the shares voted in the meeting, about 44% of the share were represented by financial institutions, employees and public taken together and two companies stated to be from Mafatlal group had only 15% share. Consequently it is too much to contend that the voting pattern was dominated by the share-holding of Arvind of Mafatlal and his group when about 40% of the shares are held by financial institutions which had nothing to do with the internal feuds of director Arvind Mafatlal on the one hand had the appellant-objector on the other. It could not be said that the Scheme as put to vote was in any way unfair to appellant or that the majority shareholders acting as a class had not behaved in a *bona fide* manner for protecting the interest of the class as a while and were in any way inimical to the appellant. While considering the question of *bona fides* of the majority voters and whether they were unfair to the appellant it has to be kept in view that *bona fides* of the majority acting as a group has to be examined vis-a-vis the Scheme in question and not the *bona fides* of the person whose personal interest might be different from the interest of the voters as a class. *Bona fide* of person can only be relevant if it can be established with reasonable certainty that he represents majority or is controller of majority. Arvind Mafatlal cannot be visited with such a charge. In this connection we may usefully refer to a decision of English Court in the case of *Hellenic and General Trust Limited* reported in (1976) 1 WLR 123. In that case the Court was concerned with a Scheme of Arrangement whereunder all the ordinary shares of the company were to be cancelled and new shares were to be issued to Hambros which would make the company as wholly owned subsidiary of Hambros. Holders of such cancelled shares were to be paid by Hambros at 48 pennies. In short it was an arrangement for taking over of the company by Hambros. 53% shares of the Hellenic Company were held by another company MIT. MIT itself was a wholly owned subsidiary company of Hambros. This situation led the Court to conclude that the subsidiary company of Hambros which was holding such large number of shares placed itself vis-a-vis Hambros in the position of vendor and the

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A lifted veil of transaction showed it to be one of acquisition than of amalgamation. The aforesaid decision is a pointer to the fact that what was required to be considered while sanctioning the scheme was *bona fides* of the majority acting as a class and not of single person. It is, therefore, not possible to agree with the contention of learned senior counsel for the appellant that the majority had acted unfairly to the appellant and had not protected his interest when what was to be protected was the class interest of minority shareholders falling in the same class along with the majority. It is not the contention of the appellant that while voting by majority in favour of the Scheme the majority had acted with any oblique motive to fructify any adverse commercial interest qua him and his group when it consisted of outsiders like financial institutions or that there was any possibility of their surrendering their economic interest in the Scheme at the dictates of shareholder-director Arvind Mafatlal and his group. It is also to be kept in view that the Board of Directors of the respective companies, namely, the transferor-company as well as the transferee-company had approved the Scheme of Amalgamation before it was put to vote. The appellant was himself one of the directors of the transferor- company who had no objection to the Scheme of Amalgamation from the point of view of the transferor-company. So far as the transferee-company is concerned though appellant was not a director he was 5% shareholder who did not think it fit to personally remain present at the time of voting and simply relied upon proxy. If he was feeling that the Scheme was unfair to him or was not going to protect his interest as shareholder in the respondent-company nothing prevented him from remaining present and voicing his grievance before the General Body of the equity shareholders and to apprise them of the alleged pernicious effect of the Scheme. It is, therefore, too late in the day for him to contend that the Scheme was unfair to him and that the family of Arvind Mafatlal had tried to dominate and engineer any adverse pattern of voting at the meeting of the equity shareholders.

In this connection we tried to know from Shri Shanti Bhushan, learned senior counsel for the appellant as to how the appellant felt that the Scheme was unfair to him. He submitted that under the Scheme the transferor-company was losing its identity and was getting merged in the transferee-company. That in the pending litigation between the parties in the Bombay High Court if the appellant succeeded in his counter-claim he was likely to get larger share-holding in the transferee- company and if that was not possible he could have got the complete control of the transferor-

company as per the family arrangement. Now once the transferor-company loses its identity then his counter-claim was likely to be infructuous as the subject-matter of the counter-claim will stand withdrawn from the possible operation of the decree if at all granted in his favour in the counter-claim. This submission was countered by learned senior counsel for the respondent by pointing out that it had no factual basis. That as earlier noted in the suit pending in Bombay High Court if Arvind Mafatlal succeeded then appellant will have to transfer his even remaining 5% share-holding in transferee-company in favour of Arvind Mafatlal. If on the other hand the appellant succeeded in his counter-claim and Arvind Mafatlal's suit was dismissed then the appellant may get the shares which are at present held by Arvind Mafatlal and his group in the transferee-company. But there is no question of appellant getting any exclusive control of the transferor-company. Therefore, impact of that litigation one way or the other is going to be totally negative so far as the existence of the transferor-company or otherwise is concerned. We find considerable force in the contention of learned counsel for the respondent. It is also pertinent to note that if the appellant felt that the Scheme was unfair inasmuch as he was likely to lose his future interest, if any, and control, if any, in the transferor-company by its merger and loss of identity on account of the Scheme it passes one's comprehension how he as sitting director of the transferor-company approved of the Scheme, did not object to the Scheme and on the contrary was a party to the resolution of the Board of Directors of transferor-company to propose the Scheme of its amalgamation with the transferee company. Not only that but even when that Scheme was put for sanction before the Bombay High Court on behalf of the transferor-company the appellant did not object meaning thereby appellant had no objection to the transferor-company losing its identity and getting merged in the transferee-company pursuant to the proposed Scheme. The appellant's own conduct, therefore, belies his apprehension that the Scheme as proposed was in any was unfair to him or that there were any *mala fides* behind the Scheme attributable to Shri Arvind Mafatlal who is the director of the transferee-company. The second point for determination, therefore, also is found to be factually not sustainable. It is, therefore, held that the Scheme of Compromise and Arrangement is neither unfair nor unreasonable to the minority shareholders represented by the appellant.

Before parting with the discussion on this point it is also worthwhile to note that apart from the pattern of voting at the meeting of the equity

A shareholders, even the share-holding of the respondent-company belies the submission put forward on behalf of the appellant that Arvind Mafatlal's group dominated the constitution of the company and could control the decisions of the shareholders. The evidence on record shows that the share- holding of ANM Group can be worked out to 30.42% approximate-
B ly. As against aforesaid share-holding the share-holding of financial institutions and MHM group in MIL would work out to 39.03% and that of appellant's group works out at 29.05% while that of other shareholders would work out to 34.34%. Hence it cannot be said that Arvind Mafatlal is at the helm of affairs of the respondent- company or is in the driver's seat or that his family is the virtual master of respondent-company. This is
C not a case where it can be urged with any emphasis that the respondent-company is an alter ego of Arvind Mafatlal who is one of the directors of the company and that he could create a show of the Scheme being apparently beneficial to the shareholders but was in fact concealing any covert and hidden device of augmenting his personal interest and interest
D of his family which was adverse to the interest of innocent investors and other equity shareholders including the appellant. It is also pertinent to note that financial institutions and statutory corporations held substantive percentage of shares in respondent-company. This class of shareholders who are naturally well informed about the business requirements and economic meeds and the requirements of corporate finance in the light of
E their personal interest would not have wholly approved the Scheme if it was contrary to the interest of shareholders as a class. Individual personal interest of a minority shareholder like the appellant is absolutely out of consideration when such class meeting acting for the benefit to the whole class of equity shareholders take up the consideration of the Scheme for
F its approval. Consequently it could not be said that the majority shareholders had sacrificed the class interest of appellant minority shareholders when they voted with overwhelming majority in favour of the Scheme. Point No. 2 is accordingly answered in the negative. That takes us to the consideration of Point No 3 for determination.

G *Point No. 3*

In a way the answer to point No. 2 necessarily results in negativing this point also. Even that apart we fail to appreciate how the Scheme of Amalgamation can be said to be unfair and amounting to suppression of
H minority shareholders represented by the appellant. It has to be kept in

view that by this proposed Scheme of Amalgamation the transferor-company was getting merged in the transferee-company. Now even if it is held that the appellant succeeds in his counter-claim in the suit pending in Bombay High Court and if he is to get the share-holding of Arvind Mafatlal and his group transferred to him so far as transferee- company is concerned, the transferee-company because of the amalgamation will then be having more diversified activities and if at all according to the appellant because of this future success, if any, in the counter-claim he is going to replace Arvind Mafatlal and his group in the management of the respondent-company he would have larger field to operate and larger company to manage. We fair to appreciate as to how such a scheme from any point of view can amount to suppression of appellant's minority interest in the share-holding of the company. This interest is not going to be in any way adversely affected. If at all, his share-holding is going to increase in the respondent-company if his counter-claim succeeds. If his counter-claim fails he will have to get out lock, stock and barrel from the respondent-company and he will have to wash his hands off the same. In either case the Scheme of Amalgamation will have no adverse impact on the appellant's interest in the respondent-company. On the other hand the Scheme of Amalgamation is likely to have a move beneficial effect on the appellant's share-holding in the respondent-company if he succeeds in his counter-claim in Bombay High Court. It has to be kept in view that the question of *bona fide* of the majority shareholders or the alleged suppression by them of the minority shareholders or their attempt to suffocate their interest has to be judged from the point of view of the class as a whole. Question is whether the majority equity shareholders while acting on behalf of the class as a whole had exhibited any adverse interest against the appellant's minority shareholders also having similar interest as members of the same class, while approving the Scheme or had acted with any oblique motive to whittle down such a class interest of the minority. As we have seen earlier no such situation ever existed both at the time when the Scheme of Compromise and arrangement was cleared and proposed by the Board of Directors of both the transferor and transferee companies and also at the stage when the Scheme was put to vote before the meeting of equity shareholders forming a common class of which the appellant was also a member though a minority member. Consequently point No. 3 will also have to be answered in the negative on the same lines and for the same reasons on the basis of which point No. 2 is answered.

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A *Point No. 4*

So far as this point is concerned the relevant provisions of the Companies Act to which we have made a reference earlier indicate that the Court has to order under Section 391(1) a meeting of creditors or class of creditors or members or class of members to whom the Scheme of B Compromise or Arrangement is offered by the company. The present controversy centers round a meeting of members. Members of the company are shareholders. Part IV of the Companies Act deals with 'Share Capital and Debentures'. Section 82 provides that 'the shares or other interest of any member in a company shall be movable property, transferable in the C manner provided by the articles of the company'. As per Section 86 the share capital of a company limited by shares formed after the commencements of this Act, or issued after such commencement, shall be of two kinds only, namely, equity share capital and preference share capital. So far as the Articles of Association of respondent-company are concerned D they also contemplate two classes of shareholders, namely, equity and preference shareholders. No separate class of equity shareholders is contemplated either by the Act or by the Articles of Association of respondent-company. Appellant is admittedly an equity shareholder. Therefore, he would fall within the same class of equity shareholders whose meeting was convened by the orders of the Company Court. However it is vehe- E mently contended by learned counsel for the appellant that because of the family arrangement of 1979 on which he relies he was a special class of minority equity shareholder who had separate rights against the director of the company and whose special interest because of the pending litigation between him and the director Shri Arvind Mafatlal was likely to be adver- F sely affected by the Scheme, therefore, a separate meeting had to be convened as he represented a class within the class of equity shareholders. It is difficult to agree with this contention. Even though the Companies Act or the Articles of Association do not provide for such a class within the class of equity shareholders, in a given contingency it may be contended by a group of shareholders that because of their separate and conflicting G interest. vis-a-vis other equity shareholders with whom they formed a wider class, a separate meeting of such separately interested shareholders should have been convened. But such is not the case of the appellant. It is not his case that his interest as an equity shareholder in respondent-company is in any way conflicting with the general interest of the equity shareholders as

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a class. Consequently it could no be urged by him with any emphasis that the General Body of equity shareholders acting as a class while considering the question of approval of the Scheme was likely to take a decision which could adversely affect the commercial interest of the appellant as an equity shareholder. His personal conflict of interests with the director was totally foreign to the scope of class meeting which was convened to consider the Scheme in question as we have seen earlier while considering earlier points for determination. It is also to be kept in view that the appellant would have urged with some justification his contention for convening a separate meeting representing for him and his group of dissenting equity shareholders if it was his case that the Scheme of Compromise and Arrangement as offered to him and his group was in any way different from the Scheme of Compromise and Arrangement offered to other equity shareholders who also belonged to the same class in the wider sense of the term. On the express language of Section 391(1) it becomes clear that where a compromise or arrangement is proposed between a company and its members or any class of them a meeting of such members or class of them has to be convened. This clearly presupposes that if the Scheme of Arrangement or Compromise is offered to the members as a class and no separate Scheme is offered to any sub- class of members which has a separate interest and a separate Scheme to consider, no question of holding a separate meeting of such a sub-class would at all survive. Even otherwise it becomes obvious that as minority shareholder if the appellant had to dissent from the Scheme his dissent representing 5% equity shareholding would have been visible both in a separate meeting if any, of his sub-class or in the composite meeting where also his 5% dissent would get registered by appellant either remaining present in person or through proxy. Consequently when one and the same Scheme is offered to the entire class of equity shareholders for their consideration and when commercial interest of the appellant so far as the Scheme is concerned is in common with other equity shareholders he would have a common cause with them either to accept or to reject the Scheme for commercial point of view. Consequently there was no occasion for convening a separate class meeting of the minority equity shareholders represented by the appellant and his group as tried to be suggested. It is also to be kept in view that it is not the case of the appellant that any different terms of compromise were offered to persons holding equity shares who were covering by the family arrangement of 1979 or otherwise. In fact the entire proposal of the

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A Scheme of Arrangement was one affecting equally and in the like manner all the existing equity shareholders of the respondent-company. In this connection it is profitable to refer to what the learned author Palmer in his Treatise Company Law 24th Edition, has to say :

B "What constitutes a class :

> The Court does not itself consider at this point what classes of creditors or members should be made parties to the scheme. This is for the Company to decide, in accordance with what the scheme purports to achieve. The application for an order for meetings is
> C a preliminary step, the applicant taking the risk that the classes which are fixed by the judge, unusually on the applicant's request, are sufficient for the ultimate purpose of the section, the risk being that if in the result, and we emphasis the words 'in the result' they reveal inadequacies, the scheme will not be approved. If e.q. rights
> D of ordinary shareholders are to be altered, but those of preference shares are not touched, a meeting of ordinary shareholders will be necessary but not of preference shareholders. If there are different groups within a class the interests of which are different from the rest of the class, or which are to be treated differently under the Scheme, such groups must be treated as separate class for the
> E purpose of the scheme. Moreover, when the Company has decided what classes are necessary parties to the scheme, it may happen that one class will consist of a small number of persons who will all be willing to be bound by the scheme. In that case it is not the practice to hold a meeting of that class, but to make the class a
> F party to the scheme and to obtain the consent of all its members to be bound. It is however, necessary for at least one class meeting to be held in order to give the Court jurisdiction under the Section."

It is, therefore, obvious that unless a separate and different type of Scheme
G of Compromise is offered to a sub-class of a class of creditors or shareholders otherwise equally circumscribed by the class no separate meeting of such sub-class of the main class of members or creditors is required to be convened. On the facts of the present case the appellant has not been able to make out a case for holding a separate meeting of dissenting minority equity shareholders represented by his. The fourth
H point for determination, therefore, is answered in the negative. That takes

us to the consideration of the last point for determination placed for our consideration by the learned senior counsel for appellant. A

Point No. 5

It was submitted that the exchange ratio of equity shareholders so far as the transferee-company is concerned works very unfairly and unreasonably to them. As per the proposed Scheme 5 equity shares of transferor-company are to be exchanged for 2 equity shares of transferee-company. So far as this contention is concerned it has to be kept in view that before formulating the proposed Scheme of Compromise and Amalgamation an expert opinion was obtained by the respondent-company as well as the transferor- company, namely, MFL on whose Board of Directors appellant himself was a members. M/S. C.C. Chokshi & Co., a reputed firm of Chartered Accountants, having considered all the relevant aspects suggested the aforesaid exchange ratio keeping in view the valuation of shares of respective companies. It must at once be stated that valuation of shares is a technical and complex problem which can he appropriately left to the consideration of experts in the filed of accountancy. Pennington in his 'Principles for Company Law' mentions four factors which had to be kept in mind in the valuation on shares : B C D

"(1) Capital Cover, E

(2) Yield,

(3) Earning Capacity, and

(4) Marketability F

For arriving at the fair value of share, three well known methods are applied :

(1) The manageable profit basis method (the Earning Per Share Method) G

(2) The networth method or the break value method, and

(3) The market value method."

So many imponderables enter the exercise of valuation of shares. M/s. C.C. Chokshi & Co. considering all the relevant aspects and obviously keeping H

A in view the accounting principles underlying the valuation of shares suggested the said ratio which was found acceptable both by the Board of Directors of the respondent-company as well as the Board of Directors of the transferor-company. That the appellant himself as a director of that transferor-company gave green single to the Scheme and to this very ratio
B of exchange of shares. But Shri M.J. Thakore appearing for the appellant submitted that form the point of view of the transferor-company it was very profitable to have two shares of transferee-company against five shares of transferor- company. But the difficulty arises only from the point of view of transferee-company shareholders. According to Shri Thakore the proper
C exchange ratio would be one share of transferee-company to six shares of transferor-company. It is difficult to appreciate this contention of the appellant. It has to be kept in view that appellant never bothered to personally remain present in the meeting of equity shareholders for pointing out the unfairness of this exchange ratio to his brother equity
D shareholders who were likely to be affected by the very same ratio as the appellant. His interest at least to that extent was entirely common and parallel to that of other equity shareholders. But he had no time to remain personally present. He sent his proxy only to record his dissent vote which was in microscopic minority of 5% as compared to 95% majority vote. Not
E only that even before the Court he did not submitted and contrary expert opinion regarding the valuation of shares of transferor and transferee companies for supporting his *ipse dixit* that the correct ratio would be 6 : 1 so far as transferor and transferee companies were concerned. Shri Shanti Bhushan, learned senior counsel for the appellant having realised this difficulty submitted that at last these proceedings are continuation of
F proceedings before the High Court, therefore, this Court may now in order to satisfy itself send for the opinion of an expert. It is difficult to agree. The appellant who was propounding this theory of correct exchange ratio had nothing to offer in support of his contention both before the learned Single Judge as well as before the High Court. It has to be kept in view
G that the matter was fiercely contested on all permissible points before learned Single Judge. The proceedings were pending before the High Court for more than two years from 8th February 1994 till 12th July 1996 when the Division Bench disposed of the appeal. For all these years neither before the learned Single Judge nor before the High Court in appeal the
H appellant thought it fit to request the Court to either call for the report of

any other expert on valuation of shares not did he himself get such report for placing for consideration of the Court in support of his supposed better ratio. It has also to be kept in view that which exchange ratio is better is in the realm of commercial decision of well informed equity shareholders. It is not for the Court to sit in appeal over this value judgment of equity shareholders who are supposed to be men of the world and reasonable persons who know their own benefit and interest underlying any proposed scheme. With open eyes they have okayed this ratio and the entire Scheme. 40% of the majority shareholders were financial institutions who were supposed to be well versed on the aspect of valuation of shares. They had no objection to the exchange of 2 shares of transferee-company for 5 shares of transferor company. As stated earlier it was a sort of a package duly considering all imponderables and implicit factors which the shareholders had to keep in view for deciding whether to approve the Scheme of Amalgamation or not. The exchange ratio was only one of the items. They though if fit in their commercial wisdom to accept the Scheme as a whole along with the exchange ration presumably in expectation of better profits in years to come when the amalgamated companies would operate and when there would be, according to the shareholders, better prospects of earning greater dividends. They willingly agreed to give in exchange two shares of transferee-company for five share of transferor-company and made them available to the shareholders of the transferor- company. The appellant was representing only 5% dissenting shareholders and his object was almost a voice in the wilderness, which did not appeal to the majority of his brother shareholders. Shri Shanti Bhushan, learned senior counsel for the appellant in this connection invited our attention to the observation of the Division Bench in its judgment at page 375 wherein it has been observed that "if one were to examine the exactitude of exchange ratio that may be offered fairly on the arithmetic scale by taking into consideration various details, there is some force in what were suggested by Mr. B.R. Shah on behalf of the appellant. However, keeping in view the scope of enquiry which the court is required to undertake and with whose findings we are concerned, it will not be permissible for us in law to undertake this exercise in the facts and circumstances of present case in absence of *bona fides*". We fail to appreciate how this observation can be of any avail to learned senior conceal for the appellant as all that the Court wanted to suggest was that even assuming that some another exchange ratio

A can be suggested to be better one, it was for the equity shareholders who acted *bona fide* in the interest of their class as a whole to accept even a less favourable ratio considering other benefits, that may offset such less favourable ratio once an amalgamation goes through. We wholly concur with this view. In this connection we may also refer to a decision of B Maughm, J., in *Re Hoare & Co. (No. 2)* case (1933) All ER 105 wherein it was laid down that where statutory majority had accepted the offer the onus must rest on the applicants to satisfy the court that the price offered is unfair. In this connection following pertinent observations were made by the learned Judge :

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> "The other conclusion I draw is this X X X X X X the court ought to regard the scheme as a fair one inasmuch as it seems me impossible to suppose that the court, in the absence of any strong grounds, is to be entitled to set up its own view of fairness of the scheme in opposition to so very large a majority of shareholders D who are concerned. Accordingly, without expressing a final opinion on the matter because there may be special circumstances in special cases, I am unable to see that I have any right to order otherwise in such a case as I have before me, unless it is affirmatively established that notwithstanding the views of a very large E majority of shareholder, the scheme is unfair."

We may also refer to a decision of the Gujarat High Court in *Kamala Sugar Mills Limited* 55 Company Cases p. 308 dealing with an identical objection about the exchange ratio adopted in the Scheme of Compromise F and Arrangement. The Court observed as under :

> "Once the exchange ratio of the shares of the transferee-company to be allotted to the shareholders of the transferor-company has been worked out by a recognised firm of chartered accountants who are experts in the field of valuation and if no mistake can be G pointed out in the said valuation, it is not for the court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies or to say that the shareholders in their collective wisdom should not have accepted the said exchange ratio H on the ground that it will be detrimental to their interest."

These observations in our view represent the correct legal position on this aspect. We may also keep in view that in the present case not only expert like M/s. C.C. Chokshi & Co. had suggested the ratio but another independent body ICICI Security & Finance Company Limited reached the same conclusion which was conveyed by its letter dated 10th November 1993 to the company approving of the entire Scheme along with suggested ratio. A mere look at the report of the Chartered Accountants M/s. C.C. Chokshi & Co. shows that various factors underlying the Scheme of Compromise and Arrangement were taken into consideration while suggesting the exchange ratio by the said reputed firm of chartered accountants. The said opinion had taken into account the fact that on amalgamation shares have to be cancelled. Increase in share premium account in equity capital of the MIL will also have to be taken into account as a result of final call made in respect of Bond 1992 issue. It has also taken into account significant increase in the paid-up equity of MIL as a result of issue of its Bond in the international market. It has undertaken exercise in calculating net-worth of two companies. It has also referred to the method of valuation of exchange ratio on the basis of earning per share of the two companies by taking into account five years' working results of the two companies making certain adjustments. Apart from taking into consideration the past results of the two companies, the chartered accountants have taken into account the potentiality of the two companies to earn profit in future, considering existing expansion and modernisation of projected and planned expenditure by the MIL as well as subsidiary and sister concern in hard. It has also taken into account the market price of equity shares of past 24 months, declared dividend by the two companies the overall effect of security scam in the market price, realisable investment and their market value. Taking into consideration multifarious considerations detailed in the report, note was also taken of the fact that MIL held substantial shares of MFL, which shall have to be cancelled on merger of MFL with MIL. Two fully paid up equity shares of MIL of Rs. 100 each for every five equity share of Rs. 100 each of MFL, was considered to he a fair exchange ratio to be offered as term of amalgamation. It was clarified that, 'in absolute terms it would mean that the MIL is keeping consideration of equity capital of par value of Rs. 7.77 crores which at the last issue price of share amounts about to Rs. 38.84 crores and which at the correct market price amounts to Rs. 57.4 crores. At the stage of dividend declared

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for 1992-93, it will result in a cost in terms of distributable profits of Rs. 2.72 crores. For an undertaking in a diversified business activity of textile and chemicals with the total infrastructure, knowhow, technology tie up and range of established products and capacities and potential the aforesaid cost to MIL can be regarded as fair and reasonable'.

The aforesaid report of the chartered accountants heavily weighed with the transferor-company's Board of Directors which comprised, amongst others, the appellant himself but also the Board of Directors of transferee-company and also weighed with the General Body of equity shareholders who approved the Scheme and the ratio with overwhelming majority. No grievance, therefore, can be make by the appellant at the stage of Company Petition proceedings for demonstrating the ratio to be *ex facie* unfair and unacceptable as the appellant would like to have it.

Undeterred by this position Shri Thakore, learned counsel for the appellant in support of his contention that the exchange ratio was *ex facie* unfair to the shareholders of the transferee- company, invited our attention to the statement showing the working results of both the transferor and transferee companies as found at Annexures M and N of Vol. II of the Paper Book at page 534 and 535. He submitted that these statements showing the working results of the company for the last five years ended 31st March 1993 showed that the earning per equity share after depreciation and tax so far as the respondent-company was concerned was Rs. 30 while earning of transferor-company Mafatlal Fine Spg. & Mfg. Company Limited was only Rs. 7 for the relevant five years. He also invited our attention to the break-up value of the shares of company on the basis of the Balance Sheet as on 31st March 1993 so far as respondent-company was concerned. Annexure 'Q' at page 538 showed value per equity share of Rs. 100 each at Rs. 1,515 while so far as the transferor-company was concerned the break-up value per equity share was Rs. 259. That may be so. But as a package deal when the Scheme as a whole is examined and found to be advantageous to the economic and commercial interest of shareholders as a class only one or two item simplicitor for deciding the exchange ratio cannot tilt the balance as so may factors and aspect would enter that exercise. It was undertaken by expert body of chartered accountants like M/s. C.C. Chokshi & Co. Before parting with the discussion on this point it would be apposite to refer to the decision of this Court in

Hindustan Lever Employees' Union (supra). In paragraph 41 of the Report Justice Sen speaking for himself and Venkatachaliah, CJ, and to which Sahai, J concurred has observed that the problem of valuation in the case of amalgamation of two companies has been dealt with by Weinberg and Blank in the book 'Take-overs and Mergers' in which it is stated that some or all of the 8 listed factors will have to be taken into account in determining the final share exchange ratio. The Court has also approved the fixation of exchange ratio of the shares of the companies on the basis of adoption of combination of two or more well-known methods of valuation of shares out of many such methods. In para 37 of the Report it has been observed that the question is what method should be adopted for arriving at a proper exchange ratio. The usual rule is that shares of the going concern must be taken at quoted market value. This principle was also recognised by this Court in the case of *CWT* v. *Mahadeo Jalan,* [1973] 3 SCC 157. It is not the case of the appellant that M/s. C.C. Chokshi & Co. had not taken into consideration the quoted market value of shares of both the companies which were going concerns and which were subjected to the Scheme of Amalgamation in question. For all these reasons, therefore, there is no substance in this contention canvassed on behalf of the appellant that the exchange ratio was *ex facie* unfair to the equity shareholders of the transferee- company. The fifth point for determination is also, therefore, answered in the negative.

Before parting with this appeal we may mention that written submissions comprising of 69 pages have been submitted by learned counsel for the appellant. We have gone through the written submissions. We may mention that learned counsel for the appellant was permitted to file written submissions spread over 4 to 5 pages while his written submission have gone upto 69 pages. It may also be mentioned that there was an order passed by us 21st August 1996 permitting filing of written statements within two days but the learned counsel for the Appellant has filed written submissions only on 27th August 1996. Therefore, *ex facie* his written submissions are not required to be considered. However in order to see that the appellant may not suffer on account of non-consideration of these written submission we have gone through them and have considered them in the interest of justice. But having gone through the same we find that they involve repetition of the main contentions canvassed before us during oral arguments by their learned senior counsel Shri Shanti Bhushan and by

A their counsel Shri M.J. Thakore. Some additional points also appear to have been raised in the written submissions pertaining to additional objections which were not pressed before us at the time of oral hearing and, therefore, they obviously cannot be considered in support of the contentions on which the appeal was pressed before us. The written submissions
B in connection with the points which were already pressed before us are already dealt with by us while considering the main points for determination in the earlier part of this judgment and, therefore, it is not necessary to deal with the same once again.

These were the only contentions canvassed in support of the points
C for determination which have all been answered in the negative. The inevitable result is that the appeal fails and is dismissed. In the facts and circumstances of the case, however, there will be no order as to costs.

V.S.S. Appeal dismissed.