

(2013) 05 DEL CK 0198

In the Delhi High Court

Case No : Co. Petition No. 45 of 1971

Company Law Board

APPELLANT

Vs

Ganesh Flour Mills Co. Ltd.

RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Companies Act, 1956 — Section 173, 209(A), 372, 397, 398
Ganesh Flour Mills Company Limited (Acquisition and Transfer of Undertakings) Act,
1984 — Section 14, 2, 24, 3, 4

Citation : (2013) 5 AD 113

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Maneesha Dhir, Ms. Geeta Sharma, Ms. Vanessa Singh and Ms. Sadhvi Shahi, for the Appellant; H.L. Tikku, Mr. U.A. Rana and Ms. Mrinal Mazumdar, Advocates for WHBCL and Ms. Sonia Arora, Advocate for the Administrator, Hindustan Vegetable Oil Corpn. Ltd. (HVCOL)., for the Respondent

Judgement

S. Muralidhar, J.—This petition was filed more than 42 years ago, on 16th June 1971 to be precise, by the Company Law Board ("CLB") under Sections 397 and 398 read with Sections 401 and 402 of the Companies Act, 1956 ("Act") against Ganesh Flour Mills Company Limited ("GFMCL"). GFMCL was incorporated on 13th November 1891 under the Indian Companies Act, 1882 with its registered office at Subzi Mandi, Delhi. GFMCL was engaged in the manufacture of vanaspati and refined oil, electric fans, food products such as corn-flakes and wheat flakes etc. GFMCL was also running a solvent extraction plant and is located in Bombay. GFMCL had two vanaspati manufacturing units, one in Delhi and the other in Kanpur, GFMCL has also one electrical plant and food products plant in Delhi. GFMCL was employing about 1000 employees in its factories and plants. It is stated that the affairs of the company were not being managed properly. GFMCL was managed by a Board of Directors (BoD) comprising the following persons:

2. Early in 1969 the Government of India ("GOI") carried out an inspection of the

books of accounts and other papers of GFMCL u/s 209 (A) of the Act. It was noted that GFMCL had started losing heavily on account of mismanagement and was compelled to borrow money at high rates of interest. The amount so borrowed was not used for the business of the company. It is alleged that Mr. Kirpa Narain, Secretary-cum-General Manager was allowed to maintain a personal account and overdraw amounts from 1962-63. The amount thus overdrawn stood at Rs. 12 lakhs at the end of December 1968. Mr. Kishan Narain and Mr. Hirdey Narain, two brothers of Mr. Kirpa Narain were also allowed to overdraw sums in similar manner to the extent of Rs. 2.98 lakhs on a very nominal interest. GFMCL lacked liquid funds and was unable to lift its quota of soyabean oil allotted by the State Trading Corporation. The difference between the price paid by GFMCL and the prevailing market price of groundnut oil was considerable. The financial position of GFMCL considerably deteriorated during the period from 1964-65 to 1967-68 on account of its mismanagement and on account of personal gains made by Mr. Kirpa Narain apart from his various acts of omission and commission. During the year 1967-68, GFMCL suffered a loss of Rs. 120.21 lakhs.

3. Mr. Kirpa Narain is stated to have invited the Morarka Group some time during the end of 1968. The Morarka Group along with Mr. Satya Narain Gupta and Mr. Om Parkash established a complete stranglehold on GFMCL and started using its finances for their individual benefit and for the benefit of other companies associated with the Morarka Group. The nominees of the Morarka Group were added to the BoD of GFMCL. Its financial position started further deteriorating. It is pointed out that the investment of 59,022 ordinary shares, 23 Cumulative First Preference shares by Belapur Company Limited ("BCL") and in 59,735 ordinary shares of GFMCL by W.H. Brady & Company Limited ("WHBCL"), Respondent No. 10 (a Morarka Group Company) were made in contravention of Section 372 of the Act. It is stated that having managed to get the control of GFMCL, the Morarka Group entered into a number of arrangements which were detrimental to the interest of GFMCL.

4. On 23rd November 1968 GFMCL resolved to borrow a sum of Rs. 10 lakhs as a short term loan from BCL at a very high rate of interest of 1% per month for a period of three months. The loan was secured by a mortgage of GFMCL's moveable and immovable properties. GFMCL also agreed to appoint WHBCL as Purchase and Selling Agent and pay commission at the rate of 3/4% on the purchase of raw materials as well as sales of GFMCL's products. On 24th March 1969 charges on GFMCL's land and buildings in favour of both BCL and WHBCL for repayment of short term loans in two six monthly instalments by 24th March 1970.

5. On 20th October 1969 GFMCL rescinded the resolution of 12th April 1969 and appointed Armstrong Smith Limited ("ASL") and Shakti Trading Company Private Limited ("STCPL") as sales and purchase agents respectively and agreed to pay commission at the rate of 3/4% on all sales and purchase of its unit at Kanpur.

The commission payable to WHBCL was restricted to purchase and sales of the vegetable ghee plant of GFMCL at Delhi. It is contended that all the agreements were approved at the Annual General Meeting ("AGM") of GFMCL held on 19th January 1970 but in violation of Section 173 of the Act since the explanatory memorandum did not disclose the financial effect and duration of the agreement.

6. With a view to paying of its debts, GFMCL proposed to issue second debentures of Rs. 95 lakhs and for that purpose made an application to the Controller of Capital Issues ("CCI") on 27th June 1969. Pursuant to an application made for that purpose, the permission to issue debentures to the value of Rs. 95 lakhs was granted by CCI stipulating that the proceeds of the issue shall not without the permission of the GOI be used for an object of expenditure other than those described in the application. GFMCL represented to the CCI that the existing creditors, WHBCL and BCL had declined to accept debentures in lieu of the existing loans and the sanction was accordingly modified on 20th December 1969 authorizing GFMCL to issue debentures to corporate bodies, individuals, financial institutions through private negotiations.

7. It is stated that at the AGM of the shareholders held on 19th January 1970 GFMCL was authorized to issue 9500 debentures of the face value of Rs. 95 lakhs. It is further stated that GFMCL was in contravention of the above terms and conditions and did not issue the debentures either to the creditors or to any corporate body by way of fresh issue. GFMCL instead issued debentures of the said value of Rs. 95 lakhs to the three Morarka companies, i.e., WHBCL, BCL and ASL as a collateral security as repayment of the loan amount of Rs. 30 lakhs from BCL and Rs. 10 lakhs from WHBCL and towards interest on the said loans apart from commission on sales and purchases of GFMCL's products. A debenture trust with two trustees representing the debenture holders i.e. the four Morarka Group companies was created and GFMCL was released from the mortgage liability created in favour of the trustees under the Trust Deed dated 6th May 1970. All the assets of GFMCL were mortgaged with the debenture trustees.

8. It is stated the GFMCL took over Hind Oil Mills ("HOM") by purporting to enter into an agreement with it for a nominal payment. Consequently GFMCL took over an industrial shed occupied by HOM measuring 4400 sq. ft. at Mazgaon Docks in Bombay. On 24th February 1970 a leave and licence agreement was executed between GFMCL and WHBCL putting the latter in possession of the said property at Mazgaon Docks. The said agreement was retrospective from 1st July 1969 for a period of 33 months. It is stated that the factory premises together with plant and machinery and other moveable items of GFMCL were taken over by WHBCL, except one room which was to be utilized by GFMCL for the purpose of maintaining a Chowkidar for security.

9. The CLB contended that the issue of debentures of Rs. 95 lakhs to the aforesaid three companies was a fraud perpetrated by Morarka Group on GFMCL. It is alleged that it was a device to take away valuable assets of the company for

a paltry sum of Rs. 40 lakhs which was advanced to it as a loan. It is stated that the financial position of GFMCL was very bad and it had not been depositing the contribution either of the employer or of the employee towards provident fund as well as the Employees State Insurance Corporation. The wages to the workers had also not been paid by GFMCL and there was an outstanding liability of Rs. 1,01,600 as on 31st December 1970. It was stated that GFMCL was not in a position to revive its operations. It was contended that the affairs of GFMCL were conducted in a manner oppressive to the members of the company and prejudicial to the public interest. The CLB prayed that it would be equitable for GFMCL to be wound up. The prayers in Co. Petition 45 of 1971 filed on 16th June 1971 were as follows:

(a) remove the present Board of Directors Respondents No. 2 to 9 from the office of directors;

(b) appoint Administrator or Administrators or persons on the Board of Directors or to pass appropriate order for the regulation of the conduct of the company's affairs in future;

(c) termination of the agreements entered into between the company and respondents 10, 11 and 14 appointing them as purchase and selling agents on payment of commission @ 3/4 per cent retrospective effect from the date of execution of the said agreements;

(d) termination of the agreement for payment of 1/2 per cent commission to Shri Kirpa Narayan and his brothers on the loans advanced to the company for which the said Shri Kirpa Narayan stood personal guarantee.

(e) terminate the mortgages and other arrangements entered into between the company and the Trustees for debentures of the value of Rs. 95 lakhs under which almost all the assets of the company in India have been mortgaged with the trustees;

(f) restrain the company from disposing of the assets of the company and to rescind all contracts, agreements and commitments which may have been made for disposal of any of the assets of the company in India and.

(g) to pass such other order or orders as may be deemed fit and proper in the circumstances of the case and for safeguarding the interests of the shareholders, creditors company and public at large.

10. On 18th June 1971 the Company Court passed an interim order restraining GFMCL from disposing of its assets and the Trustees of the Debenture holders from enforcing the rights of the debenture holders under the Trust Deed dated 20th May 1970. On 10th September 1971 the Court directed the Secretary of GFMCL to file a report. After the feasibility report was filed by the Secretary, an order was passed on 12th October 1971 by the Court directing the parties to file their comments thereon.

11. C.A. Nos. 254 and 323 of 1971 were filed restricting the reliefs to prayers (a) and (b) i.e. removal of the Directors and constitution of a BoD to manage GFMCL. On 7th January 1972 the Company Judge held that the financial position of GFMCL was bad and that it had no liquidity of funds. Prayers (a) and (b) were granted and by an order dated 12th January 1972 the Company Court appointed a BoD under the Chairmanship of Mr. Justice Jindra Lal a retired judge of the High Court of Punjab and Haryana. The appeal by the debenture trustees being Company Appeal No. 2 of 1972 was dismissed by the Division Bench by an order dated 17th April 1972.

12. On 17th November 1972 the Court passed the following order:

The learned counsel say that the Central Government in exercise of powers under sub Section (1) of Section 18AA of the Industrial (Development and Regulation) Act, 1951 has directed the Industrial Reconstruction Corporation of India Limited to take over the industrial undertaking/of the company. The learned counsel pray for time to study the implication and take whatever steps may be necessary in the matter. At the request of the counsel, to come up on 5th January, 1973.

13. The Central Government on 23rd November 1972 took the action u/s 18AA of the Industries (Development & Regulation), Act, 1951 ("IDRA") and appointed an authorized person to take over the management of GFMCL. For about ten years thereafter nothing much happened in the present petition. In 1981 WHBC and three other debenture holders moved to the Company Court contending that the petition had become infructuous. It was submitted by them that prayers (a) and (b), which were the only reliefs that could be granted under Sections 397 and 398 of the Act did not survive since the BoD had been superseded by the central government's notification dated 23rd November 1972. It was submitted that since prayers (c) to (f) could be granted u/s 402 of the Act only consequential upon prayers (a) and (b) being granted, those prayers did not survive either.

14. By a detailed order dated 25th January 1982 the Company Court negatived the above contention and held that while deciding the petition under Sections 397 and 398 of the Act, the Court would be able to grant reliefs (c) to (f) even if it came to the conclusion that it was not necessary to pass an order superseding the BoD of GFMCL. The Court held that the present petition should be decided expeditiously and listed for directions on 1st February 1982. However, for more than a year thereafter no effective hearing took place. An appeal was filed against the order dated 25th January 1982 was subsequently disposed of by the Division Bench of this Court on 24th April 2003.

15. On 20th September 1983 the Company Court disposed of an application C.A. 568 of 1982 filed on behalf of GFMCL for amending a reply filed on its behalf earlier in the present petition at a time when the management had not been taken over by the central government. One of the proposed amendments was

regarding a property at Bombay for which eviction proceedings had been filed by the landlady against GFMCL and WHBCL. The Company Court declined the amendment to the above extent since the CLB itself had not amended the petition to seek any relief in regard to that property. The other amendments were, however, allowed.

16. At this stage certain facts leading to the filing of the above eviction suit require to be noticed. In 1960 GFMCL acquired Hindustan Oil Mills (HOM) which had taken on lease an industrial shed admeasuring over 4400 sq. ft. at Mazagaon Docks, Bombay. With its takeover of HOM, GFMCL stepped into the shoes of HOM and became the occupant of the said property. The case of the new management of GFMCL was that after the Morarka Group took over GFMCL, they forced an agreement to be entered into between GFMCL and WHBL whereby the possession of the said property was forcibly given on leave and licence basis to WHBCL. The landlady, Shrimati Fizzabai Ghulamality Tambawala, filed Suit No. 1029/5457 of 1972 under the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 in the court of Small Causes Court, Bombay on 20th November 1972 praying for eviction of HOM. The landlady contended that HOM was in arrears of rent since 1st May 1971 and that HOM had sublet the premises and assigned its interest therein to WHBCL. The landlady stated that the tenancy with GFMCL stood terminated on 8th November 1971 and the cause for the eviction suit arose on 1st January 1972.

17. In its written statement in the suit, HOM stated that it was ready and willing to pay the arrears of rent and that it had remitted the cheque for payment of arrears of rent to the landlady but it was not accepted by her. The allegation of subletting was denied. The contention of the CLB is that the said written statement was filed without the instructions from the authorized person since by the order dated 3rd November 1972 the central government had taken over the management of GFMCL. In the said suit, WHBCL filed an application seeking impleadment. WHBCL also filed a reply in which it is stated that by an agreement dated 11th February 1970, HOM gave it on leave and licence basis, the right of use and occupation of the said premises on a monthly sum of Rs. 3,000 for a period of 33 months and that after the expiry of period it continued to pay a monthly compensation of Rs. 3,000. It was contended by WHBCL that the extended/exclusive occupation by WHBCL was confirmed by GFMCL by another agreement dated 24th May 1972, which was for a period of 22 months commencing from 1st April 1972. The said licence was claimed to be subsisting till 1972 and WHBCL continued to pay the amount in the Small Causes Court in terms of that Court's order dated 14th August 1975. As will be noticed shortly, one of the contentions in the present petition is that the subletting of the premises to WHBCL was a case of usurpation of the premises by the persons who were in control of GFMCL, i.e. the Morarka Group and this act is liable to be set aside as an oppressive and prejudicial activity.

18. In the meanwhile, one more development which place on 28th January 1984.

The central government promulgated the Ganesh Flour Mills Company Limited (Acquisition and Transfer of Undertakings) Ordinance, 1984 whereby all the assets of GMFCL were vested in the Central Government. This was replaced by Ganesh Flour Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1984 ["GFMCL Act, 1984"]. In terms of Section 2 of Chapter I of the GFMCL Act, it was deemed to have come into force on 28th January 1984. Some of the import definitions contained in Section 2 of the GFMCL Act, 1984 were as under:

2. Definitions-In this Act, unless the context otherwise requires,

(a) "appointed day" means the 28th day of January, 1984.

(b) "Commissioner" means the Commissioner of Payments appointed u/s 14.

(c) "Company" means the Ganesh Flour Mills Company Limited Delhi, a company within the meaning of the Companies Act, 1956, and having its registered office at Subzi Mandi, Delhi.

(d) "date of taking over" means the date on which the management of the Ganesh Flour Mills of the Company was taken over by the Board of Management by virtue of the Order of the Government of India in the late Ministry of Industrial Development No. S.O. 695 (F)/18AA/IDRA/72 dated the 3rd November 1972 made under sub-Section (1) of Section 18AA of the Industries Development Regulation Act, 1951.

(e) "Ganesh Flour Mills" means -

(i) the Delhi Vanaspati Factory, Delhi.

(ii) the Hindustan Breakfast Food Manufacturing Factory, New Delhi, including Ganesh Electrical Factory, New Delhi which is interlinked with it by reason of its location, common services and infrastructure.

(iii) the Kanpur Vanaspati Factory Kanpur and

(iv) The Solvent Extraction Plant, Bombay.

(f) "notification" means a notification published in the Official Gazette.

19. Section 3 of GFMCL Act, 1984 stated that on the appointed day, the Ganesh Flour Mills and the right, title and interest of the GFMCL in relation to Ganesh Flour Mills, shall stand transferred to, and shall vest in, the central government. Section 4 spoke of the general effect of vesting and to the extent relevant for the present purpose, Section 4 reads as under:

4. General effect of vesting -

(1) The Ganesh Flour Mills shall be deemed to include all assets, rights, leaseholds, powers authorities and privileges, and all property moveable and immovable, including lands, buildings, workshops, stores, instruments machinery and equipment, cash balances, cash on hand, reserve funds, investments and

book debts pertaining to the Ganesh Flour Mills and all other rights and interest in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the company in relation to the Ganesh Flour Mills, whether within or outside India, and all books of account registers and other documents of whatever nature relating thereto.

(2) All properties as aforesaid which have vested in the Central Government u/s 3 shall, by force of such vesting be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them, and any attachment, injunction or decree or order of any court or other authority, restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall be deemed to have been withdrawn.

(3) Every mortgagee of any property which has vested under this Act in the Central Government and every person holding any charge, lien or other interest in, or in relation to, any such property shall give, within such time and in such manner as may be prescribed, an intimation to the commissioner of such mortgage, charge, lien or other interest.

(4) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (3) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part, out of the amounts specified in section 7, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

(5) Any licence or other instrument granted to the Company in relation to the Ganesh Flour Mills which has vested in the Central Government u/s 3 at any time before the appointed day and in force immediately before that day shall continue to be in force on and after such day in accordance with its tenor in relation to, and for the purposes of the Ganesh Flour Mills, and, on and from the date of vesting of the Ganesh Flour Mills u/s 5 in a Government company, that Government company shall be deemed to be substituted in such licence or other instrument as if such licence or other instrument had been granted to that Government company and that Government company shall hold it for the remainder of the period for which the Company to which it was granted would have held it under the terms thereof.

(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature instituted or preferred by or against the Company, in relation to the Ganesh Flour Mills, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the Ganesh Flour Mills or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the Central Government or, where the Ganesh Flour Mills vest in a Government company u/s 5, by or

against the Government company.

20. Section 8 (1) stated that on the appointed day, the general superintendence, direction, control and management of the affairs and business of the Ganesh Flour Mills shall vest in the government company specified in such direction by the central government u/s 5 (1) and one or more custodians appointed by the central government u/s 5 (2) of GFMCL Act, 1984. Section 14 related to the appointment of Commissioner of Payments for disbursing the amounts payable as per Section 7 to the company. Section 24 thereof stated that the provisions of the Act shall have overriding effect over any other enactment for the time being in force.

21. The government company referred to Section 5 (1) was the Hindustan Vegetable Oil Corporation Limited ("HVOCL") which was formed on 23rd April 1984 by the central government by its notification in terms of which the right, title and interest of GFMCL in relation to its undertaking vested in HVOCL, Respondent No. 16 in the present petition. It is common ground that the HVOCL is under liquidation and a separate Company Petition is pending in this Court in relation to it. The central government appointed Mr. B.S. Mahapatra, Executive Director (Finance) Food Corporation of India as the Administrator of HVOCL.

22. In an order dated 18th May 1984 the Company Court noted that as a result of GFMCL Act 1984 while GFMCL was allowed to continue, its assets termed as "Ganesh Flour Mills" had vested in the central government. As far as debentures issued by GFMCL were concerned, the Court noted the concern of the CLB that GFMCL had still to receive compensation from the central government for the assets taken over and if the debentures were "not struck down, the entire compensation would be taken away by the Morarka Group through the concerns holding those debentures." The Court also agreed with the CLB that the Commissioner of Payments could not adjudicate the validity of the commission agreements and the issue of debentures. It was held that they could only be determined by the Company Court.

23. The Court in the same order then dealt with the Company Application No. 2 of 1982 by HOML concerning the premises in Mazgaon Docks in Bombay. The suit pending in the Court of Small Causes in Bombay had been stayed by an interim order dated 4th January 1982. The landlady, impleaded as Respondent No. 2, had sought vacation of the interim order stating that the grounds of ejectment were "damage to the premises, nonpayment of rent, change of user, and subletting in favour of W.H. Brady & Co. Ltd." She contended that the Bombay Small Causes Court was fully competent to adjudicate upon the pleas raised. The contention of GFMCL on the other hand was that once it is found that the leave and licence in favour of WHBCL was "unauthorized, fraudulent and collusive", the ground of subletting would disappear and "the ejectment case would become unsustainable." The Court noted that the contention of the landlady that the petition did not at all refer to the premises or their parting with possession in favour of WHBCL. Agreeing with the above contention the Court vacated the stay

and permitted the suit to proceed.

24. Thereafter CA. No. 459 of 1984 was filed by the CLB seeking amendment of the petition. It sought to add the following prayers to the main petition:

(e) To restore to the Company the property situated at Reay Road, Mazagaon Dock, Bombay and any other properties diverted by the Morarka Group to themselves, and in the event the property is not returned or the Respondent company is deprived of the same for any reason whatsoever, to give such compensation to the company as this Hon"ble Court may determine, and to reimburse the Respondent company for a sum of Rs. 12 lakhs for its use and occupation.

(f) Declare Debenture Trust Deed dated 20th May 1970 to be terminated on the ground that the same is void as no debentures were issued under the same.

25. CA No. 166 of 1987 was filed by WHBCL and Respondents 11, 12, 14 and 15 praying that the Company Petition No. 45 of 1971 had become infructuous and was liable to be dismissed as a result of GFMCL 1984 Act.

26. Disposing of the three applications the Company Court by a detailed order dated 19th September 1990 held that there cannot be any doubt that reliefs (a) and (b) of the petition had become infructuous by virtue of GFMCL Act 1984. It was held that the reliefs claimed in prayers (c) and (d) had to be examined only by the Company Court and not by the Commissioner of Payments. As a result, CA No. 166 of 1987 was dismissed with costs. The amendment to the petition by addition of prayers (e) and (f) as noted above was allowed. Thereafter, the amended petition was filed by the CLB. For nearly six years thereafter no effective hearings took place.

27. Nearly twenty-five years after the petition was filed, issues were framed on 23rd February 1996, as under:

1. Whether M/s. Morarka Groups are guilty of oppressive and prejudicial activities as set out in detail in the petition. If so, its effect?

2. Whether as a consequence of the aforesaid oppressive and prejudicial activities the valuable property of the company was diverted to themselves and whether on account of the personal gains on the part of the Directors, the company suffered losses?

3. Whether the acts like alleged licence/lease of property Hind Oil Mills at Bombay and or the debentures trust deed obtained by the Morarka Groups are acts of oppression and misfeasance by Morarka Groups. If so, its effect?

4. Whether the debentures were issued, if the same were issued, whether the same were issued validly in favour of Morarka Groups and if so, to what effect?

5. Relief.

28. On 22nd May 1997 after considering the pleadings and the counter affidavit

filed by WHBCL, the following additional issues were framed by the Court:

4a. Whether the petition suffers from gross delay and laches and if so, its effect on the petition?

4b. Whether there was any arrangement and/or agreement between the Respondent No. 1 and Respondent No. 10 and if so, was the said arrangements and agreements were duly approved by the General body of shareholders at properly convened General meetings.

4c. Whether there was any valid Debenture Trust Deed executed on 20.5.1970 and if so, whether the Court u/s 402 of the Companies Act, 1956 could set aside the Debenture Trust Deed and the interest accrued upon the assets of the respondent No. 1.

4d. Whether the Commissioner of payment has any jurisdiction to decide on the validity of and consideration for 7.75 % debentures allegedly issued to the respondent No. 10 and if so, its effect.

4e. Whether the Morarka Group was controlling the respondent No. 1 company and if so, its effect?

29. Affidavits by way of evidence were filed by the CLB as well as WHBCL. The record of the suit in Bombay was summoned by the Court. There have been numerous adjournments granted from time to time for nearly seventeen years thereafter with no effective hearings taking place. The effect of the pendency of the petition for nearly forty two years has rendered pointless the reliefs sought as will be discussed hereafter.

30. Ms. Maneesha Dhir, learned counsel for the CLB urged that the issues arising in the present petition particularly those concerning the property at Mazgaon Docks in Bombay survive for decision. According to her, the said property which belonged to GFMCL was worth several hundreds of crores and had been given away arbitrarily to WHBCL. That constituted an act of oppression and mismanagement and the Court should order the property to be restored to GFMCL. The said submission of Ms. Dhir was supported by Ms. Sonia Arora, learned counsel for the Administrator of HVOCL, Respondent No. 16, to whom all the assets of GFMCL stood transferred. She submitted that in the event it was found that the subletting of the premises in favour of WHBCL was fraudulent, then the very basis of the suit in the Bombay Small Causes Court would disappear. Both learned counsel placed reliance on the order passed by the Company Court on 19th September 1990.

31. Mr. H.L. Tikku, learned Senior counsel for WHBCL opposed the above pleas. He pointed out that it was a misconception to contend that the premises in Mazgaon Docks Bombay belonged to GFMCL. The premises were given on lease to GFMCL and the lease had been terminated by the landlady way back in November 1971. WHBCL was given possession under a leave and licence agreement. No issues have been framed regarding the validity of the termination

of the lease. He pointed out that the Company Court had in its order dated 18th May 1984 already opined that the said suit should proceed. However, an interim order had been passed on 25th March 1985 in CA No. 272 of 1985 as a result of which the suit again was stayed. The said suit should now proceed in accordance with law. He further pointed out that after GFMCL Act, 1984 the question of any mortgage deed or agreement having any financial implications for GFMCL did not arise. No claim had been filed by any debenture holder till date. Mr. Tikku submitted that the debenture holders are not interested in enforcing the debentures. There was also no claim on the basis of the commission agreement entered into by GFMCL with any of the parties. All the issues had therefore been rendered academic.

32. The Court would like to observe that prayers (a) and (b) of the petition were rendered infructuous long ago. The issues concerning the debenture trust deed and the claims of the debenture holders have been rendered academic as there has in fact been no claim by any debenture holder till date. It has been stated that there will be no claim filed for way of enforcement of such debentures. The basis for the Court in its order of 18th May 1984 keeping this issue open was the possibility of the entire compensation money being taken away by the debenture holders. That apprehension does not survive now. Consequently, the relief claimed under amended prayer (f), Issue No. 4 framed on 23rd February 1996 and Issues 4 (c) and 4 (d) framed on 22nd May 1997 do not require to be addressed and are disposed of as such.

33. Prayers (c) and (d) seek termination of the sales and commission agreements entered into by GFMCL with Respondents 10, 11 and 14. Here again Mr. Tikku has categorically stated that none of the said respondents have made or will hereafter make any claim against GFMCL under the said agreements. In any event after the coming into effect of the GFMCL Act, all such claims would have to be filed before the Commissioner of Payments. None has been filed till date. The fact that the agreements in question were approved at the general body meetings of GFMCL is not denied. For the purposes of Sections 397 and 398 of the Act, even if there is a finding that the said agreements are invalid and therefore constitute acts of oppression, the possible consequential reliefs u/s 402 of the Act would be the termination of the agreements, removal of the BoD and the appointment of a new management. The agreements have not been given effect to in the past forty-two years and will not hereafter be given effect to. No relief of refund of the monies paid under the agreements has been sought. The removal of the BoD and their replacement by the central government nominees has already happened way back in November 1972. From that date it is the central government which has been in the management and control of GFMCL. The evidence by way of affidavits by both sides filed more than fifteen years ago has to be viewed in light of the fact that forty-one years after the central government has taken over, in the changed circumstances, it has become academic to examine, the validity of the said agreements. In light of the above determination the need to examine whether the petition is barred by laches does

not arise. This disposes of reliefs (c) and (d) and correspondingly Issues 1 and 2 framed on 23rd February 1996 and Issue 4 (a), part of Issue 4 (b) and Issue 4 (e) framed on 22nd May 1997.

34. The remaining issue to be examined concerns the premises at Mazgaon Docks, Bombay. This issue was in fact dealt with comprehensively by the Company Court in its order dated 18th May 1984. The Court held that in order to examine whether, as alleged by the CLB, the Morarka group frittered away the assets of the company in favour of the concerns belonging to them, "the parties have been allowed opportunities to substantiate their respective cases by leading evidence or filing affidavits." At the same time it noted that before the Bombay Small Causes Court the landlady had not claimed ejectment on the ground of subletting or parting with possession alone. It noted that "there are other grounds of ejectment as well, and the proper forum to adjudicate upon them is the Bombay Court. It is therefore in the fitness of things that the suit pending there should be allowed to proceed." The Court acknowledged the possibility of the Bombay court allowing the ejectment finally on grounds other than those connected with WHBCL or of unauthorized sub-letting, in which case "the landlady should not suffer if any rights under the law which have accrued in her favour." It was only where the decision of the Bombay court was based "on the ground of sub-letting or parting with possession or any unwarranted acts" of WHBCL that "the propriety of stay of execution can be considered." Since no relief in regard to the property had at that stage yet been sought by the CLB, the Court was of the view that "it would not be proper to grant any relief as an interim measure when at the ultimate stage of the decision of the petition this relief cannot be granted." Consequently it vacated the stay granted against further proceedings in the Bombay suit and permitted it to proceed.

35. To rectify the above position the CLB sought to incorporate by way of amendment to the narration of facts in the petition the an allegation that Morarka Group after capturing the control of GFMCL had manoeuvred to hand over the premises in Bombay to WHBCL and that the said transfer was unwarranted, illegal, fraudulent, coercive and ineffective. It was contended that the findings in that regard would take away the basis of the suit filed by the landlady and on that basis the CLB sought re-casting of prayers (e) and (f). Even while the Company Court, allowed the above amendments to the petition by its order dated 19th September 1990, it did not modify the earlier order passed on 18th May 1984. On the other hand it stated that "this Court is not concerned with the merits of the allegations sought to be added by amendment and thus the amendment sought cannot be rejected on that score." As a result the order dated 18th May 1984 to the extent it held that since the landlady had not sought eviction exclusively on the ground of subletting and that the suit in Bombay should be allowed to proceed has not been varied.

36. There are other factors that weigh with the Court in declining to decide the issues concerning the Bombay property and relegating parties to the Small

Causes Court in Bombay where the suit is pending. One is that even now the CLB has not questioned the validity of the termination of the lease by the landlady. The landlady could well contend that irrespective of whether there was a "valid" subletting by GFMCL to WHBCL the fact remains that there was in fact sub-letting which was impermissible without the landlady's consent. That will be ultimately gone into by the Small Causes Court which is fully competent to do so. Secondly, the assertion that GFMCL had been illegally deprived of the said property for which it requires to be compensated appears to be conceived. The premises per se does not "belong" to GFMCL. It had the right, if at all, of continuing as a tenant therein as long as the lease in favour of HOM subsisted. That will in turn determine whether WHBCL is entitled to continue in the premises. These are questions that can and should be examined by the Bombay court as already opined by this Court nearly three decades ago in its order dated 18th May 1984. The third factor is of course the claim of HVOCL that the premises has vested in it by operation of law. If that plea succeeds then the question of restoration of possession of the premises to GFMCL may not arise. This too can be examined by the Bombay court in accordance with law as and when HVOC applies to it. Even while liberty is granted to HVOC to do so, this Court makes it clear that it expresses no opinion on the merits of the contentions which have to be properly examined by the Bombay Small Causes Court.

37. This disposes of relief (e) and correspondingly Issue 3 framed on 23rd February 1996 and Issues 4 (a) and the remaining part of 4 (b) framed on 22nd May 1997. The petition and all the pending applications are disposed of. The records of Suit No. 1029/5457 of 1972 titled Fizza Bhai Gulamali Tambawali v. Hind Oil Mills & Another be returned by the Registry through an approved courier agency in a secured condition to the Court of Small Causes, Bombay and confirmation be obtained of its receipt by that Court and placed on file. Thereafter the file be consigned.