IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 469 of 1999

IN THE MATTER of Section 192 of the Companies Act

A N D

IN THE MATTER of Mechala Group Jamaica Limited

Dr. Lloyd Barnett, Derek Jones and Mrs. Sandra Minott Phillips instructed by Dimitri Singh and Miss Odia Reid of Myers, Fletcher and Gordon for Petitioner

John Vassell, Q.C. and Mrs. Janet Morgan instructed by Dunn, Cox, Orrett and Ashenheim for Supporting Creditors

Charles Piper instructed by Piper and Samuda for Supporting Creditors

Abe Dabdoub, Walter Scott and Mrs. Sharon Usim instructed by Daboub, Dabdoub and Company for Objectors.

Heard: January 13, 14, 17 and February 24, 2000.

CORAM: WOLFE, C.J.

The Petitioning Company was incorporated under the Companies Act of Jamaica on the 10th day of August, 1995, as a company limited by shares, under the name Mechala Investments Limited. By a Special Resolution and with the approval of the Registrar of Companies the Company changed its name to Mechala Group Jamaica Limited on the 27th of August, 1996.

The registered office of the Company is situated at 7 Harbour Street, Kingston, Jamaica.

The objects for which the Company was incorporated were to act as an investment company and as a holding company and the several other objects set forth in the Company's Memorandum of Association.

The original capital of the Company was $200.00 divided into 200 ordinary shares of $1.00 each. By a Special Resolution duly passed at an Extraordinary General Meeting of the Company held on the 2nd day of February, 1996 the existing ordinary shares of the company were converted from $1.00 shares to 1c (one cent) shares, and the share capital of the Company was increased to $10,000.00 by creation of 980,000 ordinary shares of 1c each.

By a Special Resolution duly passed at an Extraordinary General Meeting of the Company held on the 26th day of July, 1996, the capital of the Company was consolidated into 10,000 shares of $1.00 each and the share capital was increased to $215,868.00 divided into 4,460 ordinary shares of $0.36 each and 8,920 non-cumulative preference shares of $24.00 each.

By a Special Resolution duly passed at an Extraordinary General Meeting of the Company held on the 22nd day of October, 1996, the share capital of the Company was increased to $959,428,064.00 divided into 19,839,290 ordinary shares of $0.36 each and 39,678,580 non-cumulative preference shares of $24.00 each.

The Company is a holding company with limited assets of its own and which conducts substantially all of its business through subsidiaries. The Company, together with its consolidated subsidiaries, is -

(a) Jamaica's largest developer of housing, in particular low-income housing and related social and commercial infrastructure;

(b) the second largest distributor of foods and a major distributor of hardware, pharmaceutical, personal care and consumer products, and

(c) a major provider of insurance, investment management and other financial products and services.

Pursuant to two Indentures dated December 24, 1996 and February 26, 1997 respectively, made between the Company and the Bank of New York, the Company issued the undermentioned notes:

(i) US$475,000,000 of 12 3/4% Senior Notes and 12 3/4% Series B Senior Notes due on December 31, 1999 (hereinafter referred to as "the 1999 Notes")

(ii) U.S. $25,000,000 of 12% Senior Notes and 12% Series B Senior Notes due on December 31, 2002 (hereinafter referred to as "the 2002 notes') in order to raise funds for various purposes.

A portion of the net proceeds of 1999 Notes was used to pay off approximately J$2 billion of the then existing Jamaican dollar - denominated indebtedness incurred by the company and its subsidiaries in the ordinary

course of business. The result to the company was a significant reduction in interest cost while undertaking a foreign exchange risk. The company utilized its remaining net proceeds from sale of the 1999 Notes to consummate the acquisition of a 50% interest in International Finance Holding Ltd. which was owned by the Bank of Nova Scotia.

The net proceeds from the sale of the 2002 notes were used to refinance approximately J$840.2 million of Jamaican dollar denominated indebtedness incurred by the Group in the ordinary course of business. Such indebtedness was to mature by its terms at various dates during 1997. Again the result to the company was a significant reduction in interest cost while undertaking a foreign exchange risk.

The Company through the President of the Mechala Group Jamaica Ltd., Joseph Arthur Matalon, avers that the Company's business and results of operations have been and are expected to continue to be, adversely impacted on by the protracted decline in the Jamaican economy. The company did not generate operating income or cash flow sufficient to cover its interest expense during 1997 and 1998 and has a working capital deficiency of U.S. $70,211,000 at December 31, 1998.

The Company has not made the interest payments due on the 1999 Notes and the 2002 Notes payable on June 30, 1999 and August 15, 1999 respectively and will be unable to repay or refinance the 1999 Notes at their scheduled maturity on December 30, 1999.

The report of the Company's independent Accountants on the Company's Consolidated Financial Statements at December 31, 1998 expressed doubt about the company's ability to continue as a "going concern".

In addition, the company's recent poor operating performance in tandem with the difficult Jamaican economic environment and with the worldwide scarcity of capital available to companies located in emerging markets together with a variety of other factors has made it impossible for the company to refinance the Notes.

As a consequence of the foregoing the company deemed it necessary to ask the Holders of the Notes to accept a Scheme of Arrangement.

On November 18, 1999, upon an Exparte Originating Summons for Leave to Convene a meeting to consider a Scheme of Arrangement the Court ordered:

1. That the Applicant be at liberty to convene separate meetings to be held at the Jamaica Conference Centre, Duke Street, Kingston on Tuesday, the 21st December, 1999 at 2.00 p.m. and 4.00 p.m., respectively, and if for any reason that venue should be unavailable then at the Kingston Hilton Hotel, Knutsford Boulevard, New Kingston.

   (a) of the Holders of all the Applicant's issued and outstanding "12 3/4% Senior notes due 1999 and 12 3/4% Series B Senior Notes due 1999" aggregating Seventy Five Million United States Dollars (US$75,000,000). Principal amount

(hereinafter called the "1999 Notes') issued pursuant to Indenture dated December 24, 1996 and made between the Applicant and the Bank of New York.

(b) of the Holders of all of the Applicant's issued and outstanding "12% Senior Notes due 2002 and 12% Series B Senior Notes due 2002 aggregation Twenty Five Million United States Dollars (US$25,000,000) Principal amount (hereinafter called the "2002 Notes") issued pursuant to Indenture dated February 26, 1997 and made between the Applicant and The Bank of New York,

both for the purpose of considering, and if thought fit, approving without modification a Scheme of Arrangement proposed to be made between the Applicant and the Holders of the 1999 Notes and the 2002 Notes.

The meetings of Noteholders were duly held in accordance with the above Order.

At the meeting of the holders of "the 1999 Notes."

(a) Thirty six Holders of 1999 Notes whose Notes amounted in aggregate to US $42,654,000.00 and which represented 93.43% of the Aggregate Principal amount of "1999 Notes" present in person or by proxy voted to accept the scheme of arrangement; and

(b) Two Holders of 1999 Notes whose Notes amounted in aggregate to US$3,000,000.00 and which represented 6.57% of the Aggregate Principal amount of 1999 Notes present in person or by proxy voted to reject the Scheme of Arrangement."

The Scheme of Arrangement as modified was approved by a majority in number of the Noteholders which represents more than 75% in value of the Aggregate Principal amount of 1999 Notes of the Noteholders present and voting.

At the meeting of holders of " the 2002 - Notes"

"(a) holders of 2002 Notes whose Notes amounted in aggregate to US$11,075,000.00 and which represented 89.13% of the Aggregate Principal amount of 2002 Notes present in person or by proxy voted to accept the Scheme of Arrangement; and

(b) holders of 2002 Notes whose Notes amounted in aggregate to US$1,350,000.00 and which represented 10.87% of the Aggregate Principal amount of 2002 Notes present in person or by proxy voted to reject the Scheme of Arrangement."

The modified Scheme of Arrangement presented to the meeting was approved by a majority in number of the Noteholders which represents more than 75% in value of the Aggregate Principal amount of 2002 Notes of the Noteholders present and voting.

There is no contest that the meetings were held in accordance with the Order made on November 18, 1999. There is no contest as to the accuracy of the reports concerning the outcome of the voting.

The applicant now moves the Court to approve the Scheme of Arrangement as approved by the majority of the holders of both classes of Notes.

Section 192 of the Companies Act stipulates as follows:

> "(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the Court may, on the application in a summary way of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.
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> (2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or 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 company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company"

In respect of both classes of Notes the Scheme of Arrangement has been accepted by a majority of more than 75% in value of the creditors pursuant to section 192 (2) of the Companies Act.

The role of the Court in the hearing of a petition of this nature is two fold, namely -

(i) to see that the resolutions are passed by the statutory majority in value and number, in accordance with the provisions of section 192 of the Companies Act, at a meeting duly convened and held.

(ii) to see whether the proposal is such that an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve of the scheme.

Put another way the Court must first ascertain if it has jurisdiction to approve the scheme and secondly to ascertain if the scheme is fair.

JURISDICTION

The reports of the persons designated as chairmen of the meetings in respect of both sets of Notes indicate that the conditions stipulated in the Order made on the 18th day of November, 1999 have been fulfilled.

Mr. Scott contends that there is procedural unfairness in that the beneficial owner of the Notes did not receive copies of the scheme in keeping with the Court's Order of November 18, 1999.

The affidavit of Sharon Neil avers that the document were duly served upon the parties concerned by Fed Ex, on November 30, 1999 at 9.41 a.m. (see Ex. SN 1 attached to the affidavit of the said Sharon Neil).

In the face of the documentary evidence from Fed Ex, a company with no interest to serve in the present proceedings, I am satisfied that the documents were duly served in good time affording anyone who wished to attend and object to the scheme adequate time so to do. The entities that were not allowed to vote were properly denied as the proxy was defective in that it neither identified the Holder of the Notes nor the amount involved.

FAIRNESS OF THE SCHEME

Mr. Scott for the objectors argued that the scheme was unfair and ought not to be approved for the undermentioned reasons.

(i) The scheme sacrifices the interest of the Noteholders to the shareholders.

(ii) The scheme releases the guarantors from liability without the guarantors putting up anything whether in the form of cash payment to the bondholders or additional guarantees to the Noteholders.

(iii) The dominant purpose of the scheme is not to repay the debt but to provide a new holding company which will be debt free thereby benefiting the shareholders and owners of ICDC (the new company) and Mechala (the old company) without benefiting the Noteholders in any substantial manner. This approach would avoid the winding up or re-organization procedures.

(iv) It is unfair to deprive the Noteholders of the jurisdiction of the Courts and Laws of the State of New York when the Jurisdiction of the Court of New York was a fundamental term of the Indenture.

(v) The adoption of the Scheme will vary the terms of the contract as evidenced by the Indentures and made between Mechala and the Noteholders by removing the fundamental term of there being unanimity amongst the Noteholders in order to vary and/or alter the Noteholders' rights.

I will now proceed to examine each of the above reasons:

(i) Mr. Scott submitted that the scheme enables Mechala which borrowed US$100,000,000 to repay only US$47,000,000.00. This he refers to as a massive write off. The company has not been declared insolvent and there has been no attempt to have the guarantors pay any portion of the debt. The guarantors are solvent with substantial assets. In addition to the foregoing the Noteholders are being offered 47 cents in the dollar or shares in the new company to liquidate the debt.

Approval of the scheme will mean that the Matalons as shareholders will have all of their assets in a new company and will have replaced US$100,000,000.00 of debt with US$20,000,000.00 borrowed from Bank of Nova Scotia.

In all of this the Noteholders will be the losers.

In addressing this submission the affidavit of Stephen Bornstein is instructive. Bornstein is the Executive Vice President and General Counsel of Bear Stearns Asset Management Inc. which is collateral manager of the beneficial owner of US$8,000,000.00 principal amount of Mechala Group Jamaica Limited issued and outstanding 12% Senior Notes due 2002.

The affidavit discloses that when the situation became clear that Mechala would not be able to honour its obligations to the Noteholders, a Creditors' Committee comprising the large institutional holders of 1999 and 2002 Notes was established. This Committee excluded any representative of the Noteholders affiliated with Mechala. The purpose of this committee was to respond to the tender offer and to develop and pursue appropriate strategies to protect Noteholders' interests in general. The Committee obtained the services of investment bankers in the United States specializing in advising creditors on corporate restructuring.

The Committee acting upon the advice of its advisor concluded that Mechala was not in a position to pay 100c on the dollar of interest or principal but rejected the tender offer of 35c on the dollar as too low and counter proposed 70c on the dollar, which Mechala rejected.

Extensive negotiations ensued with a series of proposals and counter proposals.

In September 1999 an agreement was reached between the company and the Committee that Mechala would pay 45c on the dollar with an additional

US$2 million as a consent payment to the Noteholders who accepted the offer and consented to the amendments and reorganization.

Before arriving at this agreement the Committee explored the option of putting Mechala and its subsidiaries in liquidation. Having taken advice on the matter the view was that the exercise of that option would be complex, protracted, costly and was likely to result in a lower net recovery than the agreed figure.

It is to be noted that throughout the negotiations Federated Strategic Fund, Federated International High Income Fund and Strategic Income Fund (hereinafter referred to as "Federated") who together are beneficial owners of US$5 million of the 1999 Notes and US$1.3 million of the 2002 Notes and who were represented on the Committee took the position that Mechala could pay more.

Federated applied to the United States District Court, Southern District of New York and obtained a preliminary injunction restraining the consummation of the Tender Offer. With the support of the majority of the members of the Committee, Mechala abandoned the Tender Offer and commenced these proceedings. Worthy of note is that the Scheme of Arrangement provides for approximately the same cash recovery to the note holders who opted for cash as the Tender Offer. In addition, the Scheme provides a shares option for the note holders who might prefer to convert their debt into equity.

Mr. Scott commented that the Noteholders should be able to exercise both options, i.e. part cash and part shares in the new company.

It is clear from the facts recited that all options were put on the table during the negotiations. It is clear that the majority of Noteholders accepted the scheme as fair. Absolutely no evidence has been advanced by the objectors to the effect that the majority shareholders were not acting bona fide and in the interest of all the classes of creditors in taking the decision to support the Scheme of Arrangement. I am not unmindful of the fact that the onus of establishing the fairness of the scheme rests upon the petitioner.

Mr. Scott further contended that the Scheme was approved because of the incestuous votes of the Mechala affiliates. This submission is without a scintilla of merit. The following chart confounds Mr. Scott's submission.

"ASSUMING ALL VOTES AND DOLLARS INCLUDING AFFILIATES

38	Number present in person or by proxy
219	Assumed number of beneficial holders
17.35%	percentage represented
47,654,000	Total dollars present including affiliates
75,000,000	Total Notes issued
63.54%	percentage of class represented

ASSUMING ALL VOTES AND DOLLARS BUT EXCLUDING AFFILIATES

36	Number present in person or by proxy
217	Assumed number of beneficial holders
16.59%	percentage represented
47,654,000	Total dollars present including affiliates
-26,927,000	Affiliates
20,727,000	Total dollars present excluding affiliates
48,073,000	Total dollars outstanding excluding affiliates
43.12%	percentage of class represented

ASSUMING ALL PARTIES INCLUDING AFFILIATES

45,654,000	Total dollars present including affiliates
42,654,000	Votes for
3,000,000	Votes against
93.43%	percent for
6.57%	percent against
38	Total votes including affiliates
36	For
2	Against

ASSUMING AFFILIATES EXCLUDED

18,727,000	Total dollars present excluding affiliates
15,727,000	Votes for
3,000,000	Votes against
83.98%	percent for
16.02%	percent against
36	Total votes excluding affiliates
34	For
2	Against

ASSUMING $2 MILLION PROXY ADMITTED AND AFFILIATES EXCLUDED

18,727,000	Total dollars present excluding affiliates as above but excluding proxy
2,000,000	Add proxy
20,727,000	Total dollars present excluding affiliates but including proxy
15,727,000	Votes for
5,000,000	Votes against assuming proxy voted against
75.88%	percent for
24.12%	percent against
37	Total votes excluding affiliates
34	For
3	Against"

The above chart shows the number of holders present in person or by proxy as also the assumed number of beneficial owners. It also demonstrates the representation at the meeting whether by proxy or in person including and excluding the affiliates and the dollar value of those present in person or by proxy including and excluding the affiliates.

When the affiliates are included 93.43% of the total dollar value present in person or by proxy voted in favour of the scheme and 6.57% against. When the affiliates are excluded 83.98% voted in favour of the scheme and 16.02% against. These figures make it abundantly clear that the exclusion of the affiliates would not have significantly affected the out come of the vote. That only 38 beneficial owners turned out in person or by proxy at the meeting is not a basis to reject the scheme. All beneficial owners were notified of the meeting in good time. No explanation as to their absence was offered by those who did not attend. It is reasonable to assume that they had no interest in the matter and were willing to be governed by the decision of the majority of those who chose to attend the meeting and vote.

The Learned author of Palmers Company Law Volume 2 at paragraph 12.028 states:

> "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."

Apart from the question of the majority, the Court must also be satisfied that the class is fairly represented. The chart shows that 38 beneficial owners of an assumed number of 219 were present in person or by proxy representing 17.35% of the class.

In terms of dollar value this represents 63.54% of the class of Note-holders. These figures must be interpreted, in my view, in the context of the affidavit evidence of Stephen Bornstein to which I have already referred in this judgment.

For the reasons set out I find that the class was fairly represented and that the majority of the Noteholders acted bona fide. The assertion that the interests of the Noteholders were sacrificed to the shareholders has not been substantiated.

(ii) The point is made that the scheme releases the guarantors from liability without the guarantors putting up anything whether in the form of cash payment to the Noteholders or additional guarantees to the Noteholders.

In re Garner Motors Ltd. (1937) All ER 671, it was decided that a scheme of arrangement sanctioned under the Companies Act does not have the effect of releasing a joint debtor.

Dr. Barnett draws a distinction between joint debtors and guarantors who have no primary liability.

I am of the view that it is unnecessary to decide the point as to whether or not Garnett's case is applicable to guarantors. I am of this view because in

Garnett's case the release of the joint debtor by the Scheme did not make the Scheme invalid. The Court held that the Scheme did not have that effect of releasing the joint debtor. It did not hold the Scheme of Arrangement to be invalid.

In ***Shaw v. Royce Limited [1911] 1 Ch. 138 Warrington J,*** said:

> "It has been decided over and over again that the Court has power to sanction an arrangement between a company and secured creditors. That means that it has power to sanction an arrangement which involves the giving up of the existing security and the acceptance of a different one. Can it have less jurisdiction - it is not a question of whether it thinks proper to do so, but can it have less jurisdiction to sanction an arrangement which contains a stipulation which the company think it necessary to make and which the debenture-holders who voted in favour of it think it in the interest of the debenture holders to accept? I cannot see why that stipulation should render the agreement one which the Court would have no jurisdiction to sanction."

(iii) To say that the dominant purpose of the scheme is to avoid the procedure and stigma either of winding up or re-organization is to disregard the evidence adduced. Stephen Bornstein in his affidavit averred that the Committee which was established to negotiate with the company considered the option of liquidation and decided not to go that route because of the complexity of the procedure and the likelihood of having to settle for less than the Scheme of Arrangement offered the Noteholders. This Scheme of Arrangement was accepted after there had been intense investigations and negotiations between the parties acting upon expert advice.

The affidavit of James O. Perry, IV, associate corporate Counsel for Federated Investors, Inc., one of the objectors, is in the same vein as that of Stephen Bornstein.

(iv) Mr. Dabdoub for the objectors advised the Court that he would not be pursuing the conflict of law point.

(v) The essence of this complaint is that the Scheme of Arrangement will vary the terms of the contract.

For this submission Mr. Scott relies upon the provisions of section 902 of Article Nine of the Indenture; which is set out below:

> " Supplemental Indentures with Consent of Holders
>
> With the consent of the Holders of not less than a majority in aggregate principal amount of Outstanding Securities, by Act of the said Holders delivered to the Company, the Guaranteeing Subsidiaries and the Trustee, (but without the consent of any Guaranteeing Subsidiary) the Company when authorised by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; provided however, that no such supplemental indenture shall, without the consent of the Holder of each outstanding security affected thereby: (emphasis mine)
>
> (1) change the stated maturity of the principal of or any instalment of interest on, any security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon redemption thereof, or change the coin or currency in which any security or any premium or the interest thereon is

payable, or impair the right to institute suit for the enforcement of any such payment after the stated maturity thereof (or, in the case of redemption, on or after the Redemption Date), or

(2) reduce the percentage in principle amount of the outstanding securities, the consent of whose Holders is required for any waiver of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture, or

(3) modify any of the provisions of this section or sections 513 and 1201, except to increase the percentage of outstanding securities required for such actions or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding security affected thereby, or

(4) amend, change or modify the obligation of the Company to make and consummate a change of Control Offer in the event of a Change of Control or make and consummate an Excess Proceeds Offer with respect to any Asset Sale or make a Change of Jamaica Transfer Tax Offer in the event of a change of Jamaica Transfer Tax or modify any of the provisions or definitions with respect thereto.

It shall not be necessary for any Act of Holders under this section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof."

It is clear that section 902 of Article 9 of the Indenture set out above applies only to the creation of Supplemental Indentures by the parties. It does not apply to a Scheme of Arrangement. A Scheme of Arrangement, which the

Court is empowered to approve, by its very nature anticipates that variation will be made to the original contract. Once the Court is satisfied that -

(i) the provisions of the Companies Act have been complied with;

(ii) the class was fairly represented by those who attended the meeting in person or by proxy;

(iii) the statutory majority acted bona fide in making the decision; and

(iv) the Scheme of Arrangement is such as an intelligent and honest man and a member of the class concerned and acting in respect of his interest might reasonably approve, it matters not that the scheme will result in the variation of a provision of the original contract.

The Court in exercising its discretion should bear in mind the dictum of Lindley L.J. *In Re English, Scotish and Australian Chartered Bank [1893] Ch. 385 at 409.*

> "If the creditors are acting on sufficient information and with time to consider what they are about, and are acting honestly, they are, I apprehend, much better judges of what is to their commercial advantage than the Court can be. I do not say it is conclusive, because there might be some blot in a scheme which had passed that had been unobserved and which was pointed out later.
>
> While, therefore, I protest that we are not to register their decisions, but to see that they have been properly convened and have been properly consulted, and have

> considered the matter from a proper point of view, that is, with a view to the interests of the class to which they belong and are empowered to bind, the Court ought to be slow to differ from them. It should do so without hesitation if there is anything wrong; but it ought not to do so, in my judgment, unless something is brought to the attention of the Court to show that there has been some material oversight or miscarriage."

Nothing has been shown to me by the objectors which amounts to "a material oversight or miscarriage".

Mr. Scott at the invitation of the Court provided what could be considered an alternative Scheme of Arrangement. When the proposal is examined against the evidence as to the state of affairs of the Company it becomes quite clear that Mr. Scott's proposal is untenable.

On the evidence adduced the Court is satisfied that the only way the Noteholders will be paid is by the Scheme of Arrangement approved on December 21, 1999. The Court is further satisfied that the creditors understand this. Having themselves, by way of the Committee of Creditors, considered all the options, particularly liquidation, they voted in favour of the Scheme of Arrangement.

In ***Re English, Scottish and Australian Chartered Bank (supra) Lindley L.J.*** at p 406 emphasised that the Court should not be concerned only with the fact that the creditors are being paid less than they are entitled to but also with the issue of "where is the money to come from".

If they cannot get what they are entitled to says Lindley L.J., "it becomes necessary to consider and decide upon some alternative scheme for giving them less than that to which they are entitled".

I am satisfied that the guiding principles laid down in the authorities and in particular the four principles set out in ***Re Alabama, New Orleans, Texas and Pacific Junction Ry [1891] 1 Ch 213*** have been met and that the Court ought to exercise its discretion in favour of confirming the decision made by the creditors.

For the aforesaid reasons the Scheme of Arrangement approved by the creditors on December 21, 1999, is hereby sanctioned by the Court.