**SUPREME COURT OF INDIA**

JIK Industries Limited

Vs.

Amarlal V. Jumani

Crl.A.No.263 of 2012

(Asok Kumar Ganguly and Jagdish Singh Khehar JJ.)

01.02.2012

**JUDGMENT**

**GANGULY, J.**

1. Leave granted.

2. This group of appeals were heard together as they involve common questions of law. There are some factual differences but the main argument by the appellant(s) in this matter was advanced by Mr. Chander Uday Singh, Senior Advocate on behalf of the Sharp Industries Limited in SLP (Crl.) No.6643-6651 of 2010 and the facts are taken mostly from the said case.

3. The learned counsel assailed the judgment of the High Court wherein by a detailed judgment High Court dismissed several criminal writ petitions which were filed challenging the processes which were issued by the learned Trial Judge on the complaint filed by the respondents in proceedings under Section 138 read with Section 141 of Negotiable Instruments Act, 1881 (hereinafter `N.I. Act'). By way of a detailed judgment, the High Court after dismissing the writ petitions held that sanction of a scheme under Section 391 of the Companies Act, 1956 (hereinafter `Companies Act') does not amount to compounding of an offence under Section 138 read with Section 141 of the N.I. Act. The High Court also held that sanction of a scheme under Section 391 of the Companies Act will not have the effect of termination or dismissal of complaint proceedings under N.I. Act. However, the learned Judge made it clear that the judgment of the High Court will not prevent the petitioners from filing separate application invoking the provisions of Section 482 Criminal Procedure Code, if they are so advised. Assailing the said judgment

the learned counsel submitted that an unsecured creditor who does not oppose the scheme of compromise or arrangement under Section 391 of the Companies Act must be taken to have supported the scheme in its entirety once such a scheme is sanctioned by the High Court, even a dissenting creditor cannot file a criminal complaint under Section 138 of the N.I. Act for enforcement of a pre-compromise debt. Nor can such a creditor oppose the compounding of criminal complaint which was filed under Section 138 of the N.I. Act in respect of pre-compromise debt.

4. The material facts of the case are that the appellant company on or about 12th May, 2005 came out with a scheme by which it was agreed that the appellant company should be revived and thereafter payments will be made to the creditors. Pursuant to such scheme the appellant company filed a petition under Section 391 of the Companies Act to the High Court. The whole scheme was placed before the High Court and according to the appellant(s), first order of the scheme came to be passed by the Hon'ble High Court by its order dated 5th May, 2005 in Company Petition No.92 of 2005. At the time the said company petition was pending, a meeting was convened by the appellant company on 1.6.05 and the same was attended by several creditors including representative of the first respondents and they opposed the scheme. Despite the said opposition, the appellant(s) succeeded in getting the scheme approved by statutory majority as required under the law. Thereafter, on 17.11.2005 another company petition with a fresh scheme (Company petition No. 460 of 2005) was filed. After the said company petition was filed all proceedings which were initiated by different companies against the appellant(s) came to be stayed by the High Court. In view of the aforesaid scheme the appellant company filed application for compounding under Section 147 of the N.I. Act read with Section 320 of the Criminal Procedure Code (hereinafter, `the Code') and Section 391 of the Companies Act. However, the respondents opposed the said prayer of the petitioner and by an order dated 19th January, 2007, the learned Chief Judicial Magistrate, Ahmednagar rejected the application filed by the appellant for termination of the proceedings inter alia on the ground that the learned Magistrate has no power to quash or terminate the proceedings.

5. Being aggrieved by the said order of the Magistrate, the appellants filed writ petitions before the High court.

6. Similar petitions were filed on 6.7.2009 by JIK Industries Limited and another. All those petitioners were dismissed by the High court on 18.3.2010 in view of an order dated 14.8.2008 passed by the High Court in connection with the petitions filed by other similarly placed companies (JIK Industries).

7. In the background of the aforesaid facts the contentions raised by the appellant company is that the scheme envisaged a compromise between the company and the secured creditors on the one hand and its unsecured creditors on the other hand. Such scheme was framed pursuant to the order of the Company Court dated 5th May, 2005 which directed meeting of the different classes of creditors for consideration of the scheme.

> Thereafter, meeting was convened of unsecured creditors and the scheme was approved on 1st June, 2005 by the requisite majority of the shareholders and unsecured creditors. Then the scheme was taken up for sanction by the Company Court. The Court considered the objections of some of the unsecured creditors and workmen but ultimately by its judgment dated 17th November, 2005 approved the scheme with a few minor modifications. It was also urged that some of the secured and unsecured creditors have taken advantage of the scheme and did not challenge the scheme. However, the scheme was challenged by the appellant(s) in respect of certain observations made therein by the learned Company Judge and the said appeal is pending before the Bombay High court. The learned counsel for the appellant(s) argued that the effect of a scheme of compromise between the company and its creditors under Section 391 of the Companies Act is binding upon all class of creditors whether they are assenting or dissenting. The purpose of a scheme under Section 391 and 392 is restructure and alteration of the old debts which were payable prior to the scheme so as to make the debts payable in the manner and to the extent provided under the scheme.

8. In so far as the case of JIK Industries is concerned, it has been urged that the scheme in JIK is different that Sharp. The learned counsel for the appellant(s) urged that the once the scheme is sanctioned, it relates back to the date of the meeting and in support of the said contention reliance was placed on a judgment of the Privy Council in the case of Raghubar Dayal vs. The Bank of Upper India Ltd. reported in AIR 1919 P.C. 9. It was also urged that in a scheme under Section 491 a judgment is in rem. The learned counsel further submitted that admittedly the respondents objected to the scheme and is a dissenting creditor.

9. The learned counsel for the respondents (in Sharp Industries case) on the other hand submitted that in the petition which was filed before the Magistrate on behalf of the Sharp Industries the prayer was only for quashing of the criminal proceedings and there was no prayer for compounding of the offences. While the Magistrate refused to quash the said proceeding then while challenging the same in

the High Court the prayer for compounding was made for the first time. The learned counsel for the respondents (in the case of JIK Industries) has drawn the attention of this Court to the order dated 3.10.2006 passed by the Metropolitan Magistrate, XII Court Bandra, Mumbai whereby the learned Magistrate passed an order on the application of the accused, the appellant, for compounding of offences under Section 138. By the said order the learned Magistrate rejected the prayer for compounding made by the appellant(s) under Section 147 of the N.I. Act.

10. It was also pointed out by some of the respondents that after the High Court passed the impugned order whereby the prayer for compounding by the appellant(s) was rejected and the appellant(s) were given an opportunity to file a petition under Section 482 of the Criminal Procedure Code for quashing of the complaint, some of the appellant(s) availing of that liberty also filed application for quashing of the proceedings. They have also filed SLPs before this Court. This Court should, therefore, dismiss the SLPs.

11. Considering the aforesaid submissions of the rival parties, this Court finds that the effect of approval of a scheme of compromise and arrangement under Section 391 of the Companies Act is that it binds the dissenting minority, the company as also the liquidator if the company is under winding up. Therefore, Section 391 of the Companies Act gives very wide discretion to the Court to approve any set of arrangement between the company and its shareholders.

12. Learned counsel for the appellant(s) placed reliance on the decision of this Court in M/s. J.K. (Bombay) Private Ltd. vs. M/s. New Kaiser-I- Hind Spinning and Weaving Co., Ltd., and others reported in AIR 1970 SC 1041 in support of his contention that a scheme under Section 391 of the Companies Act is not a mere agreement but it has a statutory force. The learned counsel also urged, relying on the said judgment that the scheme is statutorily binding even on dissenting creditors and shareholders. The effect of the scheme is that so long as it was carried out by the company by regular payment in terms of the scheme, a creditor is bound by it and cannot maintain even a winding- up petition.

13. Even if the aforesaid position is accepted the same does not have much effect on any criminal proceedings initiated by the respondent creditors for non-payment of debts of the company arising out of dishonour of cheques. Factually the allegation of the respondent is that even payment under the scheme has not been made. However, without going into those factual controversies, the legal position is that a scheme under Section 391 of the Companies Act does not have the effect of creating new debt. The scheme simply makes the original debt payable in a

manner and to the extent provided for in the scheme. In the instant appeal in most of the cases the offence under the N.I. Act has been committed prior to the scheme. Therefore, the offence which has already been committed prior to the scheme does not get automatically compounded only as a result of the said scheme. Therefore, even by relying on the ratio of the aforesaid judgment, this Court cannot accept the appellant's contention that the scheme under Section 391 of the Companies Act will have the effect of automatically compounding the offence under the N.I. Act.

14. The learned counsel for the appellant(s) also relied on various other judgments to show the effect of the scheme under Section 391 of the Companies Act. Reliance was also placed on the decision of this Court in the case of S.K. Gupta and another vs. K.P. Jain and another reported in 1979 (3) SCC 54. In the case of S.K. Gupta (supra) also the ratio in the case of M/s. J.K. (Bombay) Private Ltd. (supra) was relied upon and it was held that a scheme under Section 391 of the Companies Act has a statutory force and is also binding on the dissenting creditor. Various other questions were discussed in the said judgment with which we are not concerned in this case.

15. The scheme under Section 391 of the Companies Act has been very elaborately dealt with by this Court in the case of Miheer H. Mafatlal vs. Mafatlal Industries Ltd. reported in AIR 1997 SC 506. From a perusal of the various principles laid down in Mafatlal (supra), it is clear that the proposed scheme cannot be violative of any provision of law, nor can it be contrary to public policy. (see paragraph 29 sub-paragraph 6 at page 602 of the report).

16. In Hindustan Lever and another vs. State of Maharashtra and another reported in (2004) 9 SCC 438 it has been reiterated that a scheme under Section 391 of the Companies Act is binding on all shareholders including those who oppose it from being sanctioned. It has also been reiterated that the jurisdiction of the Company Court while sanctioning the scheme is supervisory. This Court in Hindustan Lever (supra) also accepted the principle laid down in sub-para 6 of para 29 in Mafatlal (supra) discussed above and held that a scheme under Section 391 of the Companies Act cannot be unfair or contrary to public policy, nor can it be unconscionable or against the law (see para 18 page 451 of the report)

17. In the case of Administrator of the Specified Undertaking of the Unit Trust of India and another vs. Garware Polyester Ltd. reported in (2005) 10 SCC 682, this Court held that a scheme under Section 391 of the Companies Act is a commercial document and the principles laid down in the case of Mafatlal (supra) have been relied upon and in para 32 at page 697 of the report it has been reiterated that the

scheme must be fair, just and reasonable and should not contravene public policy or any statutory provision and in paragraph 33 at page 697 of the report, sub-paragraph 6 of para 29 of Mafatlal (supra) has been expressly quoted and approved.

18. Therefore, the main argument of the learned counsel for the appellant(s) that once a scheme under Section 391 of the Companies Act is sanctioned by the Court the same operates as compounding of offence under Section 138 read with Section 141 of the N.I. Act cannot be accepted. Rather the principle which has been reiterated by this Court repeatedly in the aforesaid judgments is that a scheme under Section 391 of the Companies Act cannot be contrary to any law. From this consistent view of this Court it clearly follows that a scheme under Section 391 of the Companies Act cannot have the effect of overriding the requirement of any law. The compounding of an offence is always controlled by statutory provision. There are various features in the compounding of an offence and those features must be satisfied before it can be claimed by the offender that the offence has been compounded. Thus, compounding of an offence cannot be achieved indirectly by the sanctioning of a scheme by the Company Court.

19. The learned counsel also relied on a few other judgments in order to contend the scheme of compromise operates a statutory consent and the same will have the effect of restructuring legally enforceable debts or liabilities of the company. In support of the said contention reliance was placed on the judgment of this Court in the case of Balmer Lawrie Workers' Union, Bombay and another vs. Balmer Lawrie Co. Ltd. and others reported in 1984 (Supp.) SCC 663. That decision related to a settlement reached in a proceeding under Industrial Disputes Act in which a representative union was a party. The Court held that such a settlement is binding on all the workmen of the undertaking. This Court fails to understand the application of this ratio to the facts of the present case.

20. Reliance was also placed by the learned counsel for the appellant(s) on the decision of this Court in the case of Shivanand Gaurishankar Baswanti vs. Laxmi Vishnu Textile Mills and others reported in (2008) 13 SCC 323. In that case also the question of an agreement under Section 18 of Industrial Disputes Act came up for consideration by this Court. The wide sweep of an agreement under Section 18 of the Industrial Disputes Act for the purpose of maintaining industrial peace is not in issue in this case. Therefore, the decision in Shivanand (supra) does not have any relevance to the question with which we are concerned in the facts and circumstances of the case.

21. The learned counsel for the appellant(s) then advanced his argument on the provisions of N.I. Act and the nature of the offence under the N.I. Act. Reliance was placed on explanation to Section 138 of the N.I. Act in order to show that for the purposes of an offence under Section 138 of the N.I. Act, debt or other liability must mean a legally enforceable debt or liability. The learned counsel urged that even if a cheque is issued by the appellant company and which has been subsequently dishonoured, the same is a cheque relating to the debt of the company in respect of which there is a sanctioned scheme. Therefore, the same is not a legally enforceable debt in as much as after the sanctioning of the scheme the debt of the company can only be enforced against the company by a creditor in accordance with the said scheme and not otherwise. Reliance was also placed on Section 139 of the N.I. Act in order to contend that the statutory presumption must be construed in favour of the appellant company in as much as the cheque which has been received by the respondent is not for the discharge of any debt of the company which is legally enforceable. The learned counsel relied on several judgments of this Court on the question of the nature of the offence under Section 138 of the N.I. Act.

22. Reliance was placed on the decision of this Court in the case of Kaushalya Devi Massand vs. Roopkishore Khore reported in (2011) 4 SCC 593. The learned counsel relied on the observation made in para 11, at page 595 of the report and contended that the gravity of a complaint under the N.I. Act cannot be equated with an offence under the provisions of Indian Penal Code and further urged that this Court held that a criminal offence under Section 138 of the N.I. Act is almost in the nature of a civil wrong which has been given criminal overtones.

23. Reliance was also placed on the judgment of this Court in the case of Mandvi Cooperative Bank Limited vs. Nimesh B. Thakore reported in (2010) 3 SCC 83. This Court in Mandvi (supra) discussed the scope of N.I. Act including the first amendment to the Act inserted under Chapter XVII in the Act. This Court looked into the Statement of Objects and Reasons introducing the amendment and noted the rationale for introduction of Section 147 of N.I. Act. Section 147 of N.I. Act made the offences under the said Act compoundable. The Court noted that from the Statement and Objects and Reasons it is clear that the Parliament became aware of the fact that the courts are not able to dispose of, in a time bound manner, large number of cases coming under the said Act in view of the procedure in the Act. In order to deal with such situation, several amendments were introduced and one of them is making offences under the said Act compoundable. Section 147 of the N.I. Act is as follows:

147. Offences to be compoundable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

24. This Court fails to understand the applicability of the principle laid down in Mandvi (supra) to the facts of the present case. It is no doubt true that Section 147 of the N.I. Act makes an offence under N.I. Act a compoundable one. But in order to make the offence compoundable the mode and manner of compounding such offences must be followed. No contrary view has been expressed by this Court in Mandvi (supra).

25. On the nature of the offence under N.I. Act learned counsel for the appellant(s) also placed reliance on a decision of this Court in the case of Damodar S. Prabhu vs. Sayed Babalal H. reported in (2010) 5 SCC 663. In paragraph 4, this Court held that the dishonour of a cheque can be best described as a regulatory offence which has been created to serve the public interest in ensuring the reliability of these instruments and the Court has further held that the impact of the offence is confined to private parties involvement in commercial transactions. The Court also noted the situation that large number of cases involving dishonour of cheques are choking the criminal justice system and putting an unprecedented strain on the judicial functioning. In paragraph 7 of the judgment this Court noted the submissions of the learned Attorney General to the extent that the Court should frame certain guidelines so as to motivate the litigants from seeking compounding of the offence at an early stage of litigation and not at an unduly late stage. It was argued that if compounding is early the pendency of arrears can be tackled.

26. In paragraph 12 of Damodar (supra) this Court dealt with the provision of Section 147 of the N.I. Act and held that the same is an enabling provision for compounding of the offence and is an exception to the general rule incorporated in sub- section 9 of Section 320 of the Code. This Court harmonised the provision of Section 320 of the Code along with Section 147 of N.I. Act by saying that an offence which is not otherwise compoundable in view of the provisions of Section 320 sub-section 9 of the Code has become compoundable in view of Section 147 of N.I. Act and to that extent Section 147 of N.I. Act will override Section 320 sub-section 9 of the Code since Section 147 of N.I. Act carries a non- obstante clause. This Court on the basis of the submissions of the learned Attorney General framed certain guidelines for compounding of offence under Section 138 of the N.I. Act. Those guidelines are as follows:

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

27. The Court held in paragraph 26 of Damodar (supra) that those guidelines have been issued by this Court under Article 142 of the Constitution in order to fill-up legislative vacuum which exists in Section 147 of the N.I. Act. The Court held that Section 147 of the N.I. Act does not carry any guidance on how to proceed with the compounding of the offence under the N.I. Act and the Court felt that Section 320 of the Code cannot be strictly followed in the compounding of offence under Section 147 of the N.I. Act. Those guidelines were given to fill up a legislative vacuum.

28. Reliance was also placed by the learned counsel for the appellant(s) on the judgment of this Court in Central Bureau of Investigation, SPE, SIU (X), New Delh vs. Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 SCC 591. The decision of this Court in Duncans Agro (supra) was on the question of quashing the complaint under Section 482 of Criminal Procedure Code. In the facts of that case the learned Judges held that the Bank filed suits for recovery of the dues on account of grant of credit facility and the suits have been compromised on

receiving the payments from the company concerned. The learned Court held if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes amount to compounding of the offence of cheating. In that case the Court came to the conclusion since the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, the Court felt that the complaint should not be perused any further and, therefore, the Court felt in the special facts of the case the decision of the High Court in quashing the complaint does not require any interference under Article 136 of the Constitution.

29. Quashing of a case is different from compounding. In quashing the Court applies it but in compounding it is primarily based on consent of injured party. Therefore, the two cannot be equated.

30. It is clear from the discussion made hereinabove that the said case was not one relating to compounding of offence. Apart from that the Court found that the dues of the Banks have been satisfied by receiving the money and the suits filed by the Bank in the Civil Court have been compromised. The FIRs were filed in 1987-1988 and the investigation had not been completed till 1991. On those facts the Court, rendering the judgment in July, 1996, felt that having regard to the lapse of time and also having regard to the fact that there is a compromise decree satisfying the Banks' dues, there is no purpose in allowing the criminal prosecution to proceed. On those consideration, this Court, in the `special facts of the case', did not interfere with the order of the High Court dated 23.12.1992 whereby the criminal prosecution was quashed.

31. It is, therefore, clear that no legal proposition has been laid down on the compounding of offence in Duncans Agro (supra). This Court proceeded on the peculiar facts of the case discussed above. Therefore, the said decision cannot be an authority to contend that by mere sanctioning of a scheme, the offences committed by the appellant company, prior to the scheme, stand automatically compounded.

32. Reliance was also placed on the decision of this Court in the case of Hira Lal Hari Lal Bhagwati vs. CBI, New Delhi reported in (2003) 5 SCC 257. In that case reliance was placed on the decision of this Court in Duncans Agro (supra). In Hira Lal (supra) this Court was discussing the voluntary scheme namely, Kar Vivad Samadhan scheme 1998 introduced by the Government of India. The Court found that the aforesaid scheme being a voluntary scheme has provided that if the dispute

and demand is settled by the authority and pending proceedings were withdrawn by an importer the balance demand against the importer shall be dropped and the importer shall be immune from any penal proceedings under any law. The Court also came to the conclusion that under the Customs Act, 1962 the appellant(s) have been discharged and the scheme granted them immunity from prosecution. On those facts the Court held that the immunity which has been granted under the provisions of Customs Act will also extend to such offences that may, prima facie, be made out on identical allegation, namely, evasion of customs duty and violation of any notification under the said Act. The Court also found, on a reading of the chargesheet and the FIR that there was no allegation against the appellant(s) of any intentional deception or of fraudulent or dishonest intention. On those facts the Court held that once a civil case has been compromised and the alleged offence has been compounded, the continuance of the criminal proceedings thereafter would be an abuse of the judicial process.

33. We fail to appreciate how the ratio in the case of Hira Lal (supra) rendered on completely different facts has any application to the facts of the present case.

34. Reliance was also placed on the judgment of this Court in the case of Nikhil Merchant vs. Central Bureau of Investigation and another reported in (2008) 9 SCC 677. In paragraphs 30 and 31 of the judgment this Court held that dispute between company and the Bank have been set at rest on the basis of compromise arrived at between them. The Court noted that Bank does not have any claim against the company. The Court poses the question whether the power of quashing criminal proceeding which is there with the Court should be exercised. (See para 30 at page 684 of the judgment)

35. The Court answered the same in Nikhil Merchant (supra) by saying in para 31 that technicality should not be allowed to stand in the way of quashing of the criminal proceedings since in the view of the Court the continuance of the same after the compromise could be a futile exercise. Therefore, the said decision in Nikhil Merchant (supra) was rendered in the peculiar facts of the case and it was done in exercise of quashing power by the Court. It was not a case of automatic compounding of an offence on the sanctioning of a scheme under Section 391 of the Companies Act.

36. Mr. K. Parameshwar, learned counsel appearing for the respondent in special leave petition Nos.4445- 4454/2009 argued that the impugned judgment of the High Court is based on correct principles inasmuch as the effect of a Scheme under Section 391 of the Companies Act can only be made applicable to a civil

proceeding and it cannot affect criminal liability. Learned counsel further submitted that under the criminal law there is nothing known as deemed compounding. It was further urged that under the very concept of compounding, it cannot take place without the explicit consent of the complainant or the person aggrieved. It was also urged that in the instant case the offence has been completed prior to the scheme under Section 391 of the Companies Act was sanctioned by the Court.

37. Learned counsel distinguished between a Scheme under Section 391 and an act of compounding by urging that a Scheme under section 391 can at most be a Scheme to forego a part of a debt or to restructure the payment schedule of a debt but the act of compounding an offence must proceed on the basis of the consent of the person compounding and his consent cannot be assumed under any situation.

38. Learned counsel further submitted that the impugned judgment of the High Court correctly formulated the principle of compounding by holding that the act of compounding involves an element of mutuality and it has to be bilateral and not unilateral.

39. This Court finds lot of substance in the aforesaid submission.

40. Compounding of an offence is statutorily provided under Section 320 of the Code. If we look at the list of offences which are specified in the Table attached to Section 320 of the Code, it would be clear that there are basically two categories of offences under the provisions of Indian Penal Code which have been made compoundable.

41. There is a category of offence for the compounding of which leave of the Court is required and there is another category of offences where for compounding the leave of the Court is not required. But all cases of compounding can take place at the instance of persons mentioned in the Third Column of the Table. If the said Table is perused, it will be clear that compounding can only be possible at the instance of the person who is either a complainant or who has been injured or is aggrieved.

42. Sub-sections 4(a) and 4(b) of Section 320 also reiterate the same principle that in case of compounding, the person competent to compound, must be represented in a manner known to law. If the person compounding is a minor or an idiot or a lunatic, the person competent to contract on his behalf may, with the permission of the Court, compound the offence. Legislature has, therefore, provided that if the

aforesaid category of person was suffering from some disability, a person to represent the aforesaid category of persons is only competent to compound the offence and in such cases the permission of the Court is statutory required.

43. Section 320 (4) (b) also reiterates the same principle by providing that when a person who is otherwise competent to compound an offence is dead, his legal representatives, as defined under the Code of Civil Procedure may, with the consent of the Court, compound such offence.

44. Therefore, representation of the person compounding has been statutorily provided in all situations.

45. Sub-section (9) of Section 320 which is relevant in this connection is set out below:

> No offence shall be compounded except as provided by this section.

46. Section 147 of the Negotiable Instrument Act reads as follows:

147. Offences to be compoundable. - Notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

47. Relying on the aforesaid non-obstante clause in Section 147 of the N.I. Act, learned counsel for the appellant argued that a three-Judge Bench decision of this Court in Damodar (supra), held that in view of non-obstante clause in Section 147 of N.I. Act, which is a special statute, the requirement of consent of the person compounding in Section 320 of the Code is not required in the case of compounding of an offence under N.I. Act. This Court is unable to accept the aforesaid contention for various reasons which are discussed below.

48. The insertion of a non-obstante clause is a well known legislative device and in olden times it had the effect of non obstante aliquo statuto in contrarium (notwithstanding any statute to the contrary).

49. Under the Stuart reign in England the Judges then sitting in Westminster Hall accepted that the statutes were overridden by the process but this device of judicial surrender did not last long. On the device of non-obstante clause, William Blackstone in his Commentaries on the Laws of England (Oxford: The Claredon Press, 1st Edn. 1765- 1769) observed that the devise was ...effectually demolished

by the Bill of Rights at the revolution, and abdicated Westminster Hall when James II abdicated the Kingdom (See Bennion on Statutory Interpretation, 5th Edition, Section 48).

50. Under the Scheme of modern legislation, non- obstante clause has a contextual and limited application.

51. The impact of a `non-obstante clause' on the concerned act was considered by this Court in many cases and it was held that the same must be kept measured by the legislative policy and it has to be limited to the extent it is intended by the Parliament and not beyond that. [See ICICI Bank Ltd. vs. Sidco Leathers Ltd. and Ors. - (2006) 10 SCC 452 para 37 at page 466]

52. In the instant case the non-obstante clause used in Section 147 of N.I. Act does not refer to any particular section of the Code of Criminal Procedure but refers to the entire Code. When non-obstante clause is used in the aforesaid fashion the extent of its impact has to be found out on the basis of consideration of the intent and purpose of insertion of such a clause. 3

53. Reference in this connection may be made to the Constitution Bench decision of this Court in the case of Madhav Rao Scindia Bahadur, etc. vs. Union of India and Another reported in (1971) 1 SCC 85, Chief Justice Hidayatullah delivering the majority opinion, while construing the provision of Article 363, which also uses non-obstante clause without reference to any Article in the Constitution, held that when non-obstante clause is used in such a blanket fashion the Court has to determine the scope of its use very strictly (see paragraph 68- 69 at page 138-139 of the report).

54. This has been followed by a three-Judge Bench of this Court in Central Bank of India vs. State of Kerala and others reported in (2009) 4 SCC 94, following the principles as laid down in Madhav Rao (supra) this Court in Central Bank (supra) held as follows:-

> ...When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. `A search has, therefore, to be made with a view to determining which provision answers the description and which does not'.

(Para 105, page 132 of the report)

55. Section 147 in N.I. Act came by way of amendment. From the Statement of Objects and Reasons of Negotiable Instrument (Amendment) Bill 2001, which ultimately became Act 55 of 2002, these amendments were introduced to deal with large number of cases which were pending under the N.I. Act in various Courts in the country. Considering the said pendency, a Working Group was constituted to review Section 138 of the N.I. Act and make recommendations about changes to deal with such pendency.

56. Pursuant to the recommendations of the Working Group, the aforesaid Bill was introduced in Parliament and one of the amendments introduced was to make offences under the Act compoundable.

57. Pursuant thereto Section 147 was inserted after Section 142 of the old Act under Chapter II of Act 55 of 2002.

58. It is clear from a perusal of the aforesaid Statement of Objects and Reasons that offence under the N.I. Act, which was previously non- compoundable in view of Section 320 sub-Section 9 of the Code has now become compoundable. That does not mean that the effect of Section 147 is to obliterate all statutory provisions of Section 320 of the Code relating to the mode and manner of compounding of an offence. Section 147 will only override Section 320 (9) of the Code in so far as offence under Section 147 of N.I. Act is concerned. This is also the ratio in Damodar (supra), see para 12. Therefore, the submission of the learned counsel for the appellant to the contrary cannot be accepted.

59. In this connection, we may refer to the provisions of Section 4 of the Code. Section 4 of the Code, which is the governing statute in India for investigation, inquiry and trial of offences has two parts.

60. Section 4 sub-section (1) deals with offences under the Indian Penal Code. Section 4 sub-section (2) deals with offences under any other law which would obviously include offences under the N.I. Act. (See 2007 Crl. Law Journal 3958)

61. In the instant case no special procedure has been prescribed under the N.I. Act relating to compounding of an offence. In the absence of special procedure relating to compounding, the procedure relating to compounding under Section 320 shall automatically apply in view of clear mandate of sub-section (2) of Section 4 of the Code.

62. Sub-section (2) of Section 4 of the code is set out below:-

> 4(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

63. Interpreting the said Section, this Court in the case of Khatri and Ors. etc. Vs. State of Bihar and Ors. - AIR 1981 SC 1068 held that the provisions of the Code are applicable where an offence under the Indian Penal Code or under any other law is being investigated, inquired into, tried or otherwise dealt with (See para 3 page 1070).

64. In view of Section 4(2) of the Code, the basic procedure of compounding an offence laid down in Section 320 of the Code will apply to compounding of an offence under N.I. Act.

65. In Vinay Devanna Nayak vs. Ryot Sewa Sahakari Bank Limited reported in (2008) 2 SCC 305, this Court also considered the object behind the insertion of Section 138 of the N. I. Act by Banking Financial Institutions and Negotiable Instruments (Amendment) Act 1988. This Court held:-

> ...The incorporation of the provision is designed to safeguard the faith of the creditor in the drawer of the cheque, which is essential to the economic life of a developing country like India. The provision has been introduced with a view to curb cases of issuing cheques indiscriminately by making stringent provisions and safeguarding interest of creditors.
>
> (para 16, page 309 of the report)

66. The Court also looked into the scope of Section 147 of the N.I. Act, and held after considering the two sections, that there is no reason to refuse compromise between the parties. But the Court did not hold that in view of Section 147, the procedure relating to compounding under Section 320 of the Code has to be given a go bye.

67. Subsequently in the case of R. Rajeshwari vs. H. N. Jagadish reported in (2008) 4 SCC 82, another Bench of this Court also construed the provisions of Section

147 of the N.I. Act, as well as those of Section 320 of the Code. Here also it was not held that all the requirements of Section 320 of the Code for compounding were to be given a go bye.

68. Both these aforesaid decisions were referred to and approved in Damodar (supra). The decision in Damodar (supra) was rendered by referring to Article 142 of the Constitution insofar as guidelines were framed in relation to compounding for reducing pendency of 138 cases. In doing so the Court held that attempts should be made for compounding the offence early. Therefore, the observations made in paragraph 24 of Damodar (supra), that the scheme contemplated under Section 320 of the Code cannot be followed `in the strict sense' does not and cannot mean that the fundamental provisions of compounding under Section 320 of the Code stand obliterated by a side wind, as it were.

69. It is well settled that a judgment is always an authority for what it decides. It is equally well settled that a judgment cannot be read as a statute. It has to be read in the context of the facts discussed in it. Following the aforesaid well settled principles, we hold that the basic mode and manner of effecting the compounding of an offence under Section 320 of the Code cannot be said to be not attracted in case of compounding of an offence under N.I. Act in view of Section 147 of the same.

70. Compounding as codified in Section 320 of the Code has a historical background. In common law compounding was considered a misdemeanour. In Kenny's `Outlines of Criminal Law' (Nineteenth Edition, 1966) the concept of compounding has been traced as follows:-

> It is a misdemeanour at common law to `compound' a felony (and perhaps also to compound a misdemeanour); i.e. to bargain, for value, to abstain from prosecuting the offender who has committed a crime. You commit this offence if you promise a thief not to prosecute him if only he will return the goods he stole from you; but you may lawfully take them back if you make no such promise. You may show mercy, but must not sell mercy. This offence of compounding is committed by the bare act of agreement; even though the compounder afterwards breaks his agreement and prosecutes the criminal. And inasmuch as the law permits not merely the person injured by a crime, but also all other members of the community, to prosecute, it is criminal for anyone to make such a composition; even though he suffered no injury and indeed has no concern with the crime.

71. Russell on Crime (Twelfth Edition) also describes:-

> Agreements not to prosecute or to stifle a prosecution for a criminal offence are in certain cases criminal.
>
> (Chapter 22 - Compounding Offences, page 339)

72. Later on compounding was permitted in certain categories of cases where the rights of the public in general are not affected but in all cases such compounding is permissible with the consent of the injured party.

73. In our country also when the Criminal Procedure Code, 1861 was enacted it was silent about the compounding of offence. Subsequently, when the next Code of 1872 was introduced it mentioned about compounding in Section 188 by providing the mode of compounding. However, it did not contain any provision declaring what offences were compoundable. The decision as to what offences were compoundable was governed by reference to the exception to Section 214 of the Indian Penal Code. The subsequent Code of 1898 provided Section 345 indicating the offences which were compoundable but the said Section was only made applicable to compounding of offences defined and permissible under Indian Penal code. The present Code, which repealed the 1898 Code, contains Section 320 containing comprehensive provisions for compounding. A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a Code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of Section 147 in the N.I. Act, the entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence under the N.I. Act, in that case the compounding of offence under N.I. Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under N.I. Act. Therefore, Section 147 of the N.I. Act must be reasonably construed to mean that as a result of the said Section the offences under N.I. Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of N.I. Act.

74. For the reasons aforesaid, this Court is unable to accept the contentions of the learned counsel for the appellant(s) that as a result of sanction of a scheme under

Section 391 of the Companies Act there is an automatic compounding of offences under Section 138 of the N.I. Act even without the consent of the complainant.

75. The appeals are dismissed. The judgment of the High Court is affirmed.