

CALCUTTA HIGH COURT

Inland Steam Navigation

Vs

Rivers Steam Navigation

(A Ray and S Mukherjee , JJ.)

14.07.1967

JUDGMENT

A Ray, J.

1. This appeal is from the order of P.B. Mukharji J., by which a scheme of arrangement referred to in the order dated 3rd May, 1967, has been sanctioned.

2. The petitioner, Rivers Steam Navigation Company Limited (hereinafter referred to as the company), made an application for an order that compromise or arrangement be sanctioned by this court so as to be binding on all the members, secured creditors and unsecured creditors of the company and for further orders that all properties and assets of the company be transferred and vest in the new company, viz., Central Inland Water Transport Corporation Limited, free from the mortgages and charges in favour of the Chartered Bank and the liabilities of the company in favour of the State Bank of India and Government of India, be also transferred to and become the liabilities of the new company, Central Inland Water Transport Corporation Limited, and for other consequential reliefs.

3. The company was incorporated in England on or about 10th July, 1914. The objects of the company were, inter alia, the conveyance of passengers, merchandise and goods and treasure in steamers, boats, barges or other vessels to and from such places in the East Indies or elsewhere as the company may, from time to time, determine. The company commenced the business of river transport between Calcutta and Assam. Since the year 1965, the Government of India in view of the importance of the business of the company, acquired by purchase various shares in the company. The Government of India came to possess 5,00,000 equity shares, of which 29,660 are fully paid up and 4,70,340 are partly paid up, to the extent of 15 shillings per share. The company owned a fleet of 59 steamers, 19 tugs, 16 launches, 108 flats and 38 barges. The company also employed a large number of staff and workmen both in West Bengal and Assam. It is also alleged in the petition that the company has been compelled to close down its main

business for which the Government of India acquired the controlling interest. After the termination of hostilities with Pakistan, it was thought that resumption of service through East Pakistan might be possible. The company continued with large recurring financial help from the Government. The Government of India, from time to time, lent and advanced large sums of money, which comprised a sum of Rs. 30 lakhs in the month of December, 1958, and a further sum of money amounting to Rs. 1 crore in the year 1961 ; a farther sum of Rs. 90 lakhs in the month of August, 1966. The Chartered Bank claimed to be a creditor of the company to the extent of Rs. 1.6 crores and filed a suit against the company. The State Bank also claimed to be a creditor of the company and filed a suit in this court for the recovery of Rs. 1.5 crores.

4. On 21st June, 1966, a petition for winding up was presented. Advertisements were issued pursuant to the admission of the winding-up application.

5. It is alleged in the petition that the company was faced with incurring huge loss year after year, particularly, in view of the large liabilities in respect of past borrowings. The entire assets of the company were found to be mortgaged, charged or hypothecated. It was said in the petition that the winding-up would throw out of employment large number of staff and workers of the company.

6. In this context, the Government of India decided to set up a new rupee company for the purpose of taking over the debts which were covered and secured by properties and assets of the company. The maintenance of the river transport in Assam as well as in West Bengal is alleged to be of strategic necessity and of national importance, though it may be uneconomic to do so strictly from business point of view. It is alleged that the new company proposes to employ majority of the existing employees on terms and conditions suitable for the new company. It is also alleged in the petition that the other staff and workers, who were not offered employment by the new company, would be paid reasonable compensation being not less than which they were lawfully entitled to under the provisions of the Industrial Disputes Act.

7. The scheme that the company proposed is to be found at pages 12, 13 and 14 of the paper book. In brief, the company was to transfer to the new company all its properties and assets and the new company would undertake all liabilities of the existing company in favour of the State Bank of India. The amount due to the Chartered Bank would be payable by the new company and the claim of the Chartered Bank would be reduced to Rs. 60 lakhs. The other creditors of the existing company, which comprised the unsecured creditors other than the State Bank of India, the Chartered Bank, the Government of India and the creditors referred to in paragraph (5) of the proposed scheme were to be paid Rs. 5,000 or, if the amount due to them was less than Rs. 5,000, then the full amount due upon the sanction of the scheme and the others would be paid Rs. 66-2/3 per cent. of the balance of their dues as appearing in the books of account of the company

in instalments, viz., 33-1/3 per cent. payable on 30th June, 1967, and the balance of 33-1/3 per cent. on or before 30th June, 1968. The new company would employ such of the workers and staff of the existing company as might be necessary and suitable for its business on such terms and conditions as it, in its discretion, thought fit. Upon approval of the scheme by the court, the existing company would be closed and upon payment to all the creditors the existing company would be dissolved without winding up pursuant to the order of this court. A clause was also inserted to add, alter, vary or modify the scheme pursuant to orders obtained from the court.

8. The scheme was placed before the meeting of members, secured creditors and unsecured creditors. The chairman of the meeting reported the result of the meeting and the report was filed on 17th February, 1967. The members approved and agreed to the scheme. The secured creditors also approved and agreed to the scheme. The total value of the members was sterling 7,27,325-0-0. The value of the creditors who attended was Rs. 687.94 lakhs. The value of unsecured creditors who voted in favour of the scheme was Rs. 2,68,04,372-12.

9. An affidavit-in-opposition was filed by Mahendra Chandra Chakrabarty, Assistant Secretary of the Inland Steam Navigation Workers' Union. In the affidavit he alleged that he was specially authorised by a power-of-attorney to make the affidavit on behalf of workers. That affidavit was affirmed on 6th March, 1967. It is necessary to refer to a few features in that affidavit. First, it was said that the scheme, if sanctioned, would prejudice the rights of hundreds of employees as creditors whose rights would have been preferential if the winding up had been carried on. Reference was made to an agreement dated 25th August, 1965, between the Rivers Steam Navigation Co. Limited on the one hand and the workmen of the existing company represented by the Inland Steam Navigation Workers' Union on the other. The deponent further said that large sums of money were payable to the workers on account of dues according to an award dated 8th October, 1963, the validity of which had been challenged by the company in the Supreme Court. The deponent in the second place submitted that the company should make provision for payments of all dues to the employees of the company under the provisions of Industrial Disputes Act and the agreement dated 25th August, 1955. In paragraphs 11 and 12 of the affidavit the deponent suggested that two clauses should be substituted in the scheme and the scheme should be altered or modified as indicated by the deponent. The suggestions were that the new company would employ such number of the workers and staff of the River Steam Navigation Company Limited as might be necessary for its business and the employment of such workers and staff would be on the basis of uninterrupted transfer of services to the new company provided that there would be no retrenchment till 31st December, 1959, of the workers and staff covered by the agreement dated 25th August, 1965, between the Rivers Steam Navigation Company Limited and the Inland Steam Navigation Workers' Union. The deponent also suggested that upon the approval of the scheme by the court the Rivers Steam Navigation

Company Limited would be closed and upon payment of all dues in full to all the employees the River Steam Navigation Co, Ltd. would be dissolved without winding up pursuant to an order to be obtained from this court. Thirdly, the deponent said in paragraph 18 of the affidavit that the court should sanction the proposed scheme after directing the alteration as indicated in the affidavit in which reference has been made and if the scheme was approved without alteration and amendments, hundreds of employees would be thrown to unendurable misfortune without any fault of theirs.

10. The agreement dated 25th August, 1965, to which reference was made by the deponent in his affidavit, will appear at pages 109 to 112 of the paper book. The terms of settlement were, inter alia, as follows: First, the retiring age would be reduced to 57 years. Secondly, that the clerical staff being prematurely retired under this agreement would be given in addition to full provident fund benefits, the normal gratuity as admissible under the existing rules of the company and ex gratia payment of 2 1/2 months' pay and dearness allowance. Thirdly, the employees, both clerical and non-clerical, would be allowed to retire voluntarily on attaining the age of 45 years and above up to 56 years in the case of clerical staff in which case the ex gratia payment of 2 1/2 months' pay would be extended to them for a maximum period of ten years on the conditions as stipulated in the agreement. Fourthly, there would be no retrenchment in respect of clerical staff at Calcutta ghats even when transferred to any other establishment of the company for five years from the date of agreement, i.e., up to 31st December, 1969. The further clause in the agreement indicated the number of persons who would retire. This agreement was signed by the employees, the employers and the conciliation officer.

11. There is an affidavit-in-reply, which will be found at page 195 following, and the important paragraphs with regard to the affidavit-in-reply will appear from paragraph 40 onwards. Counsel for the company emphasises on three points in the affidavit-in-reply. First, that the scheme was not intended to affect the employees because independently of the scheme such employees would get full payment of their lawful dues except in case of winding up. When the matter was mentioned on 30th January, 1967, on behalf of some of the employees the court ordered that, without prejudice to any right or claim of the workers, if any, under the Industrial Disputes Act and without prejudice to the preferential claim, if any, for arrears of their dues, proxy forms were to be issued to them and the meeting of creditors would be held as directed. Secondly, the deponent in the affidavit-in-reply alleged in paragraph 44 that, under the agreement dated 25th August, 1965, the company agreed that there would be no retrenchment of the clerical staff of the Calcutta ghats for a certain period and that had no reference to the entire closure of the business of the company. Thirdly, in paragraph 48 of the affidavit-in-reply, it was submitted that the employees were not entitled to attend the meeting as it was never intended to enter into any compromise or arrangement with them.

12. On these facts broadly stated, counsel for the appellants raised four contentions, first, that the workers are creditors and if a workman is a creditor and he is not being represented at the meeting, it contravenes the provisions of Section 391 of the Companies Act and therefore the scheme is bad. Secondly, the agreement or the settlement dated 25th August, 1965, to which reference has been made was arrived at between the workmen on the one hand and the company on the other and such an agreement was binding not only on the Rivers Steam Navigation Company Limited but also on the new company to which rights and liabilities of the Rivers Steam Navigation Company Limited were transferred, and the learned judge did not recognise the agreement or settlement in the scheme. Thirdly, the schemes contemplated in Section 391 of the Companies Act do not apply to any scheme between two companies, both of which are Government companies. Fourthly, the provisions contained in Sections 391 and 394 of the Companies Act do not apply in the present case, as this was neither a case of amalgamation nor of reconstruction but only a case of transfer to a successor company.

13. In support of these contentions, counsel for the appellants contended that it was recognised in the judgment that workers were creditors and in support of that contention reliance was placed on the observations in the judgment at page 253 of the paper book, where the learned judge said : " In the light of the discussions I have already made such of the workers as are creditors of the company will, therefore, be paid off in full and all their legitimate dues under the law shall be so paid and I order and direct accordingly". Reference was made to page 114 of the paper book, where in the letter dated 17th February, 1967, the General Secretary, Inland Steam Navigation Workers' Union, wrote to the managing director of the Rivers Steam Navigation Company Limited that arrear salaries on account of the annual increments for 1966--67 were due and there were dues under the Enforced Savings Scheme and work bonus for the years 1965, 1966 and 1967, and there were dues in terms of Clause 5(III) of the Tripartite Agreement dated 25th August, 1965. It may be stated that Clause 5(III) referred to premature retirement of clerical staff, who would be given full provident fund benefits of normal gratuity and ex gratia payments of two and a half months' pay. At page 118 will appear the letter dated 18th February, 1967, written by the company to the General Secretary of the Inland Steam Navigation Workers' Union. Counsel for the appellant placed reliance on paragraphs 3, 4 and 5 of that letter appearing at page 119. The managing director of the company stated, first, as regards the arrears of salary on account of the annual increments for 1966-67, and the dues under the Enforced Savings Scheme and work bonus for 1965 and 1966, that the Government had been moved for the necessary financial assistance and it was expected that it would be possible to make payment by 31st March, 1967. Secondly, it was said as for persons who retired under the Tripartite Agreement dated 25th August, 1965, that their dues would be settled by 25th February, 1967. Thirdly, it was said that as regards other points in the letter, namely, dues under the award of the Special Tribunal and dues under the terms of the Tribunal Award of 1949, an appeal was pending in the

Supreme Court and after final determination of the proceedings a final decision would be made. Counsel for the appellants, therefore, contended that there was sufficient evidence to hold that the workmen were creditors and yet they were not allowed to participate at the meeting and notice was not given to them. and on 30th January, 1967, when the matter was mentioned on behalf of the workmen and they wanted to appear by proxies they were not granted any proxy. It was also said by counsel for the appellants that the claim of the workers would appear to be of large magnitude and would approximately come to Rs. 75 lakhs. It should be stated here that this value does not appear in the affidavit evidence and it was made as a submission by counsel for the appellants.

14. It will appear from the judgment, particularly at page 223, that the labour in the present case was not opposing the scheme at all. Counsel for the company placed considerable reliance on that observation in the judgment and rightly contended that the workers did not raise the contention in the trial court that the scheme was bad because no notice was given or that they were creditors who should have been allowed to participate at the meeting and, on the contrary, the workers wanted modification of the scheme in the manner indicated in the affidavit-in-opposition to which reference has been made. It will appear from the judgment at page 260 and from the order at page 269 that the learned judge, at the suggestion of the parties appearing, modified the scheme by introducing three clauses in paragraph 7 which will appear at page 270 of the paper book. These three clauses are of great importance. The three modifications were as follows :

" (a) That the new company shall take as many of the existing staff of labour as possible as can be reasonably taken over by the said transferee company subject to any valid objection to any individual employee or employees.

(b) That as to exactly how many can be employed it is left to the said transferee company's bona fide discretion.

(c) That those employees who cannot be taken over shall be paid by the transferor company all moneys due to them under the law and all legitimate and legal compensations payable to them either under the Industrial Disputes Act or otherwise legally admissible and that such moneys shall be provided by the Government of India to the existing transferor company who will pay these dues."

15. It is necessary to refer to certain observations of the learned judge to show the circumstances and the reasonings which occasioned the modification.

First, at page 223 of the judgment it will appear that the learned judge said that the main concern

was that, as the company was really transferring all the property and assets to vest in the new company, Central Inland Water Transport Corporation Limited, the workers and the staff must have some kind of sensible and reasonable protection of their rights, either to continue as many as possible in the new concern or who cannot be continued, their lawful dues, legitimate under the law, should be fairly calculated and provided for. Secondly, counsel for the Government of India and counsel for the company gave assurance to the learned judge and the assurance is recorded at pages 223 and 224 of the paper book in the judgment and at page 269 in the order. The assurance that was given was embodied in the scheme as follows : " It is appearing from the reports that the proposed compromise or arrangement has been approved unanimously by and upon the said transferee company through their advocate giving in court written assurance as follows :

" The new company will employ such of the workers and staff of the existing company as are considered by it suitable and necessary for its business on appropriate terms and conditions to be decided by the new company. The employees of the existing company who are not absorbed by the new company will be paid by the existing company compensation due and payable to them under the law. If, as a result of the growth of business, the new company requires additional hands, the employees of the existing company who are not absorbed now, will, if they are willing and otherwise found suitable, be considered preferentially and upon the Government through their advocate, Mr. D.K. Sen, giving in court the assurance as follows The Government of India agrees to pay the amount due to the secured and unsecured creditors, as indicated in the scheme proposed in the petition by the Rivers Steam Navigation Company Limited. The Government of India shall provide necessary funds to the new Central Inland Water Transport Corporation Limited to pay the amount provided in the scheme for settlement to the Chartered Bank of India."

16. This assurance was reiterated at the hearing of the appeal and it is hoped that the assurance will be respected and honoured.

17. In the light of this assurance, the learned judge at page 224 of the judgment observed that public and national interest as well as the interest of the labour and staff demand that a scheme should be evolved to work out the equities between different groups. At page 249 following, the learned judge dealt with the submissions made on behalf of the labour and observed at page 250 of the paper book that the scheme or compromise or arrangement with creditors or members obviously meant difficulty for the company to carry on its normal business in a normal way and, therefore, it could not be possible to lay down as a matter of law that such a scheme would have no effect or impact on the labour or the workers. The learned judge also said that the

consideration of the fate and condition of the workers was a part of the larger interest of the company and its scheme under consideration : vide page 252 of the judgment.

18. It is indisputable, as was contended by counsel for the company, that the inland route was a matter of strategic importance. It is equally unassailable that the Government invested large sums of money and but for the bounty of the Government, the company would not have gone on. Counsel for the company rightly contended that workers purely as workers were not creditors and it was not part of the scheme to have compromise or arrangement of the salaries or their dues. The scheme did not seek to affect any salary or dues of workers. Workers individually could appear in respect of any particular and individual claim but it was said by counsel for the respondent that there was no such appearance on behalf of any individual worker. The attitude of the workers was, according to counsel for the respondent, to be found out, first, with regard to meeting of the creditors and, secondly, with regard to representation of the workers before the court. At page 104 of the paper book will appear the affidavit of Mahendra Chandra Chakravarty, affirmed on 6th March, 1967, to which reference has already been made. The workers in that affidavit asked for modification and sanction of the scheme. At page 121 will appear another affidavit of Nalini Kanta Sarma, affirmed on 6th March, 1967, on behalf of workers in the Assam region. In paragraphs 11 and 17 of the affidavit of Nalini Kanta Sarma it was stated that the scheme should be sanctioned and the scheme should be modified by having a clause that the new company would employ all workers and staff of the existing company in the Assam establishment on the basis of uninterrupted transfer of service to the new company. Paragraph 7 of the scheme sanctioned by the court appearing at page 270 of the paper book and which has been set out above shows that whatever protection and modification the workers wanted was given and therefore counsel for the respondent contended that the labour, namely, the workers in the present case were not opposing the scheme and the observation of the learned judge at page 223 of the paper book to the effect is a fact which has been accepted and there is no denial of that fact in the grounds of appeal. This contention of counsel for the respondent is, in my view, sound and correct.

19. In view of the fact that the scheme did not touch or affect any salary or any other due to any workman--and it should be stated here that it was not the contention of counsel for the appellants that the scheme had any such effect--and also in view of the fact that the workers did not assert any claim with regard to any particular sum of money for any particular workman, counsel for the respondent is, in my view, right in his contention that there was no claim asserted by any worker in the capacity of an individual creditor. This aspect of individual creditor is of importance in view of the fact that what was really contended on behalf of the appellants and what was really assailed in the scheme was that the agreement dated 25th August, 1965, should not be affected or prejudiced. With regard to that agreement, counsel for the respondent

contended that it could not be rightly said that any right of any person to work in any concern could be described to be a right of a creditor. Under the common law or under the law of the land, personal service cannot be enforced and the only exception is made in the case of the Industrial Disputes Act. Such a claim for enforcement of personal service or any assertion by any workman to remain in employment or any claim by any person not to be thrown out of employment would be all in the character of enforcement of personal service and would not, in my opinion, come within the arena of demands of a creditor.

20. The scheme, it was rightly said by counsel for the respondent, did not affect or seek to affect any right of any workman to remain in service. On the contrary, whatever the workers wanted by way of modification was inserted in the scheme. Counsel for the appellant, on the other hand, contended that the agreement dated 25th August, 1965, in the present case was a settlement within the meaning of Section 2 of the Industrial Disputes Act and, secondly, such a settlement would have a binding character and its character could not be taken away by the scheme nor could its character be impaired by the scheme. In order to appreciate the contentions on behalf of the appellants, reference may be made to a few sections of the Industrial Disputes Act. The settlement as defined in Section 2(p) of the Industrial Disputes Act, 1947, means settlement arrived at in course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed. In the present case, the evidence is that the agreement was arrived at in course of conciliation proceeding. The intrinsic evidence in the agreement shows that it is signed by the conciliation officer. Reference may next be made to Section 18 of the Industrial Disputes Act which indicates that settlement arrived at by agreement between the employer and workmen in the course of conciliation proceeding shall be binding on the parties to the industrial dispute ; all other parties summoned to appear in the proceedings as parties to the dispute, the employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates and workmen would include all persons who were employed in the establishment to which the dispute related on the date of the dispute and persons who subsequently became employed in that establishment or part. The decision of the Supreme Court in Ramnagar Cane and Sugar Co. Ltd. v. Jatin Chakravorty, , indicates that the whole policy of Section 18 of the Industrial Disputes Act appears to give extended operation to the settlement arrived at in course of conciliation proceeding and that is the object with which the four categories of persons bound by such settlement were specified in Section 18 of the Industrial Disputes Act. Counsel for the appellant placed reliance on this decision in order to contend that the agreement or settlement dated 25th August, 1965, would be binding not only on the Rivers Steam Navigation Company Limited but also on the new company which was formed and which became a party to the scheme.

21. Counsel for the respondent, on the other hand, contended that an agreement or settlement might be binding under Section 18 of the Industrial Disputes Act but its binding character was not that it would prevail over the provisions of the Companies Act in the sense that the agreement would be superior to other statutes. In order to emphasize this contention, reference was made to Section 25J of the Industrial Disputes Act. Section 25J of the Industrial Disputes Act occurs in Chapter V-A of the Act and Chapter V-A of the Act consists of Sections 25-A to 25-J inclusive. Under Section 25J, it is stated that the provisions of Chapter V-A shall have effect notwithstanding anything inconsistent therewith contained in any other law. There is a proviso that, where under the provisions of any other Act or rules, or orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under the Industrial Disputes Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under the Industrial Disputes Act.

22. Counsel on behalf of the respondent contended that Sections 25-F, 25-FF and 25-FFF of the Industrial Disputes Act related to compensation in case of retrenchment or compensation in case of transfer of undertakings or compensation in case of closing down of the undertakings and that in the present case there was a closure and therefore retrenchment, if any, would be under Section 25-FFF of the Industrial Disputes Act. Emphasis was also placed by counsel for the respondents on the provisions of Chapter V-A of the Industrial Disputes Act and it was said that the settlement or agreement dated 25th August, 1965, which was set up by the appellants, was not a settlement under Section 25-F of the Industrial Disputes Act. Another contention was advanced by counsel for the respondents that the provisions of Chapter V-A would have effect notwithstanding anything inconsistent therewith contained in any other law and this was not a case where anything would be found to be inconsistent with any law.

23. Counsel for the appellants, on the other hand, put in the forefront not only the agreement dated 25th August, 1965, but also the observations and finding in the judgment at page 254 of the paper book that the agreement was bona fide extinguished by circumstances beyond its control. The learned judge discussed the agreement and settlement at pages 252 to 254 of the paper book and observed that, as far as clerks of the Ghat establishment and the Assam clerical and subordinate staff of the company were concerned, the Rivers Steam Navigation Company Limited agreed to avoid retrenchment of the Ghat clerical staff and in case of Assam staff there was no agreement to avoid retrenchment. At page 253 of the paper book it was observed in the judgment as follows : " It is not a question of proposed retrenchment of the staff of the Ghat establishment but in effect to really close down the company as a whole and to transfer its assets and liabilities to a new company set up by the Government of India," The further observation at

page 254 of the paper book is as follows : " The real point of merit, however, on this point so far as the Government is concerned, is that the agreement with the Ghat staff has now become incapable of implementation as a result of the Indo-Pakistan hostilities and the consequent closure of the company and that the notice of intention to close the Ghat establishment was given to the concerned Union nearly a year ago." The further observation in the judgment at page 254 of the paper book is as follows : " If the company and its business cease to exist due to circumstances beyond its control, it will be illogical and incomprehensible to say or hold that an agreement between such a company which cannot exist any more except by transferring all its assets and liabilities to a new transferee company must still bind the transferee who as a part of its liabilities must carry the burden of the agreement between that transferor company and its workmen made under circumstances which are now so totally changed that the whole substratum of the transferor company with whom the agreement was made, is completely gone. Such an agreement cannot be regarded as a covenant running with company bona fide extinguished by circumstances beyond its control." These observations in the judgment indicate, first, that there is a finding that there is a closure of the Rivers Steam Navigation Company Limited and, secondly, that the agreement dated 25th August, 1965, has been extinguished.

24. It is essentially a question of fact as to whether there is a closure and it is equally a question of fact as to whether the agreement has been extinguished by circumstances beyond control as was found by the learned judge. The learned judge looked at the interest of the company as also the interest of the workers as a part of the larger interest of the company and considered the scheme from that point of view. That is why the learned judge modified Clause 7 of the scheme. The modifications are, first, that the new company shall take as many of the existing staff of labour as possible and as can be reasonably taken over by the transferee company and, secondly, that those employees who cannot be taken over shall be paid by the transferor company all moneys due to them under the law and all legitimate and legal compensations payable to them either under the Industrial Disputes Act or otherwise legally admissible and that such moneys shall be provided by the Government of India to the existing transferor company who will pay these dues. Counsel for the appellants rested the case of the appellants on Clause 7(c) of the scheme and, in particular, the agreement dated 25th August, 1965, and contended that, if any worker or workman could not be taken over, the worker or workman would raise his claim under the agreement dated 25th August, 1965. If there is a finding that there has been a closure of the company and if there is a finding that the agreement has become extinguished, the enforceability of the agreement is imperilled for ever and the worker or workman cannot set up the agreement any further. It was not within the scope of the scheme to find out whether, first, there was a closure of the company within the meaning of the Industrial Disputes Act and, secondly, whether the agreement has become extinguished so as to close the door of the workers for ever against enforcing that agreement. The claim of the workers under the Industrial Disputes Act based on

the agreement dated 25th August, 1965, was not within the jurisdiction and province of the application for sanction of scheme. If, on the other hand, these findings of the learned judge remain that there was a closure of the company and that the agreement became extinguished, Sub-clause (c) of Clause 7 of the scheme may not be effective for enforcement by the workers. If it be the intention of the learned judge that the workers ' interest was of great consideration and because of which in the words of the counsel for the respondents, a higher form was applied by the learned judge in allowing the workers the right to represent their grievances and their case it would be robbing Sub-clause (c) of the content by depriving the workers or workmen from asserting their claims under the agreement. I am of opinion that the questions, first, whether there is a closure of the company within the meaning of the Industrial Disputes Act, secondly, whether the agreement dated 25th August, 1965, is capable of enforcement, thirdly, whether the workers or workmen are entitled to prefer and assert their claims on the agreement dated 25th August, 1965, and fourthly, whether the Rivers Steam Navigation Company Limited and the new transferee company are entitled to assert that there has been a closure and further that the agreement is not capable of enforcement should all be left open for the rival contentions to be pursued in the proper form and on proper materials and in the proper jurisdiction. It must be made clear that these observations are made not with a view to nurse any litigation but for the express purpose of saying that the findings of the learned judge in the judgment should not remain as a bar to any claim that may be made by any one in future or any defence that may be made by the Rivers Steam Navigation Company Limited or the transferee company in case any claim be made in future in respect of the agreement. Counsel for the appellant placed considerable emphasis on the provisions of the Industrial Disputes Act and, in particular, Section 18 of the Industrial Disputes Act to assert the binding character of the agreement. I am of opinion that this question should also be left open. Whether the agreement has the binding character or the agreement is binding or the agreement has ceased to be binding, all these questions, in my opinion, should be left open for consideration in the event any claim is made or in the event of any defence being raised to such a claim.

25. Counsel for the appellants submitted that the scheme should be modified to make it clear that the workers or workmen would have the liberty to apply in the event of any claim being made under the agreement. I am of opinion that no such liberty should be given save what is in the scheme. The agreement will have to be enforced in properly constituted proceedings. I am of opinion that, if any claim be made in the proper jurisdiction, it will be a matter for enforcement of that claim in properly constituted proceeding. It is needless to say that, unless there is adjudication, there cannot be any enforcement of the claim and such adjudication has to be made in a proper forum. As far as the scheme is concerned, Sub-clause (c) of Clause 7, which was modified by the learned judge, is of wide amplitude that those of the employees who cannot be taken over shall be paid all legitimate and legal compensations payable to them under the

Industrial Disputes Act or otherwise legally admissible.

26. The third contention on behalf of the appellant was that the provisions contained in Section 391 of the Companies Act were not available to a Government company. Counsel for the appellants submitted that the veil of the company should be pierced and it was to be found that both the Rivers Steam Navigation Company Limited and the transferee company were Government companies. Reliance was placed on Sections 617, 619 and 620 of the Companies Act in support of the contentions that the provisions indicated the rights and privileges of a Government company. This contention was advanced before the learned judge and the contention on behalf of the appellants was not accepted. It will appear from the definition section, namely, Section 2, Sub-sections (10), (16) and (18), that company, existing company and Government company are defined. Government company as defined means a Government company within the meaning of Section 617. In Section 617, it is indicated that Government company means any company in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary of a Government company as defined. Section 619 indicates that certain sections, namely, Sections 224 to 233 of the Companies Act, are to apply to Government companies as enacted in Section 619. Section 620 of the Companies Act indicates that the Government may, by notification, direct that any of the provisions of the Companies Act, other than Sections 618, 619 and 619A, specified in the notification shall not apply to any Government company or shall apply to any Government company only with such exceptions, modifications and adaptations as may be specified in the notification. Counsel for the appellants contended that the Government could by notification achieve the object of having the scheme and that it was not within the contemplation of Section 391 of the Companies Act that the Government could have taken advantage of the section. I am unable to accept that contention. The provisions of the Companies Act bind the Government company. The constitution of the Government company has to be in accordance with the provisions of the Companies Act. The administration of the Government company is also to be in accordance with the provisions of the Companies Act with such modifications as are applicable to Government companies. To suggest that a Government company will be deprived of the right conferred by Section 391 of the Companies Act is to denude the provisions of the Companies Act of their content and character and to deprive the Government company of the rights under the statute. The language of the provisions does not have either any restrictive operation as far as Government companies are concerned or fetter the jurisdiction of the court in relation to Government companies.

27. Arguments were advanced at the Bar about piercing the veil of the company and reference was made to the *Daimler Company case*¹, *Tunstall v. Steigmann*², and the decision of the

Supreme Court in State Trading Corporation case, [1963] 33 Comp. Cas. 1057 ; (1964) 2 S.C.A. 201 (S.C.) and another decision in *Andhra Pradesh State Road Transport Corporation v. Income-tax Officer, B-1 B-Ward, Hyderabad*³, It will appear from those decisions that the court when occasion demanded pierced the veil to find out as to what the constitution of the company is. In Andhra Pradesh State Road Transport Corporation case, it was found that, though the company was owned by the State, the Corporation had a separate personality. The decision in the State Trading Corporation case is of importance in finding out as to whether the State is a citizen or not in order to enforce the rights which are available to citizens. Counsel for the respondents, in my view, rightly contended that piercing the veil is not allowed in ordinary cases but will apply in finding out the status of a person either in revenue matters or in cases of fraud or in case of finding out the alien character of the Corporation as happened in the Daimler Company case. In the present case the aspect of piercing the veil is not of any importance for the obvious reason that the two companies, namely, Rivers Steam Navigation Company Limited and the transferee company, are entities recognized by law. What counsel for the appellants submitted was that the transfer was a sham. It was said that a Government company was transferring to a Government company and a piece of legislation was being used to achieve that purpose. If the Government company is entitled to take recourse to the Companies Act, I do not see any reason as to why it should be described as a sham just because it is a Government company. A Government company is entitled to the same rights and privileges as any other company in this land.

28. The fourth contention on behalf of the appellants was that the provisions of Section 394 of the Companies Act were not applied in the present case. It was said that, Section 394 would indicate that where an application is made to the court under Section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section and it is shown to the court that the compromise or arrangement has been proposed for the purpose or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies and under the scheme the whole or any part of the undertaking, property or liabilities of the scheme is "to be transferred, the court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all matters mentioned therein. What was said by counsel for the appellants was that the provision contained in Clause (a) of Sub-section (1) of Section 394 was not complied with, namely, that there was no evidence in the present case, that it was a scheme for reconstruction or the amalgamation of companies. Reliance was placed by counsel for the appellants on the decision of the Supreme Court in *Anakapalle Co-operative Agricultural and Industrial Society Ltd, v. Workmen*₂, in support of the contention that the court would have to be satisfied before the court exercises its powers of sanctioning a scheme. It will appear from the petition that it was an application under Sections 391 and 394 of the Companies Act. There is no particular meaning in the word "reconstruction" or in the word "amalgamation". It has to be

found out from the scheme read as a whole whether it is a case of reconstruction or whether it is a case of amalgamation. In the present case, the entire affidavit evidence as also the way the petition was presented and the manner in which the scheme has been sanctioned prove beyond any measure of doubt that it is a case of reconstruction. In case of amalgamation, all the rights and liabilities are amalgamated and the transferee company becomes vested with all such rights and liabilities. In the present case the scheme to which reference has been made shows that the Rivers Steam Navigation Company Limited is reconstructed for certain purposes. It is discharging certain functions for a certain time until it will be dissolved. The transferee company under the scheme will fulfil other purposes as fully mentioned in the scheme.

29. Before I conclude, I should state here that some arguments were advanced by counsel for the appellants as well as counsel for the respondents as to the meaning of closure, the meaning of retrenchment as also the conditions under which the retrenchment would be available. Reliance was placed by counsel for the respondents on the decision in Barsi Light Railway Company's case, (1956) 11 F.J.R. 317; (1957) S.C.A. 57 (S.C.) and counsel for the appellants, on the other hand, relied on the provisions of the Industrial Disputes Act and the nature and character of the agreement and contended that the workers were entitled to the fullest advantage under the Industrial Disputes Act. I have already stated that I do not desire to express any opinion whatever on the rival contentions of the parties as also on the question whether it is competent to the workmen to advance their claims or the company to resist their claims in properly constituted proceedings. All these questions are left open.

30. For all these reasons, I am of opinion that the contentions advanced by the appellants fail under the three heads and the contention under the head that the scheme is bad, because the agreement has not been given effect to, also fails with the observations expressed hereinbefore that the question as to whether the agreement is capable of enforcement or not is left open. The scheme as sanctioned is upheld. I desire to add one word in connection with the scheme. The following words appear in Clause 8 : "Upon the approval of the scheme by the court, the existing company shall be closed. " Whether the words "the existing company shall be closed" mean that there is a closure of the company within the contemplation and meaning of the Industrial Disputes Act is left open.

31. Counsel for the respondents invited our attention to the fact that some dates appear in the scheme. One of the dates which appears in some clause is 30th June, 1967. Because of the pendency of the appeal that date requires modification. Counsel for the respondents submitted that the date required modification because of altered and changed circumstances occasioned by the appeal. Wherever 30th June, 1967, occurs it should read as 30th August, 1967.

32. With these observations the scheme as sanctioned is upheld. The appeal is, therefore,

dismissed. This is a case where I am of opinion that each party should pay and bear its own costs.

S.K. Mukheejee, J.

33. I agree.

Cases Referred.

1[1916] 2 A.C. 307

2[1962] 2 Q.B. 593

3(1964] 52 I.T.R. 524. (S.C)