Before Binod Kumar Roy, C.J., N.K. Sud & Hemant Gupta, JJ

SWIFT FORMULATIONS PVT. LTD. &
ANOTHER,—Transferor Companies

versus

IND SWIFT LTD.,—*Transferee Company*

Company Petition No. 138 of 2003

31st March, 2004

Companies Act, 1956—S. 391(2)—Sanctioning the scheme of amalagamation of Companies—S. 391(2) provides that a majority representating 3/4th in value of the creditors/shareholders present & voting at the meeting has to agreed to the arrangement—Whether majority in number represent 3/4th of the value of total creditors/ shareholders or of the value of creditors/shareholders actually present & voting in the meeting—Interpretation—Under Section 391(2) requirement of majority of 3/4th has to be seen in relation to the value of shares/credits represented by persons who are present & voting in the meeting either in person or by proxy—Does not mean that 3/4th majority has to be of the total value of the creiditors/shareholders of the Company.

(Euro Cotspin Ltd.'s case CP No. 324 of 2002 decided on 11th July, 2003, over-ruled)

Held, that for the purposes of Section 391(2) of the Act, the requirement of majority of three-fourth has to be seen in relation to the value of shares/credits represented by the persons who are present and voting in the meeting, either in person or by proxy. This provision cannot be interpreted to mean that the three-fourth majority has to be of the total value of the creditors/shareholders of the Company. It has been correctly pointed out that taking the later view would render the words "present and voting" redundant, which would be contrary to the well settled rules of construction. If the intention was to have three fourth majority of the total value, the provisions would have been worded accordingly. The language of Section 391(2) of the Act is totally unambiguous and a plain reading of this provision clearly shows that the majority in number by which a compromise or arrangement is approved should represent three-fourth in value of the creditors/shareholders who are 'present and voting' and not of the 'total' value of the shareholders or creditors of the Company.

(Para 13)

Anil B. Dewan and L.M. Suri, Senior Advocates, with Deepak Suri and Sumeet Goel, Advocates, in CP 203 of 2003.

R.S. Arora, Advocate, in CP 8 of 2003.

Amit Singh, Advocate, in CP 138 of 2003.

Sumeet Goel, Advocate, in CP 150 of 2003.

Akshay Bhan, Advocate, in CP 223 of 2003, for the petitioners.

M.L. Sarin, Sr. Advocate, with Ms. Jaishree Thakur, Advocate, Amicus Curiae.

JUDGMENT

N.K. SUD, J.

(1) In this reference, we are called upon to interpret Sub-section (2) of Section 391 of the Companies Act, 1956 (for short 'the Act') and determine its true meaning and import.

(2) This provision reads as under :—

> "(2) If a majority in number representing three-fourth in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under the rules made under section 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members or all the members of the class, as the case may be, and also on the Company, or in the case of a company which is being wound up, on the liquidator and contributories of the company."

(3) Company Petition No. 138 of 2003 is a petition under Sections 391(2) and 394 of the Act for sanctioning the Scheme of amalgamation of companies; namely, Swift Formulations Private Limited and Mukur Pharmaceuticals Company Private Limited, with another company: namely, Ind-Swift Limited.

(4) As per the provisions of sub-section (2) of Section 391 of the Act, a majority in number representing three-fourth in value of the creditors/shareholders present and voting at the meeting, has to agree to this arrangement. In this case, the meetings of unsecured creditors/ shareholders of the transferee company were held on 22nd April, 2003. The meeting of unsecured creditors was attended by 17 creditors representing credit of the value of Rs. 15,48,77,556/-. The total value of unsecured creditors of this company is Rs. 27,19,01,000/-. The arrangement was unanimously approved. Similarly, in the meeting of the share-holders, 38 share-holders representing shares of the value of Rs. 1,25,17,560/- were present at the meeting. 37 share-holders voted for approval of the arrangement, whereas one share-holder holding 100 shares of the value of Rs. 1,000/- voted against it. However, the total value of the issued and subscribed share capital of this Company is Rs. 4,39,50,000/-.

(5) When the petition came up for consideration before the Company Judge, a question arose as to whether the arrangement had been approved by the requisite majority as prescribed in Sub-section (2) of Section 391 of the Act or not ? It was contended on behalf of the petitioners that since the arrangement had been approved by a majority representing three-fourth in value of the creditors/shareholders present and voting at the respective meetings, the requirement of Sub-section (2) of Section 391 of the Act stood fulfilled. In support of its claim, counsel for the petitioners had placed reliance on the judgment of the Calcutta High Court in re: **Hindustan General Electric Corporation Limited (1),** wherein it has been held that the "intention of the framers of this Section was that the majority of the three-fourth value must be of the persons, who were present and who took part in the voting." However, the Company Judge noticed that in CP No. 324 of 2002 in the matter of Euro Cotspin Limited, decided on 11th July, 2003, it had been held that three-fourth majority envisaged in sub-section (2) of Section 391 of the Act has to be of the total value of the creditors/share-holders and not merely of the value of the creditors/share-holders present and voting at the meeting. Since the Company Judge entertained his doubts about the correctness of the view expressed in the case of Euro Cotspin Limited (supra) he was

(1) AIR 1959 Calcutta 679

of the view that the matter required consideration by a larger Bench for resolving the following question :—

> "Whether majority in number as envisaged in sub-section (2) of Section 391 of the Companies Act, 1956 should represent three-fourth of the value of total creditors/ share-holders or of the value of creditors/share-holders actually present and voting in the meeting ?"

(6) Since in CP Nos. 8, 150, 203, and 223, of 2003, also the same question was involved, the same were also ordered to be heard along with CP 138 of 2003.

(7) This is how the matter has now been placed before us.

(8) Following main arguments on behalf of the petitioners were advanced by Mr. Anil B. Dewan, Senior Advocate :—

(i) Ordinarily the decisions in the meetings of the companies are taken by a simple majority of those who attend such meetings but when a company proposes to enter into a compromise or arrangement which is likely to affect the interest of all the creditors/share-holders, their interest needs to be safeguarded. It is for this purpose that a larger majority is required to approve such a compromise or arrangement as per sub-section(2) of Section 391 of the Act.

(ii) A plain reading of this provision clearly shows that an arrangement requires approval of the majority in the following manner :—

(a) it must be approved by majority in number of the persons present and voting either in person or, where the proxies are allowed, by proxy ;

(b) the above majority in number must also represent three-fourth in the value of creditors/share-holders present and voting.

The above provision nowhere provides that the majority in number should represent three-fourth of the"total value" of creditors/share-holders. If such an interpretation was to be made, the words "present and voting" would become redundant.

(iii) Under the old Indian Companies Act, 1913 the provision corresponding to Sub-section (2) of Section 391 of the Act was sub-section(2) of Section 153, which reads as under :—

> "(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or class of members, as the case may be, and also on the company, or in the case of a company in the course of being wound up, on the liquidator and contributories of the company."

The majority envisaged in the above provision was in respect of creditors/share-holders who are present at the meeting either in person or by proxy. There was no requirement that such persons must also be actually voting. The base under this provision was much wider than the base in sub-section(2) of Section 391 of the Act, which requires three-fourth majority of the members who are not only present in person or by proxy, but who also exercise their right to vote. Thus, in Section 391(2) of the Act, persons who are present in the meeting but do not vote are excluded from consideration.

(iv) The corresponding provision under the English law viz. sub-section(2) of Section 206 of the Companies Act, 1948, which is identically worded, reads as under :—

> "(2) If a majority in number representing three fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or

arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company."

In the Thirteenth Edition of 'Buckley on the Companies Act', it has been observed that for the purposes of the above provision "The sanction of a majority in number representing three-fourths in value of the members of the class present and voting in person or by proxy is sufficient, although it may not represent three-fourths in value, nor, semble, constitute a majority in number of the total class."

The provisions of sub-section (2) of Section 391 of the Act are in *pari-materia* with the above provision under the English law and, thus, the base for determining the three-fourth value has to be value of shares/credits held by the members who are present and voting at the meeting and not the total value of the shares/credits of the Company.

(v) The Companies Act, 1948 was superseded by the Companies Act, 1985, wherein an identical provision was made in sub-section (2) of Section 425, which reads as under :—

"(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all creditors or the class of creditors or on the members or class of members (as the case may be), and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company."

In this provision again, the three-fourth value is required to be calculated in respect of the value of shares/credits represented by the persons who are present and voting at the meeting.

(vi) In the English Company law by Professor Robert R. Pennington (5th Edition), at page 590, the use of words 'present and voting' has been explained as under :—

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

(vii) This provision has further been explained in the Twenty-Fourth Edition of Palmer's Company Law (at page 1145) as under :—

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

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

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

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

However, this is not the whole requirement, because in addition the court requires to be satisfied that the class is fairly represented. If, for instance, there were altogether, 1,000 shareholders holding 10,000 shares in all, the court would be unlikely to be satisfied by the statutory majorities at a meeting at which 10 members holding 100 shares in all were present and voted." (Emphasis supplied).

(viii) In Gower's Principles of Modern Company Law (Sixth Edition) (at page-585) the scope and meaning of the concept of "majority in number representing three fourths in value of the creditors or class of creditors or members or class of members, as the case may be.

present and voting", has been explained by giving an illustration as under :—

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

In all these three cases the requisite majority is of the members entitled to vote and actually voting either in person or by proxy where proxy voting is allowed. This may and in the case of a public company normally will, be much less than a majority of the total membership, and may even be less than a majority of the members present at the meeting, for those who refrain from voting are ignored. To take an extreme case: A meeting of a company with 500,000 preference shares without voting rights, and 500,000 ordinary shares each with one vote, is attended only by five ordinary shareholders, four with one share each and one with a hundred shares. If on a poll a resolution is voted for by three of the holders of one share and against by the fourth shareholder with one share, the holder of the hundred shares abstaining, the resolution will have been duly carried even if it is an extraordinary or special resolution

notwithstanding that only three out of a total of one million share, three out of 500,000 total votes and three out of 104 votes exercisable at the meeting, have actually been polled in its favour. As we shall see later, the procedure of voting on a show of hands, unless a poll is effectively demanded, may produce even greater anomalies." (Emphasis supplied).

(ix) In Re: **Bessemer Steel and Ordiance Company (2),** wherein identical provisions of the English Law have been interpreted as under :—

"The only question is, whether the agreement has been approved by the proper number of creditors required by the Act. The 2nd section of the Act provided that the meeting of the company's creditors may approve and sanction the agreement:—"If a majority in number representing three-fourths in value of such creditors or class of creditors, present either in person or by proxy at such meeting, shall agree to the arrangement or compromise, and the agreement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors (as the case might be), and also on the liquidators and contributories of the company." The question, therefore, is whether "the majority representing three-fourths in value" is to be majority of all the creditors, in which case the 120,002 12s. 3d. does not constitue three-fourths of 170,000, or the majority representing that value of the creditors present at the meeting? In the latter case, all the creditors but one, for a very small amount, approved the agreement.

We say that the clause in the Act is satisfied by the sanction of three-fourths in value of the persons present at the meeting, and this was decided by your Lordship in re Tunis Railway Company (22nd May, 1874), affirmed on appeal (before the Lords Justices, 11th July, 1874).

(2) J. Chancery Division 251

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

MALINS, V.C. :—

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

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

(3) 2003 (116) Company Cases 413

said to have voted because casting an invalid vote is no voting in the eyes of law. Thus, it was held that "the proper construction to be placed in calculating whether any resolutioin is approved or passed by a three-fourth majority present and voting necessarily mean the value of the valid votes and out of the same whether the resolution has been passed with three-fourths majority". The learned counsel pointed out that the value of the votes in favour of the arrangement was Rs. 1,83,39,59,275, which was not three-fourth of Rs. 2,53,36,43,491, i.e. the value represented by the 18 creditors who were present in the meeting. This clearly shows that the base value for computation was only in respect of the creditors who were not only present but who had cast a valid vote.

(xi) Before the Bombay High Court in **Vasant Investment Corporation Ltd.** *v* **Official Liquidator, Colaba Land and Mill Co. Ltd., (4)**, the scheme was unanimously approved at a meeting of shareholders where 95 shareholders holding a total number of 30,675 shares out of a total of 49,000 shares, were present. Thus, these 95 shareholders represented approximately 62% of the shares of the company. The contention of the Official Liquidator that since the shareholders who were present at the meeting represented only 62% share, it was necessary and in the interest of justice that the views of rest of the shareholders be also ascertained, was negatived by the Court on the ground that once a scheme is approved by the requisite majority under Section 391 of the Act, it becomes binding on all the members of the company. Dealing with this issue, the Court, at page-29 of the report, observed as under :—

"Hence, if at a meeting called to consider a scheme under S. 391, the scheme is passed by the requisite majority, then it becomes binding on all the members of the company, irrespective of the question whether they have expressly consented to it or not. Hence, under S. 391 of the Companies Act, it is not necessary for the court to ascertain

(4) (1981) 51 Company Cases 21

whether all the members of a company have expressly consented to the scheme, Under the Section, once the scheme is passed by the requisite majority, all the members become bound by it. In this connection, a reference may be made to In re Trix Ltd. reported in [1970] 3 All ER 397 (Ch D), which makes a clear distinctioin between a stay of winding up under S. 245 of the English Companies Act (equivalent to S. 466 of the Companies Act. 1956) and a stay under a schem of arrangement framed under S. 206 of the English Act (equivalent to S. 391 of the Indian Act). While the former requires express consent of all share holders, the latter provides for a meeting of the share holders and creditors which is required to approve of the scheme by a prescribed majority. On such approval the scheme becomes binding on all the share holders or creditors, as the case may be. In the case of **S.K. Gupta** *v* **K.P. Jain** reported in [1979] 49 Comp Cas 342, at p. 350, the Supreme Court has observed as follows :—

Section 391 envisages a compromise or arrangement being proposed for consideration by members and/ or members of the company and the company, as the case may be. It was always open to the company to offer a compromise to any of the creditors or enter into arrangement with each of the members. The scheme in this case is essentially a compromise between the company and its unsecured creditors. The scheme when sanctioned does not merely operate as an agreement between the parties but has statutory force and is binding not only on the company but even dissenting creditors or members, as the case may be. The effect of the sanctioned scheme is to supply by recourse to the procedure thereby prescribed the absence of that individual agreement by every member of the class to be bound by the scheme which would otherwise be necessary to give it

validity (see **J.K. (Bombay) P. Ltd. *v* New Kaiser-I-Hind Spg. and Wvg. Co. Ltd. [1969] 2 SCR 866, 891 ; [1970] 40 Comp Cas 689 (SC)".**"

(xii) From the facts of this case, it is evident that three-fourth majority envisaged under Section 391 (2) of the Act has to be of the value of the creditors present and voting and not of the local value of the creditors.

The Madras High Court in Re : **Nods Worldwide Ltd. (5),** where also, the arrangement was approved in a meeting which was attended by 66 out of total of 300 shareholders, who represented 46.21% of the paid-up capital of the transferee company, it was held that the requirement of Section 391 of the Act stood complied with. At page 896, it has been observed as under :—

". . . . . Those who attended the meeting, controlled 46.21 per cent of the paid up capital of the transferee company and were almost unanimous in according approval of the scheme. The requirement of section 391 of the Companies Act, 1956, regarding the need for a majority in number and the need for 75 per cent of the value of the shares held by those attending the meeting, has therefore, been satisfied . . . . . "

(xiii) To interpret the requirement of majority under Section 391 (2) of the Act to mean three-fourth majority of the total value of shares/credits would not only render the expression "present and voting" as redundant but also make the provision totally unworkable and impractical. In today's corporate world in our country, there are big public limited companies, shares of which are held by a large number of people from all over the country. In some of the well known companies, the number of share-holders is as large as about 30 lacs. In such cases, it is almost an impossibility to convene a meeting which can be attended by persons representing three-fourth of the total value of share-holding. The view expressed

(5) 2002 (109) Company Cases 891

by the learned Company Judge in the case of **Euro Cotspin Limited** (supra) that three-fourth majority contemplated under Section 391 (2) of the Act is of the total value of credits or shares, is not correct. In the case of **Hindustan General Electric Corporation Limited** (supra), the total value of the preferential share-holding of the company was Rs. 8,45,200 whereas the value represented by the shareholders who were present and voting in the meeting was only Rs. 6,42,700. However, those who voted for the resolution represented value of Rs. 4,42,700 as one of the shareholder who was present, did not vote. The resolution was held to have been carried by the requisite majority as envisaged under Section 391 (2) of the Act. Admittedly, Rs. 4,42,700 is much less than three-fourth of Rs. 8,45,200, the total value of the preferential shares.

(9) Mr. Amit Singh, appearing in CP 138 of 2003, reiterated the arguments advanced by Mr. Divan. Additionally, he drew our attention to Article 368 of the Constitution of India dealing with amendment of the Constitution. Clause (2) of Article 368 requires the Amendment Bill to be "passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting". He further referred to Article 169 of the Constitution wherein, for the purposes of abolition or creation of Legislative Councils in the States, similar majority has been prescribed. The scope and meaning of the expression "present and voting" in this context had come up for consideration before the Madras High Court in **D. Jayaraman** *v.* **Government of Tamil Nadu and another, (6)**. On 13th May, 1986, a Government Resolution was moved in the Legislative Assembly for abolition of the Legislative Council which came up for discussion on the very next day i.e. 14th May, 1986. The members present in the House on that date were 222. However, before the voting took place, 60 members belonging to Congress-I and 1one G.K.N.C. member withdrew from the House. The Resolution was passed with 136 votes in favour and 25 votes against it. The question for consideration was as to whether 136 votes constituted "two-thirds of the members of the Assembly present and

(6) AIR 1987 Madras 215

voting". The Madras High Court held that "by a plain reading of the article, the words present and voting occurring in Art. 169(1) would mean only those who were physically present and voting. It will not include those who withdrew from the House at the time of voting". He, therefore, contended that the three-fourth majority for the purpose of Section 391(2) of the Act has also to be construed in the same manner from out of the value of the creditors/shareholders who are present and voting either in person or by proxy at the meeting. According to him, the plain language of this provision cannot possibly be stretched to hold that the majority prescribed is of three-fourth of the value of total creditors/shareholders of the company. He also referred to the observations made to the same effect in Halsbury's Laws of England (Fourth Edition). In para 1531, the learned author, while dealing with identical provisions of Sub-section (2) of Section 206 of the Companies Act, 1948 has observed that the majority required is the majority in number representing three-fourth in value of those present and voting at the meeting in person or by proxy.

(10) Mr. R.S. Arora, Advocate, appearing on behalf of the petitioner in CP 8 of 2003, adopted the arguments advanced by his colleagues Mr. Divan and Mr. Amit Singh. He further pointed out that as per Rule 78 of the Companies (Court) Rules, 1959, the report of the result of a meeting under Section 391(2) of the Act has to be submitted by the Chairman on the prescribed form. Form 39, within a fixed time frame. He, then, referred to Form 39 to show that information sought therein was only in respect of the value of shares/ credits represented by those who were present and voting. No information is required to be furnished either of the total value of the shares or the total value of the creditors of the company. This itself, according to him, shows that three-fourth majority envisaged under Sub-section (2) of Section 391 of the Act is of the value of the shares or the credits represented by the creditors/shareholders present and voting at the meeting.

(11) Mr. Akshay Bhan, appeared in CP 223 of 2003 and Mr. Sumeet Goel, appeared in CP 150 of 2003, and adopted the arguments of their colleagues.

(12) Mr. M.L. Sarin, learned Amicus Curiae, submitted that on the basis of the language of Section 391(2) of the Act and well settled rules of construction, the interpretation canvassed by the counsel

for the petitioners appeared to be correct. He pointed out that normally decisions in the meetings are taken by a simple majority of the persons who are physically present in the meeting. However, since the decision required to be taken under Sub-section (2) of Section 391 of the Act is of far reaching consequences and affects the rights of all the creditors /shareholders, a second safeguard has been provided. In other words, the resolution has to be passed not only by a majority in number of the persons present and voting but additionally such majority must represent three-fourth of the value of shares/credits held by the persons present and voting. He pointed out that in the corresponding provision of Sub-section (2) of Section 153 of the Indian Companies Act, 1913 (which has already been reproduced in the earlier part of this judgment), the requirement of three-fourth majority in value had to be seen in relation to the value of the shareholders/ creditors who were present either in person or by proxy. It was not necessary that such person should also have participated in the voting. He submitted that as per the Company Law Committee Report, 1952, it was recommended that the words "and voting" between the words"present" and "either" be added. The object of this amendment was explained so as "to ensure that decisions in regard to compromises and arrangements are taken by a majority of three-fourths of the members present and voting in class meetings". It was in this background that the provisions of Section 391(2) of the Act were enacted. If this provision were to be interpreted to mean that the majority must represent three-fourth of the total value of the shares/ credits, then, the words "present and voting" would become redundant, which is against the well settled rules of construction. He further pointed out that the Act contains enough safeguards to protect the interests of the creditors/shareholders. As per the provisions of the Act, every creditor/shareholder has to be given 21 days notice along with a copy of the arrangement. Notice is also required to be given to the Central Government. However, if despite sufficient notice, a creditor/ shareholder choses not to attend the meeting, his inaction cannot possibly hold-up the decision making process of the company. According to him, if even after a decision has been arrived by the requisite majority but the Company Court finds it to be against the interest of the creditors/shareholders, it can still not sanction the compromise or arrangement. He further submitted that in the modern corporate world, there are companies in which the number of shareholders runs

into lacs and such shareholders are located in different parts of the country. To require such companies to have the approval under Section 391(2) of the Act from a majority representing three-fourth of the total value of its shares is almost impossible. Such an interpretation would render the provision unworkable. He also pointed out that despite a thorough study into the matter,he had not come across even a single case, either under the English Law or under the Indian Companies Act, taking the same view as expressed in the case of **Euro Colpin Limited** (supra).

(13) Having heard learned counsel and perused the corresponding provisions of the old Act, i.e. the Indian Companies Act, 1948, and also the provisions under the English Law, we are of the view that for the purposes of Section 391(2) of the Act, the requirement of majority of three-fourth has to be seen in relation to the value of shares/credit represented by the persons who are present and voting in the meeting, either in person or by proxy. This provision cannot be interpreted to mean that the three-fourth majority has to be of the total value of the creditors/shareholders of the company. It has been correctly pointed out that taking the later view would render the words "present and voting" redundant, which would be contrary to the well settled rules of construction. If the intention was to have three-fourth majority of the total value, the provisions would have been worded accordingly. In our view, the language of Section 391 (2) of the Act is totally unambiguous and a plain reading of this provision clearly shows that the majority in number by which a compromise or arrangement is approved should represent three-fourth in value of the creditors/shareholders who are present and voting and not of the total value of the shareholders or creditors of the company.

(14) We may usefully refer to the following observations of the Supreme Court in **Sajjan Singh** *v.* **State of Rajasthan, (7)**, in the context of Article 169 (1) of the Constitution :—

> "169. Abolition or creation of Legislative Councils in States.-(1) Notwithstanding anything in Article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having

(7) AIR 1965 S.C. 845

no such Council, if the Legislative Assembly of the State passes a resolution, to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-third of the members of the Assembly present and voting."

The Apex Court explained the meaning of the words "present and voting" in the above provision, as under :—

"It would thus appear that the broad scheme of Art, 568 is that if Parliament proposes to amend any provision of the constitution not enshrined in the proviso, the procedure prescribed by the main part of the article has to be followed. The Bill introduced for the purpose of making the amendment in question has to be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. This requirement postulates that a Bill seeking to amend the relevant provisions of the Constitution should receive substantial support from members of both the Houses. That is why a twofold requirement has been prescribed in that behalf. After the Bill is passed, as aforesaid, it has to be presented to the President for his assent and when he gives his assent, the Constitution shall stand amended in accordance with the terms of the Bill. That is the position in regard to the amendment of the Constitution of which the proviso does not apply."

(15) Section 391 (2) of the Act has also been enacted so as to ensure that a compromise or arrangement should receive substantial support from the creditors/shareholders. It is for this purpose that a two-fold requirement has been prescribed. Firstly, it must be approved by a majority in number of the members present and voting and in addition, such majority should also represent three-fourth value of the creditors/shareholders who are present and voting. This ensures that the persons representing nominal value of shares or credits, though may be in majority, may not take a decision which adversely affects the rights of the persons who have substantial share-holding or credit, but are in minority in numbers. Conversely, it also protects the rights of the small creditors/shareholders against persons holding large share-holdings or representing substantial credit.

(16) In **Shiv Shakti Coop. Housing Society, Nagpur** *v.* **Swaraj Developers and others, (8),** while dealing with the rules of construction, the apex Court has observed as under :—

"19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (see **Institute of Chartered Accountants of India** *v.* **Prince Waterhouse)** The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in **Crawford** *v.* **Spooner** courts cannot aid the legislatures defective phrasing of an Act, we cannot add or mend, and by constructioin make up deficiencies which are left there. (See **State of Gujarat** *v.* **Dilipbhai Nathjibhai Patel.)** It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See **Stock** *v.* **Frank Jones (Tipton) Ltd.)** Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself, (Per Lord Loreburn, I.C. in **Vickers Sons and Maxim Ltd.** *v.* **Evans,** quoted in **Jumma Masjid** *v.* **Kodimaniandra Deviah.)**

20. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid." Judge Learned Hand said, "but words just be construed with some imagination of the purposes which lie behind them".

(8) (2003) 6 S.C.C. 659

(See **Lenigh Valley Coal co.** *v.* **Yansavage.)** The view was reinterated in **Union of India** *v.* **Filip Tiago De Gama of Vedem Vasco De Gama."**

(17) similarly, in **Babua Ram and Others** *v.* **State of U.P. and another, (9),** the purpose of interpretation of a provision has been described in para-23, as under :-

> "23. The purpose of interpretationi is, therefore, to ascertain the intentioins of the legislature and to make it effective. If the statute is ambiguous or its meaning is uncertain, interpretaion is resorted to for ascertaining what the legislature meant by the words in the statute, although they do not express the legislative interest clearly and perfectly. In other words, if the statute is plain, certain and free from ambiguity, a bare reading of it suffices and its interpretation can never arise. In discovering the legislative intent, courts are not exercising legislative power but apply the rules of common sense applying certain legal principles."

On the basis of the above principles, we are satisfied that the language of section 391 (2) of the Act is plain and unambiguous. The words and phrases employed in this provision clearly show that the requirement of three-fourth majority relates to the value of shares/creditrepresented by the shareholders or members who are present and voting and not of the total value of shares/credit of the company. Same view has been expressed by the courts while interpreting identical provisions under the English Law. This, according to us, is the only interpretaioin that can be ascribed to the words "present and voting" in Sub-Section (2) of Section 391 of the Act. The contrary view expressed in thecase of **Euro Cotspin Limited** (supra), in our considered view, is not correct. Such a conclusion can only be reached if the words "three-fourth in value" are read as "three-fourth in total value" and the words ""present and voting" are ignored. Such an approach militates against the well settled rules of construction as it entails importing of the word "total" not used in the provision and also rejection of the words "present and voting" as meaningless.

(18) The reference is, accordingly, answered in the above terms.

(19) Let these petitions be now placed before the Company Judge for disposal in the light of our findings.

R.N.R.

(9) (1995) 2 S.C.C. 689