

(2007) 10 BOM CK 0066

In the Bombay High Court

Case No : Company Application No. 1122 of 2006 in Company Petition No. 731 of 2005

Reliance Natural Resources Ltd.

APPELLANT

Vs

Reliance Industries Limited

RESPONDENT

Date of Decision : 15-10-2007

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239
Constitution of India, 1950 — Article 297
Contract Act, 1872 — Section 17
Evidence Act, 1872 — Section 57, 58, 59, 60, 61
Income Tax Act, 1961 — Section 2(19AA), 2(19AAA), 2(41A)
Oil Fields (Regulation and Development) Act, 1948 — Section 2, 3

Citation : (2009) 149 CompCas 129 : (2008) 82 SCL 303

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Mukul Rohatgi, Saurabh Krupal, Manali Singhal, Mahesh Agrawal, Venkatresh Dhond, Amol Desai, Mulla and instructed by Mulla, for the Appellant; Harish Salve and Milind Sathe, Sr. Counsels, Phirdosh Pooniwala, Minakshi Grover and Gayatri Goswami, instructed by Junnarkar and Associates, for the Respondent

Judgement

Anoop V. Mohta, J.—A founder father, late Dhirubhai Ambani set up the Reliance Industries Limited (RIL) some time in the year 1973, who ventured along with the time, into oil, gas, refining and exploration apart from other textile, yarn, polyester, petrochemicals and communication business and later stages of life, with two sons-Mr.Mukesh and Mr. Anil Ambani. All are aware of these facts and figures specially the shareholders of the respective companies at all material times.

2. Some time in the year 1999, the Government announced a New Exploration and Licensing Policy, 1999 (NELP) This policy, for the first time, provided that various petroleum blocks could be awarded for exploration, development and production of petroleum and gas to private entities.

3. By virtue of Article 297 of the Constitution of India, the Petroleum in its natural state in the territory waters and the continental shelf of India is vested in the Union of India (The Government). The Oil Fields (Regulation and Development) Act, 1948 and the Petroleum and Natural Gas Rules, 1959, make provisions, inter alia, for the regulation of petroleum operation and grant of licence and leases for exploration, development and production of petroleum in India,. The Territory waters, continental shelf, exclusive of Economic Zone and other Maritime Zone Act, 1976 (Maritime Zone Act) provides for the grant of a licence or Letter of Authority by the Government to explore and exploit the resources of the Continental Shelf and Exclusive Economic Zone and any Petroleum operation.

4. The Government always desires that the petroleum resources which may exist in the territory waters, the continental shelf and the exclusive economic zone of India be discovered and exploited with utmost expedition in the overall interest of India and in accordance with good International Petroleum Industry Practices.

5. Some time in the year 1999 RIL has formed a Consortium with NIKO. They (NIKO & RIL) (the contractor) were the successful bidder for block KG-D6.

6. On 24.3.2000, Reliance Platform Communication Private Limited was incorporated which was changed to Global Fuel Management Services Limited and now called "Reliance Natural Resources Limited (RNPL)-the applicant company.

7. A Production Sharing Contract (PSC) in respect thereof has been entered into between the Government of India and the Contractor on 12.4.2000. The PSC as recorded is within respect of contract area identified as blocked KG DWN-98-3. (KG-D-6) which is situated Offshore coasts of Andhra Pradesh in the Indian ocean. Such blocks are called as "Deep Water, Exploration Blocks". The exploration in such area requires employment of highly skilled and experienced technical personnel and an extremely expensive and time consuming exercise. As recorded, all exploration expenses required to locate petroleum resources have to be borne by the Contractor. Therefore, the contractor is bound to incur huge cost and resources for discoveries of reserves in the area at their risk. The exploration activities are still in progress, the first gas deal expected in June, 2008. As per the PSC all the expenses relating to the exploration, development and production of cost incurred by the Contractor can only be recovered from the petroleum/gas actually produced and sold by the Contractor. The contractor has freedom to sell the gas produced from the block subject to the adjustment and the terms of profit sharing between the Government and RIL as set out in the PSC.

8. On 6.7.2002, Mr. Dhirubhai Ambani passed away. Sometime thereafter, differences started between Mukesh Ambani and Anil Ambani over the management and control of the group Companies. Both the brothers, at the relevant time, were looking after the company (RIL) affairs in all respects

including of the group companies.

9. All the material times, the provisions of the PSC were known to the respective Board of Directors as well as to both the brothers. Mukesh Ambani was the Managing Director and Anil Ambani was the Joint Managing Director of the RIL.

10. In October, 2002 the Consortium announced discovery of significant result of KG-D-6 block.

11. Some time in the year 2003 the National Thermal Power Corporation Limited (NTPC) floated a global tender for supply of gas to its power projects. The Gas Sale and Purchase Agreement was annexed with the tender document. NTPC invited international competitive bids for supply of natural gas to its power plants, located in the State of Gujarat in India, to meet its fuel requirements. RIL, succeeded in its bid to sell, transport and deliver 132 TBtu (means one trillion BTU (British Thermal Unit) or 1000000 MMBTU). NTPC by letter dated 16th June, 2004 confirmed RIL's deal.

12. Some time in June, 2004 RIL entered into a State Support Agreement with Government of U.P. to make necessary arrangement for land, water and other facilities for Dadri Project.

13. On 20.10.2004 in a Board Meeting of Reliance Energy Limited (REL) which was attended by Mukesh Ambani and other Directors of RIL, after reviewing the Dadri Power Project recorded that gas from KG Bhasin would be supplied for the power projects of REL. The Board of REL was assured about the availability of gas, its timing, adequate quality & requested quantity at a competitive price for the project.

14. On 18.6.2005, the media released a issue informing the general public that an amicable resolution is arrived at in respect of all disputes between the brothers. It was stated that Mukesh Ambani will have the responsibility for RIL and IPCL and Anil Ambani will have the responsibility for Reliance Infocom and Reliance Energy and Reliance Capital. On 18.6.2005 Anil Ambani resigned as a Joint Managing Director of RIL.

15. Both the brothers with the mediation of their mother (Mrs.Kokilaben Dhirubhai Ambani) arrived at a Memorandum of Understanding/family arrangement dated 18.6.2005 (MOU) and accordingly resolved their dispute amicably.

16. Based upon the said MOU, both the brothers and the officials of RIL and other group companies, made various discussion, exchanged correspondences, e-mails, and held Conferences and meetings to implement the MOU and to resolve the disputes and to divide the various companies by moving a Scheme of Arrangement. Accordingly, RIL and other companies, decided to move Bombay High Court for sanction of the scheme of demerger.

17. On 11.8.2005 RNRL (the applicant) acquired by RIL (the respondent) for the

purposes of demerger. The name was changed to Global Fuel Management Services. RIL (demerged company) moved a petition in the Bombay High Court bearing No. 731/2005 dated 24.10.2005 to obtain a sanction of Scheme of Arrangement (the Scheme) between RIL and four other companies viz.(i) Reliance Energy Ventures Limited, (ii) Global Fuel Management Services Limited, (iii) Reliance Capital Ventures Limited and (iv) Reliance Communication Ventures Limited.

18. By order dated 9th December, 2005 the Bombay High Court has granted the sanction to the Scheme and interalia directed that the shareholders of RIL would hold shares in each of the resulting companies in the ratio of 1:1 in addition to the shares held in the parent company (RIL). The scheme provides that; RIL successfully bid for off-shore oil and gas fields; strategic investment in RIL which has engaged in power projects, in order to use part of gas discovered for the generation of power; appropriate gas supply arrangement will be entered into between RIL and Global Fuel Management Services pursuant to which gas will be supplied to RIL; refined gas based energy undertaking; after the record date the Board of the resulting companies (including the applicant) shall be re-constituted and shall thereafter be controlled and managed by Anil Ambani. A suitable arrangement would be entered into in relation to supply of gas for power projects of Reliance Patalganga Power Limited and REL with the gas based energy resulting companies.

19. The relevant clauses of the Scheme are reproduced along with the pleading of the parties:

4. Transfer of Demerged Undertakings.

19. Agreements.

The Resulting Companies will have the right to use the "Reliance" brand and logo and suitable agreements will be entered into in this regard. Further, suitable arrangements would also be entered into in relation to (i) non-competition in relation to the businesses of the Demerged Undertakings and the Remaining Undertaking; (ii) supply of gas for power projects of Reliance Patalganga Power Limited and REL with the Gas Based Energy Resulting Company; and (iii) Transfer of leasehold rights of RIL to the relevant Resulting Company with respect to the relevant Demerged Undertaking.

20. As recorded, the Scheme sanctioned by this Hon'ble Court provided for Demerger of four Undertakings of Reliance Industries Limited (RIL) and transfer of these Undertakings on a "Going concern" basis to four Resulting Companies.

21. The following four are the transferred Undertakings/Resulting Companies:

1) The Coal Based Energy Undertakings (Clause 1.14)/Reliance Energy Ventures Limited.

2) Gas Based Energy Undertaking (Clause 1.12)/ Global Fuel Management

Services Limited now known as "Reliance Industrial Resources Limited (RNRL)-Applicant company.

3) Financial Services Undertaking/Reliance Capital Ventures Limited.

4) Telecommunication Undertakings/Reliance Communication Ventures Limited.

22. To retain all other business including Petrochemicals, refining oil and gas exploration and production, textile and other business the Demerged company is Reliance Industries Limited (RIL)-the respondent. The Scheme became effective from 21/12/2005.

23. A draft of GSMA (Gas Sale Master Agreement) and a GSPA (Gas Sale Purchase Agreement) were emailed by an official of RIL to a sole nominee of Anil Dhirubhai Ambani Group (ADAG) on the Board of RIL at late night of 10.1.2006, despite the officials of both the related companies were still discussing the suitable gas supply agreement.

24. On 11.1.2006 drafts of GSMA and GSPA were approved by the Board of the RIL at a time when the Board of RNPL was under the control of Mukesh Ambani.

25. The nominee of ADAG had raised the objections, but the same were overruled. There was no sufficient time given to the applicant to read the draft. No independent or legal advice could be taken on behalf of the applicants. Basic clauses to the agreements are the bone of contention of the present litigation. Both the agreements alleged to have also been settled & executed on 12.1.2006.

26. On 12.1.2006 a letter addressed by Mr. J.P. Chalasani, the nominee of ADAG on the Board of RNRL to other Directors on the Board of RNRL namely : Mr. Sandip Tandon and Mr. L.V. Merchant who were the nominees of Mukesh Ambani/RIL, stating therein that the proceeding in the Board Meeting held on 11.1.2006 to consider the agreement with RIL in terms of the Scheme were illegal and void.

27. By another letter dated 13.1.2006, a request was made to take the contents of letter dated 12.1.2006 with regard to the agenda - item No. 8 (gas supply agreement) and be made part of the minutes of the Board Meeting.

28. On 13.1.2006 by a letter addressed to Shri Chalasani, sent the minutes of the Board of Directors held on 11.1.2006 informing that it would be tabled at the meeting of 13.1.2006. Some of the objections as raised by Chalasani were also recorded.

29. On 26.1.2006 the GSPA copy was made available to ADAG for the first time.

30. On 27.1.2006, the shares of the applicants-company to the shareholders of RIL were allotted.

31. Some time in January, 2006 an information Memorandum for listing of shares of RNRL submitted to the Stock Exchange and displayed on the website of Stock Exchange which, inter alia, sets out the risk factors arising out of uncertainty in respect of gas supply with RIL. It also sets out the main commercial point agreed

upon for the supply of gas as part of the overall re-organisation, as alleged.

32. On 7.2.2006 the Board of the applicant re-constituted in order to hand over the management and control of the resulting companies to Mr. Anil Ambani.

33. On 14.2.2006 a letter addressed by RIL to the applicant stating that "a proforma gas sale and purchase agreement (GSPA) has been annexed to the above GSMA. The proforma contains the terms and conditions as are contained in the GSPA signed by RIL on 12.12.2005 and forwarded to the NTPC. It was further informed that they would be agreed to carry out changes to the proforma GSPA annexed to the GSMA so that it reflects the same terms as contained in GSPA between NTPC and RIL as and when any changes are carried out to NTPC, GSPA.

34. On 28.2.2006 RNRL by its letter to RIL informed and elaborated various deviations in the GSMA from the agreed terms which were necessary for demerging the business. A suitable draft agreement in compliance with the Scheme, as per the appellant, was also sent with the letter.

35. On 12.4.2006 the respondents-RIL made an application to the Ministry of Petroleum and Natural Gas (the MoPNG) for approval of the gas price at which the sale of 28 MMSCMD of gas was agreed with the applicant under the GSMA.

36. On 9.5.2006 the applicants by a letter requested the MoPNG to accord approval to the application dated 12.4.2006 made by the respondents.

37. On 26.7.2006 the MOPNG communicated to the respondents its refusal to approve the price of gas agreed between the applicants and the respondents under the GSMA.

38. On 31.7.2006, RIL forwarded a letter to the applicants, a copy of letter dated 26.7.2006 received from the MOPNG, rejecting the proposed formula for determining the gas price as the basis of valuation of gas under the PSC.

39. On 7.11.2006/8.11.2006, a Company Application No. 1122/06 u/s 392 of the Companies Act, 1956 (the Act) has been filed before the Bombay High Court in which the prayers are as under:

(a) Order and Direct RIL to take all necessary steps in order to ensure actual supply of 28 MMSCMD or 40 MMSCMD of gas to RNRL on the NTPC Contract Terms and as per the commercial aspect set out in para 8.3 hereinabove.

(b) Order and Direct RIL to execute an amendment to the Gas Supply Master Agreement dated January 12, 2006 and to the Form of Gas Sale and Purchase Agreement attached in Schedule 3.2 thereto, to bring them in line with the Gas Supply Master Agreement and Form of Gas Sale and Purchase Agreement as set out in Exhibit-J to this Application.

(c) restrain RIL from creating any third party interests or rights in respect of i) 28 MMSCMD of Gas to be supplied to the Applicant; ii) 12 MMSCMD to be

supplied to the Applicant on firm basis in case NTPC Contract does not materialize; and/or entering into any contract(s) and/or use or supply to any third party the said gas (28 MMSCMD or 40 MMSCMD, as the case may be) which is required to be supplied to the Applicant under the Scheme.

(d) pending the hearing and final disposal of the Application, direct RIL to supply the said 28 MMSCMD or 40 MMSCMD gas, as the case may be to the Applicant on the same terms as per NTPC contract.

(e) ad-interim reliefs in terms of prayer (c) and (d) above.

(f) such further orders be passed and/or directions be given as this Hon''ble Court may deems fit and proper.

40. Subsequently, a company Application No. 1123/2006 in Company Application No. 1122/2006 dated 16.11.2006 has been filed having following prayer Clause (a), as there was no interim relief granted till this time:

(a) RIL be restrained from creating any third party interests or rights in respect of i) 28 MMSCMD of Gas to be supplied to the Applicant, ii) 12 MMSCMD to be supplied to the Applicant on firm basis in case NTPS Contract does not materialize; and/or entering into any contract(s) and/or use or supply to any third party the said gas (28 MMSCMD or 40 MMSCMD, as the case may be) which is required to be supplied to the Applicant under the Scheme.

41. On 10.11.2006 an application for ad-interim relief was moved. However, on 23.11.2006 no ad-interim relief was granted. The matter was adjourned for the respondents' reply/affidavit.

42. On 3.5.2007, in Company Application No. 1123/06 an ad-interim relief in terms of prayer (a) of the application has been granted. The relevant observations in paragraphs 20, 21 and 22 of order dated 3.5.2007 are reproduced below:

20. Be that as it may, the question is what is the ad-interim relief that needs to be granted in the fact situation of the present case? Although the Applicant Company has specified the quantum of gas which it is entitled to receive from the Respondent Company by way of supply for their power projects for generation of power, however, has not disclosed the immediate actual consumption of gas by the existing power projects and future requirements of the concerned power projects. Even so, the Applicant Company, for the present, will be bound by the scope of relief claimed by way of ad-interim relief in the Application under consideration. In the circumstances, Respondent Company will have to be directed to ensure that no third party interest or right is created in respect of specified quantity of gas to be supplied to the Applicant under the Scheme on firm basis. In other words, the Respondent Company may proceed with the process of sale of the gas through auction, but of the remainder quantity of the gas explored and produced by it. Respondent Company will take all precautions to ensure that specified quantity of gas to be supplied to the

Applicant is set-apart and made available if and when directed. This direction is only ad-interim arrangement till the Application is heard.

21. Having regard to the nature of controversy and sizeable number of stakeholders in both the companies, the affairs of the Company being in public domain, it is appropriate that the main Application is heard expeditiously. The main Application being Company Application No. 1122 of 2006 be listed for hearing immediately on re-opening of the Court after Summer Vacation. The said Application be peremptorily listed on 7th June 2007 for hearing. If there is any other controversy, all those aspects can be considered and addressed in the main Application, which may be decided prior to the completion of the auction process which is reported to have been initiated by the Respondent Company. The above direction will meet the ends of justice.

22. Accordingly, ad-interim relief in terms of prayer Clause (a) of the Application under consideration is granted. It is made clear that the view expressed in this decision is only a tentative view for consideration of prayer for ad-interim relief. Pending proceedings will be decided uninfluenced by any of these observations. All questions therein are left open.

43. On 19.6.2007 another Company Application No. 695/2007 (Lodging No. 721/07) has been filed by the applicant and prayed as under:

(a) restraining the Respondent from committing the sale/auction of any quantity of gas to any third party or from seeking requisite approval under the Production Sharing Contract for any sale/auction from the Government.

(b) restraining RIL from creating any third party interest or rights without first satisfying the first option rights of the Applicant.

(c) ad-interim relief in terms of prayer(a) and (b) above.

44. By order dated 20.6.2007, after hearing both the parties, the Court has further observed in paragraphs 16, 17 and 18 as under:

16. Thus understood, I have no hesitation in observing that the Respondent cannot be heard to say that they are free to negotiate for the proposed sale of gas produce with third party though it may affect the claim of the Applicant in any manner, which claim is founded on the GSMA dated January 12, 2006 or the one at Exhibit J or otherwise, which, if accepted, will substitute the said Agreement as a suitable arrangement for the purpose of Clause (19) of the sanctioned Scheme. For, if the Company Court has power to do so, in that situation the Company Court will be faced with a fate accompli situation on account of prior commitments to be made by the Respondent.

17. For that reason, it needs to be clarified that in the event, the Respondent taking benefit of the observations made in paragraph 20 of my order dated 3rd May 2007 were to commit itself in relation to any gas produce to third party, that will be subject to the outcome of the main Company Application No. 1122/2006.

This position needs to be clarified which, in fact, will be stating the obvious. Ordered accordingly.

18. Place this Company Application for hearing along with Company Application 1122 of 2006 on 7th July 2007.

45. On 17.7.2007, the applicants by a letter requested again to the MOPNG to re-consider its earlier decision dated 26.7.2006 and requested to grant expeditiously the approval to the respondents' application dated 12.4.2006.

46. All these Applications therefore, by consent, were listed for hearing on 19.7.2007. The parties have no objection that the matter be heard by the present Company Court Judge.

47. All these matters were heard on 19.7.2007, 27.7.2007, 10.8.2007 and 23.8.2007. The learned Counsel for the applicants and the respondents have also filed their written submissions on 3.9.2007 and 4.9.2007 respectively.

48. The applicants have invoked Section 392 of the Companies Act, 1956 (for short, "Company Act") by Company Application No. 1122/2006 basically by contending that to make the Scheme, as sanctioned by this Court, effective and workable, it is necessary to direct the amendments and alterations to the GSMA dated 12.1.2006 and draft GSPA annexed to the GSMA, as both do not result in effective transfer of the business sought to be demerged and are not in compliance with the terms of the Scheme of Arrangement in its letter and spirit. The GSMA and GSPA are also not in compliance with the MOU which was the very reason of the Scheme of Arrangement as filed by RIL. Therefore, prayed for Courts intervention to ensure that the Scheme is implemented effectively.

BASIC PLEADINGS: PLEADINGS: PLEADINGS:

49. In the above background, The applicants have averred in support of their submission as under:

6.5 The Board of Directors of RIL were appreciative of the resolution of the issues between Shri Mukesh Ambani and Shri Anil Ambani and in their meeting held on June 18, 2005 noted the settlement and amicable resolution of the dispute providing for reorganization of the Reliance Group including the businesses and interests of RIL and adopted a resolution appreciating the sincere and painstaking efforts by Smt.Kokilaben Dhirubhai Ambani in working towards the settlement. A Press Release issued by RIL on June 18, 2005 and the report sent by RIL to the Stock Exchange on that date are enclosed collectively y marked Exhibit C.

6.6 The agreement arrived at between Shri Mukesh Ambani, Chairman and Managing Director of RIL and Shri Anil Ambani relating to the reorganisation of the RIL Group envisaged the supply of gas from RIL's current and future gas fields for various projects of Reliance - Anil Dhirubhai Group. The following are the part of the said agreement:

(a) Quantum of Supply and Source of Supply

- * Supply of 28 MMSCMD gas by RIL to Anil Dhirubhai Ambani Group (ADAG). This supply is subject to supply of 12 MMSCMD to NTPC.
- * In the event that NTPC contract does not materialise or cancelled, the entitlement of NTPC to the said extent should go to the ADA Group in addition to its entitlement of 28 MMSCMD, i.e. a total of 40 MMSCMD.
- * ADA Group to have option to buy 40% of all balance and future gas of from the current or future gas fields of MDA Group.
- * Supply to be from the proven P1 Reserves of RIL whether from the KGD-6 Basin or elsewhere.

(b) Supply Period 17 (Seventeen) Years.

(c) ADA Group's Purchase Obligation.

On take or pay basis.

(D) Price & Commercial Terms

- * The firm quantity of 28 MMSCMD/40 MMSCMD at a price no greater than NTPC prices.
- * Option gas at the market rate.
- * Other commercial terms - same as those of NTPC contract.
- * Shall be in accordance with International Best Practices.
- * Shall be bankable in international financial markets.

(E) Other Terms Governing the Arrangement

- * Reliance - ADA Group shall have the option to take delivery of gas at Kakinada on the East Coast and may construct its own pipeline. However, REL would still have to pay the transportation cost for supply to the West Coast even if the facility is not used, but will have the right to deal with the capacity as it deems fit and to sell or assign the same to another party.
- * The gas supply/option agreements would be between RIL and a 100% subsidiary of RIL, which would be demerged to the Reliance - ADA Group as part of the Scheme and not with REL.
- * In relation to applicable governmental and statutory approvals, without in any manner mitigating RIL's responsibility, RIL and Reliance - ADA Group to jointly work towards obtaining such approvals, RIL will, if so required by Reliance - ADA Group, give an irrevocable Power of Attorney to the Reliance - ADA Group to apply for and obtain all such governmental and regulatory approvals as are necessary on its behalf.

6.7 The understanding and agreements relating to the supply of gas as part of the reorganisation of RIL are set out in the Information Memorandum filed for the benefit of the shareholders and investors by the Applicant with the Bombay Stock Exchange and displayed on the site of the Bombay Stock Exchange and of the Applicant. A copy of that is also annexed as Exhibit D.

6.8 Consequently, as part of the reorganization of the business and undertakings of RIL, the power business of RIL including the Gas Based Power Business, described in the Scheme as the Gas Based Energy Undertaking, was also to be demerged. The Gas Based Energy Undertaking of RIL to be demerged under the Scheme consisted of the business of supply of gas for power projects REL and of Reliance Patalganga Power Ltd. ("RPPL") through suitable arrangements.

The relevant provisions of the Scheme to give effect to this arrangement include the following:

1. DEFINITIONS

1.1 - 1.10

1 11 "Gas Based Energy Resulting Company" means Global Fuel Management Services Limited having its registered office at 3rd floor, Maker Chambers IV, 222, Nariman Point, Mumbai 400 021;

1 12 "Gas Based Energy Undertaking" as described in item (ii) of Sub-clause (f) of Clause A of the Preamble means the Demerged Company's undertaking, business, activities and operations pertaining to supply of gas for the generation of power by Reliance Patalganga Power Limited and REL for their power projects (hereinafter referred to as " Gas Based Power") and comprising all the assets (moveable and immovable) and liabilities, which relate thereto or are necessary therefore and including specifically the following:

(i) All investments of the Demerged Company in Reliance Patalganga Power Limited and other assets through which the Demerged Company carries on its business, activities and operations pertaining to gas based power as described in Part "A" of Schedule II hereto;

(i) All the debts (whether secured or unsecured), liabilities (including contingent liabilities), duties and obligations of the Demerged Company of every kind, nature and description whatsoever and howsoever accruing or arising out of, and all loans arising out of, and all loans and borrowings raised or incurred and utilized for its businesses, activities and operations pertaining to Gas Based Power as described in Part "B" of Schedule II hereto;

(iii) All agreements, rights, contracts, entitlements, permits, licences, approvals, consents, engagements, arrangements and all other privileges and benefits of every kind, nature and description whatsoever relating to the Demerged Company's business, activities and operations pertaining to Gas Based Power;

(iv) All intellectual property rights, records, files, papers, data and documents

relating to the Demerged Company's business, activities and operations pertaining to Gas Based Power; and

(v) All employees engaged in or relating to the Demerged Company's business, activities and operations pertaining to Gas Based Power.

Part II DEMERGED UNDERTAKING

4. Transfer of Demerged Undertakings.

4.1 Transfer of assets:

(a) Upon the coming into effect of this Scheme and with effect from the Appointed Date, each of the Demerged Undertakings (including all the estate, assets, rights, claims, title, interest and authorities including accretions and appurtenances of the Demerged Undertakings) shall pursuant to the provisions of Sections 391 to 394 of the Act, without any further act, deed, matter or thing be and stand transferred to and vested in and shall be deemed to be transferred to and vested in the respective Resulting Companies on a going concern basis, in the following manner:

(i)...

(i) the Gas Based Energy Undertaking (including all the rights, claims, title interest and authorities including accreditations and appurtenances thereto such as dividends, or other benefits received including in particular any securities acquired or received by the Demerged Company in the company comprised in the Gas Based Energy Undertaking shall, without any further act, deed, matter or thing be demerged from the Demerged Company and be and stand transferred to and vested in or shall be deemed to be transferred to and vested in the Gas Based Energy Resulting Company on a going concern basis such that all the properties, assets, rights, claims, title, interest, authorities and liabilities comprised in the Gas Based Energy Undertaking immediately before the demerger shall become the properties, assets, rights, claims, title, interest, authorities and liabilities of the Gas Based Energy Resulting Company by virtue of and in the manner provided in this Scheme.

19. Agreements

Further, suitable arrangements would also be entered into in relation to (i)...; (ii) supply of gas for power projects of Reliance Patalganga Power Limited and REL with the Gas Based Energy Resulting Company; and (iii)...

6.9 Even though the Scheme was formulated in a manner in which the Applicant would be put into the shoes of RIL, it was not possible on account of various contractual and regulatory considerations to demerge RIL's interest in the gas fields under exploration and/or proposed to be explored by RIL. Consequently, as noted above, the Scheme provided for suitable arrangements whereby the applicant would receive gas from RIL and supply the same, as RIL would otherwise have done, for the power projects of REL.

6.10 In the year 2003 NTPC had floated a global tender for supply of gas to its power projects to be located at Kawas and Gandhar in the State of Gujarat. Along with the tender document, the Gas Supply Purchase Agreement (GSPA) to be entered into with the successful bidder was annexed. RIL who emerged as the successful bidder had at the time of submission of bids unconditionally accepted all the terms and conditions mentioned in the draft GSPA. In accordance with the agreed position/settlement, the gas was to be supplied by RIL to the Applicants at the price and terms no less favourable than those of NTPC and that the gas supply agreement between RIL and the Applicant would be as per the said NTPC Contract Terms. A copy of the draft GSPA annexed to the NTPC Tender is enclosed marked Exhibit E. RIL has also confirmed the relevance of the Agreement between RIL and NTPC as the base for the Agreement between RIL and the Applicant. RIL has, by the letter addressed by RIL on February 14, 2006 signed by one K. Sethuraman, Authorised Signatory of RIL, communicated that he was directed to confirm that RIL would agree to carry out amending changes to the proforma of GSPA annexed to the Gas Supply Master Agreement so that it reflects the same terms as are contained in the GSPA for 12 MMSCMD between NTPC and RIL as and when changes are carried out to NTPC GSPA.

6.11 The Scheme, in line with the overall rationale and intent, also provided that post the demerger of the Demerged Undertakings of RIL, Shri Anil Ambani would obtain control and management of the businesses and undertakings being demerged. To this end the Scheme provided for reconstitution of the Boards of the Resulting Companies on the basis that reconstitution would be carried out after the Record Date, on which date shares would be allotted to the shareholders of RIL, in a manner agreed with Shri Anil Ambani so that pursuant to such reconstitution each of the Resulting Companies shall be controlled and managed by Shri Anil Ambani. This was set out in para 17 of the Scheme which reads as follows:

At any time after the Record Date, RIL shall cause the Board of Directors of each of the Resulting Companies to be reconstituted in such manner as is agreed between each Resulting Company and Anil D. Ambani and thereupon each of the Resulting Companies shall be controlled and managed by Shri Anil D. Ambani. The Demerged Company constituting the Remaining Undertaking shall continue to be controlled and managed by Shri Mukesh D. Ambani.

7.3 Further the agreements had to reflect an interest in gas produced by all of the gas fields of RIL so as to ensure that gas upto the agreed quantity i.e. 28 MMSCMD or 40 MMSCMD, as the case may be, would be made available to the Applicant, in priority to any other sale or use by RIL, except for the gas to be used by RIL itself for operation and transportation and for the gas to be supplied to NTPC. The interest of the Applicant was thus to extend to gas fields other than the KGD-6.

7.8 In spite of the failure to arrive at appropriate and suitable arrangements and despite serious differences on critical clauses between the parties, RIL decided to

execute an agreement with the Applicant titled as "Gas Supply Master Agreement (GSMA)" to which is annexed a draft of an actual Gas Sale and Purchase Agreement (GSPA) to be entered into by RIL directly with entities engaged in or proposing to engage in generation of gas based power. The GSMA was prepared by RIL and finalized and executed by RIL not only on its behalf but also on behalf of the Applicant without the terms thereof having been vetted by or even considered by REL or by Shri Anil Ambani or the nominee of Shri Anil Ambani on the Board of the Applicant and despite the serious differences on critical issues all of which were unilaterally reflected in favour of RIL. The said act by RIL and its representatives is patently illegal and in breach of trust which RIL and its representatives had vis-a-vis the Applicant and the millions of persons who have become shareholders of the Applicant. The circumstances leading to the unjustified imposition of an agreement with onerous liabilities and also defeating some of the key requirements of the Scheme which would enable the Applicant and REL to take over the Gas Based Energy Undertaking of RIL are set out in the correspondence exchanged between the nominees of Shri Anil Ambani on the Board of the Applicant and nominees of RIL who constituted the majority of the Board of the Applicant and establish beyond doubt the malafide manner in which RIL has acted in effectively frustrating the Scheme. In particular the correspondence establishes that:

7.10 The said GSMA and the Form of the GSPA annexed thereto significantly depart from the Draft Agreement annexed to the NTPC request for bids and unconditionally accepted by RIL. The key deviations in the GSMA and GSPA are set out hereinafter:

List of major deviations made from the RIL-NTPC Draft GSPA.

Provision in NTPC Contract Provision in GSMA/GSPA Terms. purported to be entered into between RIL and RNRL on January 12, 2006.

- a) Definition of Restricted to include "Affiliate" is based on the only those entities test of control wherein ownership control is 51% or more
- b) Definition of Modified to exclude "Contracted Customers" is also those parties limited to supply for one who have an agreement year. with seller for a term less than 5 years.
- c) Sufficiency of Reserves Covenant is made Covenant is to apply applicable only at the throughout the term of the time of entering into agreement. any new Gas Supply obligation.
- d) Supply of alternate fuel/ Acceptance of alternate at alternate time is fuel made mandatory permitted only with seven upon the Buyer and that days notice and acceptance too without notice. by Buyer.
- e) Reimbursement for Reimbursement is incremental cost of linked to not only to alternate fuel is only procurement but also subject to Buyer having to actual consumption procured alternate fuel. of fuel.

f) Assignment to 100% Assignment relieves subsidiary does not the assigning party of relieve the Seller of its its obligations under obligation. the agreement.

7.11 Provisions not part of the NTPC contract Terms but included in January 12, 2006 agreement with the Applicant....

8.3 By this Application therefore, the Applicant is seeking appropriate order and directions of this Hon''ble Court for modification of the Scheme to implement it and make it workable for the effective vesting of the Gas Based Energy Undertaking in RNRL and compliance with the requirements of the Scheme, the gas supply arrangement between RIL and the Applicant to reflect the following commercial aspects:

- * After the NTPC entitlement (for 12 MMSCMD), the Applicant will get a firm supply of 28 MMSCMD of gas from RIL, which is the Base Volume from the gas reserves of RIL including from KGD6.

- * If, for any reason, the NTPC contract does not materialize, or is cancelled, its entitlement of the aforesaid 12 MMSCMD will also go to Applicant, in addition to the 28 MMSCMD, thereby making an aggregate Base Volume quantity of 40 MMSCMD.

- * The price and commercial terms for the aforesaid gas supply will be no less favourable than NTPC Contract Terms.

- * Supply to the extent of 50% of the commitment for supply of Base Volume Gas (28 MMSCMD, or 40 MMSCMD, as the case may be) to be commenced in 2008-09, and the balance in 2009-10.

- * Thereafter, from the entire future reserves of RIL (including new discoveries of gas from new explorations, and/or bids as may be submitted from time to time), Applicant will have the first option to get 40% quantity of gas (Option Volume Gas). This is to ensure that 2.2 million shareholders of RNRL continue to benefit from RIL's Gas finds.

- * Supply of Option Volume Gas will be at market rates.

- * Gas can be used for all projects of Applicant and its affiliates and group companies.

- * The gas supplied will not be used for trading, other than trading between Applicant's group companies and affiliates.

- * Swapping of gas will be permitted.

- * For Bas Volume Gas, Applicant will have the option to set up its own pipeline, but will have to pay the transportation costs, even if does not use RIL's East-West pipeline. However, in that situation, Applicant will have the right to deal with the unutilized pipeline capacity, as it deems fit.

- * Gas Supply Agreements to be entered into for both, Base Volume and option

Volume, will be in accordance with international best prices, and will be such as are bankable in international markets.

* Deletion of conditions/provisions which seek to link performance by RIL of gas supply obligations to extraneous factors such as the "formula/price under PSC for the profit sharing by RIL under the PSC or to excuse performance by RIL for RIL's inability to obtain and maintain necessary approvals.

50. The respondents have resisted the same and basically in affidavit dated 16.1.2007. The relevant denials are:

8(vi) Assuming without accepting, that one of the underlying reasons for the Scheme was an arrangement that may have been arrived at between the promoters, such arrangement/agreement is nonetheless irrelevant. A Scheme for the demerger of a large company with a large number of shares being held by the public and by institutions, has to be in larger public interest as well as interest of the company. It must necessarily keep in view interest of a large body of shareholders of the Demerged Company as also the shareholders of the Resulting Companies. Any settlement of the disputes stated to have taken place between or amongst the promoters has, as a necessity, to abide by the final decision of the Board of the Demerged Company and such adaptations as may be necessary to protect and further the interests of the large body of shareholders or public interest. It is submitted once the Scheme as was placed before and duly approved by; the shareholders (99% shareholders approved the Scheme) which suggests that the Scheme had the support not merely of the General Body of shareholders but also the members of the promoters' family- all anterior or underlying agreements become irrelevant. The senior most member of the family who (even as per the Applicants) resolved all the disputes has, at no point, contested the Scheme (which as aforesaid has, actually and factually been fully implemented) as being, inconsistent with any arrangement that may have been arrived at. It is submitted that the present Application is a thinly disguised attempt to reopen the Scheme after it has been fully implemented in a manner that is completely inconsistent not only with the demerger of the businesses but the provisions of Section 392 of the Companies Act, 1956.

Referring to paragraph 6.5, I crave leave to refer to the Resolution dated 18th June 2005 passed by the Board of Directors of RIL and the Press Release of that date to ascertain the true meaning and correct legal effect thereof.

Referring to paragraph 6.6, I respectfully submit that none of the heads of so-called Agreement are a part of the Scheme as proposed by the Board of Directors of RIL and approved by the creditors and general body of shareholders. These allegations have no place in an application made for implementation of the Scheme as sanctioned by this Hon'ble Court. The averments made therein are completely extraneous and irrelevant and this Hon'ble Court may be pleased to disregard the same. I repeat and reiterate that the issues, if at all, as between Shri Mukesh Ambani and Shri Anil Ambani were personal to the Ambani family

and the Board of RIL was not aware of the details of the settlement between Shri Mukesh Ambani and Shri Anil Ambani.

With further reference to paragraph 6.6, I respectfully submit that bearing the Vice Chairman and Joint Managing Director of RIL, at the relevant time, Shri Anil Ambani was or in any event, should be deemed to be fully aware of the nature of the rights of RIL in relation to exploration and production of gas from various gas-fields as also the provisions of the Production Sharing Contract. Significantly, the Production Sharing Contract for Block KGD6 was executed as far back as in the year 2000. Being Board managed company, the business and affairs of RIL are under control and supervision of the Board of Directors and in fact the Minutes of the Board meeting clearly show that in all matters in which Shri Mukesh Ambani was or could be said to be an interested director, he had refrained from participating in the deliberations and voting on the resolutions. The terms and conditions on which the gas was to be supplied to the power plants of Reliance Patalganga Power Limited and REL was to be at the discretion by the Board of Directors of the Demerged Company who were not bound by any "agreement" as between two groups of promoters. The Board of Directors of Demerged Company was obliged and in fact had at all times kept the interests of the general body of shareholders as being a paramount importance and had taken such decisions as in the best judgment of the Board, accorded to their duty as the Board with the shareholders interests being of utmost importance.

51. The respondents have been unable to deny and/or place on record any contra-material to oppose the contents of MOU.

RELEVANT CORRESPONDENCES-DISCUSSION PRIOR & POST
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TO THE MOU.

52. Some of the extract from the important letters from Exhibit "F" filed by the applicants and not denied by the respondents. The existence of these documents "Exhibit F" are not in dispute. As replied and denied by respective letters & correspondences, the contents of these letters & emails are not seriously denied by the applicants. In fact the concerned persons have acted upon the same.

ANNEXURE 2 EXTRACTS OF SOME IMPORTANT LETTERS FROM EXHIBIT "F"

(i) Email dated 30.6.2005 from Anil Ambani Group to RIL (pg.3).

Para VIII (vii) of Annexure 1 to the MOU (page 27) provides for making available the Production Sharing Contract, correspondence with NTPC and the latest version of draft NTPC contract to ADA Group. As will be appreciated, it is highly important for the ADA Group to study the aforesaid documents. The same may be furnished at the earliest.

(ii) Letters forming part of Exh. "F".

E-mail dated 30.6.2005 from RIL to Anil Ambani Group (pg.3).

Sub: Re: FW Gas supply.

We have already sent to Sh Cyril Shroff. We will send you a copy by Saturday, 2nd July 2005 (as this is voluminous). Kindly let me know where this should be sent. Regards, Harish.

(iii) E.mail dated 30.7.2005 from RIL to Anil Ambani Group (pg. 25).

Sub: Re: FW Actions arising from MOU. "I think we both accept that the MOU has to be given a shape to produce a technically feasible and commercially workable long-term GSPA, and that the nuances of such a long term arrangement can not be expected to have been addressed earlier than the negotiations relating to actual GSPA commenced. We have to regard the decision and move ahead to reach an agreement so that it is implemented as soon as possible by not being detrimental to the respective companies. Our proposed GSPA uses the NTPC GSPA as a base document. The final document will be based on the agreed final draft with NTPC. The modification suggested is only intended to expedite the implementation of the MOU by producing a workable commercial arrangement that is in accordance with the MOU and the standards stated above. REL's counter proposal in the modified document, however, renders it unworkable."

(iv) E-mail dated 8.9.2005 from Anil Ambani Group to RIL (pg 29-30).

We do not agree with your contention that your proposed GSPA dated July 4, 2005 uses the NTPC GSPA as the base or it is a bankable agreement from both RIL and REL's point of view. The draft GSPA submitted to us contains clauses that totally dilutes the commitment to supply gas and the P 1 reserves obligation that were explicitly mentioned both in the MOU and in the NTPC GSPA.

(v) E.mail dated 11.8.2005 (pg 37) from Mr. Cycil Shroff to Mr. Sandeep Tandon etc. As you are aware, under the KDA direction dated 2nd August 2005 issued under the MOU, both parties were to furnish their issues list by 6th August 2005. The Direction further provides that if there is no agreed issues list by 6th August, I am to finalise the same on the basis of communications exchanged between the parties.

Sl. No. Details of the ADA Group's MDA Group's issue. remarks. Remarks. 16 Gas supply Final NTPC RIL is nego- agreements. Agreement tiating the awaited. contract with The initiated NTPC. ON draft of NTPC execution of agreement to be final contract, adopted with an executed deviations to copy will be to provide for: provided to 1.swapping of ADAE. gas; 2. bankability in the international finance markets; and 3. dealing with gas transportation capacity for which cost is but not used. ADA Group to agree for changes, if any, accepted by NTPC after the date of the execution of the execution agreement between RIL and ADA Group's fuel management company. Substantial delay in appointment of international consultant for evaluation of gas reserves. Need to be appointed without any further delay. Even for

option gas NTPC agreement shall form the basis as envisaged under the MOU.

(vi) E.mail from Mr. Cyril Shroff dated 30.8.2005 (pg 4-46).

Sub: Resolution of issues pursuant to KDA directions.

(ii) Gas Supply Contract

In this behalf, I would invite attention to our mail of 16th August 2005, a copy of which is enclosed herewith for ready reference. Hence, on the

Friday/Saturday meetings, my suggestion would be:

(d) As a related matter, to evaluate the implications of "bankability" and directions given to MDA personally under the MOU to ensure that the gas supply contract is robust. Secondly, what, if any, are the appropriate changes that could be made in order to give meaning and effect to the directions under the MOU?

(vii) E-mail from Mr. Cyril Shroff dated 29.11.2005 (pg 63).

Sub: Gas.

(ii) I impressed upon MDA (and he agreed) that the finalization of the agreement with ADA Group should no longer wait the outcome of the NTPC agreement. It was possible to progress the negotiations bilaterally between the two groups using the MOU of 18th June and the interim settled drafts between RIL and NTPC as a guidance tool.

(viii) E.mail from Mr. Cyril Shroff dated 7.1.2006 (pg.95).

1/7/2006 3.30 pm

Subject: MOU - steps

Pursuant to the MOU of June 2005 and subsequent KDA directions, we are separately forwarding the pre-final versions of the shared services agreement, trademark management agreement and non compete agreements as also some other related documents to the above. These have been prepared after receiving comments from both groups. Consistent with the MOU and KDA directions, we were to finalize the same. We believe that except for some factual inputs and specific clarifications that are being indicated along with each document, these agreements are in final form and it should be possible to execute the same in the next few days upon obtaining requisite corporate authorizations.

We are enclosing herewith a list of closing actions which have to be fulfilled in order to bring the performance of the MOU to a close. It is suggested that parties discuss and agree upon the specific mechanics of the closing of these items which may be done in one or possibly 2 steps, hopefully closing no later than the Record Date for the Resulting Companies, listing and handing over of the companies to the ADA Group.

(ix) E.mail from Mr. Cyril Shroff dated 21.2.2006 (pg.136).

Subject: Deviation from MOU

The KDA 4th direction refers to the consideration of MOU deviation so far as the Brand, Non-compete and Gas Supply Agreements are concerned. With a view to consider what further steps could be taken and the guidance that KDA could provide for going forward you are requested to urgently circulate a list of specific deviations from the MOU and suggested language where such deviations are to be found. Possibly this could be done in the form of a mark-up over the agreements that have been signed already.

(x) E-mail from Mr. Cyril Shroff dated 24.2.2006 (pg.139).

02/24/2006 10.43 am

Subject: Deviation from MOU

This has reference to your mail of 23rd February in relation to the MOU deviations and enclosing the revised documents. Please forward your mail with enclosures to the MDA Group as well. They will need to comment upon your suggestions in detail.

53. These correspondences, therefore just cannot be overlooked while considering the submissions as raised by the learned Senior Counsel for the applicants Mr. Rohatgi that the Scheme has the foundation of the MOU in question, though not reflected in clear terms in any part of the Scheme as both the parties are aware of it's contents also.

54. Therefore, the submission of the learned senior counsel for the respondents Mr. Salve that there was no reliance placed on these averments and/or even these documents as the MOU in question though relied upon is itself not the part of the Court proceeding, is unacceptable.

BINDING MOU/FAMILY ARRANGEMENT & IT'S IMPORTANCE & MOU/FAMILY ARRANGEMENT & IT'S IMPORTANCE & MOU/FAMILY ARRANGEMENT & IT'S IMPORTANCE & EFFECT:

55. The learned Senior Counsel for the applicants has strongly relied on the following judgements in reference to the importance of such family arrangement (MOU) & it's effect and value.

1) Kale and Others Vs. Deputy Director of Consolidation and Others, , relevant paras 9, 17, 19, 42 are reproduced below:

9. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes succession is

so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.

17. In *Krishna Biharilal V. Gulabchand*, it was pointed out that the word "family" had a very wide connotation and could not be confined only to a group of persons who were recognised by law as having a right of succession or claiming to have a share.

19. Thus it would appear from a review of the decisions analysed above that the courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the courts is that if by consent of parties a matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds.

42. As observed by this Court in *T.V.R. Subbu Chetty's Family Charities*" case (supra), that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open.

2) *K.K. Modi Vs. K.N. Modi and Others*, , relevant paras 33 and 52 are reproduced below:

33. In the present case, the Memorandum of Understanding records the settlement of various disputes as between Group A and Group B in terms of the Memorandum of Understanding. It essentially records a settlement arrived at regarding disputes and differences between the two groups which belong to the same family. In terms of the settlement, the shares and assets of various companies are required to be valued in the manner specified in the agreement....

52. Group A also contends that there is no merit in the challenge to the decision of the Chairman of IFCI which has been made binding under the Memorandum of Understanding. The entire Memorandum of Understanding including clause 9 has to be looked upon as a family settlement between various members of the Modi family. Under the Memorandum of Understanding, all pending disputes in respect of the rights of various members of the Modi family forming part of either Group A or Group B have been finally settled and adjusted. Where it has become necessary to split any of the existing companies, this has also been provided for in the Memorandum of Understanding. It is a complete settlement, providing how

assets are to be valued, how they are to be divided, how a scheme for dividing some of the specified companies has to be prepared and who has to do this work. In order to obviate any dispute, the parties have agreed that the entire working out of this agreement will be subject to such directions as the Chairman, IFCI may give pertaining to the implementation of the Memorandum of Understanding. He is also empowered to give clarifications and decide any differences relating to the implementation of the Memorandum of Understanding. Such a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be lightly disturbed. The respondents may make appropriate submissions in this connection before the High Court. We are sure that they will be considered as and when the High Court is required to do so whether in interlocutory proceedings or at the final hearing.

56. In answer to this, the learned senior counsel for the respondents Shri Harish Salve basically submitted that as per Section 36 of the Companies Act, 1956 the Memorandum and Articles shall bind the company and the Members thereof. The Articles of Association are the regulations of a company which are binding on the company and its shareholders. Nothing outside the Articles can bind a shareholder vis-a-vis the company. He relied on *V.B. Rangaraj Vs. V.B. Gopalakrishnan and others*, and specially the following paragraph:

9. The private agreement which is relied upon by the plaintiffs whereunder there is a restriction on a living member to transfer his shareholding only to the branch of family to which he belongs in terms imposes two restrictions which are not stipulated in the Article. Firstly, it imposes a restriction on a living member to transfer the shares only to the existing members and secondly the transfer has to be only to a member belonging to the same branch of family. The agreement obviously, therefore, imposes additional restrictions on the member's right to transfer his shares which are contrary to the provisions of Article 13. They are, therefore, not binding either on the shareholders or on the company....

57. He contended that the question before the Supreme Court was as to the enforceability of an agreement which was inconsistent with private company's Articles in the context of transfer of shares. It was held that the agreement between the two groups of shareholders which impose certain restrictions on the transferability of the shares held by them was not binding either on the company or its shareholders because the restrictions so imposed by the agreement were contrary to the provisions of the Articles; a sale of shares held by one of the two groups in breach of the agreement could not, therefore, be held to be valid.

58. He further relied on *Spindel Fabrik Sussen v. Sussen Textile Bearings Ltd.*

1989 (2) CLA 202; Rolta India Limited v. Venire Industries Ltd. (2000) 24 SCL 13; (2000) 100 CompCases 19 (Bom); IL & FS Trust Company Ltd. v. Birla Perucchini Ltd. (2003) 4 Company Law Journal 131 (Bombay) and he submitted that an agreement between shareholders is not binding on the company unless the company adopts it and it is incorporated in the Articles of Association. Therefore, he resisted that the demerger Scheme was based on the MOU and be treated as guidance to the term "suitable arrangement". A family arrangement or the MOU has not been referred to at any stage, in the Scheme or in any representation made to the Stock Exchange and further that it is all contrary to the applicant's own pleading and the case.

59. The learned senior counsel for the respondents Mr. Salve has also relied on the various exerts from some of the letters/e-mails from Exhibit "F" filed by the applicant as quoted above. Those are letters/emails dated 30.07.2005 from Mr. Harish Shah (RIL) (page 25) to Mr. Venkat Rao (REL); email dated 6.10.2005 from Mr. Cyril Shroff to Mr. Sandeep Tandon/RIL (page 54), email dated 29.11.2005 from Mr. Cyril Shroff to Mr. Anil Ambani (page 63), email dated 14.12.2005 from RIL to Mr. J.P. Chalasani (page 72) and email dated 27.12.2005 from Mr. Sandeep Tandon (RIL) to Mr. Venkat Ponanda etc. but not disputed the contents of the letters or correspondences and emails referred therein. The existence of letters/correspondence remained unchallenged.

60. After going through all these correspondences one thing is very clear that both the parties in fact acted upon the said family arrangement and/or MOU dated 18.6.2005 throughout. These correspondences further confirm that there is an arrangement made and agreed between RIL and ADAG. Otherwise in pursuance to the submission as raised by the learned senior counsel for the respondents about the non-existence of such agreement, the applicants as well as the respondents companies officials or Managing Directors ought not to have discussed the same before the settlement of the Scheme and even thereafter. The correspondences as referred and as relied upon by the learned senior counsel for the respondents, show that the discussion as going on was intended to expedite the implementation of the MOU, by producing a workable commercial arrangement. Both the parties were trying to bring all the important facets of the private domain into the family corporate domain. There were various discussions and meetings took place apart from emails to use the MOU and the draft between RIL and NTPC as a guidance to finalise the agreement between the applicants and respondents to be "a suitable arrangement" as contemplated under Clause 19 of the Scheme. The submission therefore that there is no MOU at all in existence as referred and relied by the applicants and as resisted by the respondents is not acceptable. Though the actual copy of the MOU is not part of the record, yet in the absence of any contra-material and in view of the correspondences referred above, apart from the discussion as recorded therein, it is difficult to accept the contention that neither RIL nor its Board member were and are unaware of the contents of the MOU. It is also not acceptable that the respondents are not agreed to accept or incorporate the terms of MOU in any of

the arrangement for supply of gas for the power plants of REL and RPNL.

61. Another facet is that there are positive averments made in the pleading by the applicants in reference to the MOU and its contents apart from all the correspondences revolving around the MOU as filed in compilation (F) on the record, remained non-traversed for want of specific denial.

62. The dispute between the two brothers was known to the concerned and basically to the shareholders. The Press Release as relied by the learned senior counsel for the applicants (Exh. D) just cannot be overlooked. The fact that because of the efforts of Smt.Kokilaben Ambani, i.e. the mother of Mukesh Ambani and Anil Ambani, the family settlement has been arrived at and followed by the Scheme of Demerger. This further supports the case that both the parties including the respective shareholders were fully aware of the division of the main RIL. The shareholders were fully aware of the reason for such division and/or formation of the resulting company. The Board of Directors as well as the shareholders apart from all other concerned, have unanimously agreed for the Scheme. The submission therefore that RIL and its Board of Directors were not party to the said family arrangement and, therefore, were not bound by such family arrangement is inconceivable.

63. Strikingly, as recorded this division is also the part of the said MOU as referred in the pleading. Admittedly, both the parties have acted upon the Scheme. Admittedly, thereafter both the parties have been entering into various contracts and agreements with the third parties as an independent entity. Both the companies are developing in all their respective fields. Admittedly, there is no challenge of any kind raised in so far as the formation of new entities as per the Scheme. Admittedly, except the gas supply agreement all other companies as found are working and running/managing their affairs smoothly.

64. The Apex Court has, time and again, as referred above, emphasised that such family arrangements need to be maintained and not to be disturbed. Because some objections have been raised by the applicants to some of the clauses of this GSMA and GSPA that itself cannot be the reason to discard the whole scheme and/or the family arrangement as referred above. The respondents are estopped from raising such pleas having acted upon the MOU throughout till this date in all respects except some clauses of the GSMA and GSPA agreements.

65. The judgment as relied upon by the learned senior counsel for the respondents Mr. Harish Salve on the case of V.B. Rangraj (Supra) is not applicable to the facts and circumstances of the case. There was no such question of sanction of Scheme of Demerger there. Except some clauses of the agreements the whole Scheme has been implemented successfully till this date. This is not a case of agreement between two groups of shareholders which imposed certain restrictions on the transferability of the shares held by them which was not binding either to the companies or its shareholders. Only because

of some challenges raised to the clauses of GSMA and GSPA that itself cannot be the reason as recorded above to discard the MOU or the Scheme. The submission, surrounding to Section 36 and even on the judgements of V.B. Rangraj, Rolta India, Spindel Fabrik Sussen or IL & FS Trust Limited (supra), as cited by the respondents is unacceptable. The facts are totally distinct & distinguishable.

66. The agreement and the discussion from June 2005 till this date on the issues raised by the applicant, i.e. identity of sellers and buyers, quantity and Government approval, tenure and due performance which has been based upon the contents of MOU itself, supports the case of the applicants that both the parties have full knowledge about the MOU and its contents. It further supports that at the relevant time these were the agreed terms. What remained was the terms to be suitably elaborated & finalised, as contemplated under Clause 19 of the Scheme.

67. The submission that the documents required to be proved by its production and/or as not produced even as secondary evidence, in accordance with Sections 57 to 62 of the Evidence Act is also rejected in the background as set out above. Having once accepted the MOU and both the parties and their respective Board of Directors, have already acted upon the said MOU & principally by moving such Scheme of Arrangement, which has been resulted into demerged company like the respondents and transferee company like the applicants and others. The affair of the main RIL throughout, till his death managed by late Shri Dhirubhai and these two brothers. In the sense that they were the main persons and officials to deal with the affairs of then existing RIL in all respects. It is too late to raise such opposition in these proceedings. Those requirements of Doctrine of Non-traverse based upon Manager, R.B.I., Bangalore Vs. S. Mani and Others, , is not applicable in the facts and circumstances of the case. The parties having once acted, are bound by the basic terms of the MOU subject to arrangement for its actual implementation on such suitable terms and conditions.

THE MOU - THE SCHEME LEAD TO & NOW FOLLOWED BY THE GSMA MOU - THE SCHEME LEAD TO & NOW FOLLOWED BY THE GSMA MOU - THE SCHEME LEAD TO & NOW FOLLOWED BY THE GSMA & GSPA. GSPA. GSPA.&

68. As referred above, admittedly, the draft of GSMA and GSPA were in discussion even prior to the application for sanction of the Scheme. Admittedly, GSMA and GSPA dated 12.1.2006 are the resulted Agreements, which alleged to have been executed in compliance with clause 19 of the Scheme, making provision for supply of gas to the power plants of RPPL and REL. The GSMA provides for sale of gas to be produced at the fields of the respondents to the applicants or its affiliates as defined in the agreement. The GSPA provides agreement for supply of gas to the actual power producing company, i.e. GSPA. The GSPA is part of GSMA. As per this agreement, the GSMA is expressly subject to approvals under the upstream arrangement i.e. Production Sharing Contract (PSC) which the respondents have with Government of India. The applicant's

learned senior counsel with regard to these two agreements i.e. GSMA and GSPA submitted that; the arrangement as referred to and agreed in the MOU has been overlooked and breached; these agreements are not falling within the ambit of "suitable arrangement" as agreed in clause 19 of the Scheme; and are not bankable documents. The terms and conditions as put in the GSMA and GSPA are one sided and not in the interest of the applicants.

THE GOVERNMENT POLICY & THE P.S.C. - IT'S KNOWLEDGE GOVERNMENT POLICY & THE P.S.C. - IT'S KNOWLEDGE GOVERNMENT POLICY & THE P.S.C. - IT'S KNOWLEDGE

69. Mr. Anil Ambani of ADAJ was fully aware of the Government's New Exploration and Licensing Policy, 1999 (NELP) being part and important person/official of the original respondent-company. He is fully aware of the PSC in respect of the exploration Block KGDWN-98/3 in question which has been signed on 12/4/2000 between the Government of India and the Consortium (the contractor) consisting of NIKO and RIL. Some time in October, 2000, the contractor announced discovery of significant results of natural gas in KGD-6 Block. On 18.6.2005 Anil Ambani resigned as Joint Managing Director of the RIL. As noted, various correspondences, emails, reflect their discussion and due deliberation by both the parties, firstly to move such Scheme and secondly, to all feasible and possible way to enter into agreements/arrangements so that the respondents will be able to supply/sell from the share of gas to be produced at the Gas fields to the applicants or its affiliate and its undertakings. Therefore, various aspects and requirements and obligations of PSC have been the matter of discussion throughout, prior and even after the framing of the Scheme between the parties.

THE PSC & IT'S EFFECT ON AGREEMENTS GSMA & GSPA and or PSC & IT'S EFFECT ON AGREEMENTS GSMA & GSPA and or PSC & IT'S EFFECT ON AGREEMENTS GSMA & GSPA and or BETWEEN RIL & RNRL RIL & RNRL RIL & RNRL

70. As noted the basic submission of the learned senior counsel for the respondents revolve around the PSC. By virtue of Article 297 of the Constitution of India, petroleum and gas in its natural state in the Territorial Waters and the Continental Shelf of India is vested in the Union of India. In pursuance to NELP various such blocks have been awarded to provide entities for exploration, development, production.

71. The PSC provides in clauses 7 & 8 as follows:

(7) RIL-Niko has/have committed that it has/they have, or will acquire and make available, the necessary financial and technical resources and the technical and industrial competence and experience necessary for proper discharge and/or performance of all obligations required to be performed under this Contract in accordance with Good International Petroleum Industry Practices and will provide guarantees as required in Article 29 for the due performance of its undertakings

hereunder.

(8) As a result of discussions between representatives of the Government and RIL-Niko on the proposal of RIL-Niko, the Government has agreed to enter into this Contract with RIL-Niko with respect to the said area referred to in paragraph (4) above on the terms and conditions herein set forth.

72. The PSC provides following are the relevant terms for the purposes of deciding the rival contentions raised by the parties:

1.3 "Affiliat", 1.8 "Arms Petroleum", 1.32 "Development various definitions/terms. The Length Sales", 1.28 "Cost Area", 1.35 "Development Plan", 1.52 "Good International Petroleum Industrial Practices (GIPIP)", 1.74 "Petroleum operations", 1.75 "Production costs", 1.76 "Production Operation".

"1.3 "Affiliate" means a company or a body.

1.8 "Arms Length Sales" means sales made freely in the open market, in freely convertible currencies, between willing and unrelated sellers and buyers and in which such buyers and sellers have no contractual or other relationship, directly or indirectly, or any common or joint interest as is reasonably likely to influence selling prices and shall, inter alia, exclude sales (whether direct or indirect, through brokers or otherwise) involving Affiliates, sales between Companies which are Parties to this Contract, sales between governments and government-owned entities, counter trades, restricted or distress sales, sales involving barter arrangements and generally any transactions motivated in whole or in part by considerations other than normal commercial practices.

1.19 "Commercial Discovery" means a Discovery of Petroleum reserves which has been declared as a Commercial Discovery in accordance with the provisions of Article 10 and/or Article 21.

1.25 "Contract Costs" means Exploration Costs, Development Costs and Production Costs as provided in Section 2 of the Accounting Procedure and allowed to be cost recoverable in terms of Section 3 of the Accounting Procedure.

1.28 "Cost Petroleum" means, the portion of the total value of Crude Oil, Condensate and Natural Gas produced and saved from the Contract Area which the Contractor is entitled to take in a particular period, for the recovery of Contract Costs as provided in Article 15.

1.31 "Delivery Point" means, except as otherwise herein provided or as may be otherwise agreed between the parties having regard to international practice, the point at which Petroleum reaches the outlet flange of the delivery facility, either offshore or onshore and different Delivery Point(s) may be established for purposes of sales, Delivery Point(s) for the purpose of sale(s) of Petroleum from the Contract Area shall be approved by the Management Committee.

1.35 "Development Plan" means a plan submitted by the Contractor for the development of a Commercial Discovery, which has been approved by the

Management Committee or the Government pursuant to Article 10 or Article 21.

1.42 "Exploration Costs" means those costs and expenditures incurred in carrying out Exploration Operations, as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of Section 3 thereof.

1.52 "Good International Petroleum Industry Practices" or "GIPIP" means those practices, methods, standards, and procedures generally accepted and followed internationally by prudent, diligent, skilled, and experienced operators in Petroleum Exploration, Development, and Production Operations and which, at a particular time in question, in the exercise of reasonable judgement and in light of facts then known at the time a decision was made, would be expected to accomplish the desired results and goals established in respect of which the practices, methods, standards, procedures and safety regulations, as the case may be, were followed; provided, however, that "Good International Petroleum Industry Practices" is not intended to be "limited to the optimum practices or methods to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices, methods, standards, procedures and safety regulations. In the event that a question is raised by a Party as to what constitutes GIPIP in a particular circumstance, it shall be agreed to by the Management committee and failing which the same shall be decided by the Government with input from DGH or inputs from amongst a list of organisations or persons, as decided by the Government based on recommendations of DGH and its decision shall be binding provided, however, that in case a Party has earlier approved or agreed to a plan, activity, practice, procedure etc. under this Contract, then it shall not raise a question about GIPIP on that matter.

1.74 "Petroleum Operations" means, as the context may require, Exploration Operations, Development Operations or Production Operations or any combination of two or more of such operations, including construction, operation and maintenance of all necessary facilities, plugging and abandonment of Wells, safety, environmental protection, transportation, storage, sale or disposition of Petroleum to the Delivery Point, Site Restoration and any or all other incidental operations or activities as may be necessary.

1.75 "Production Costs" means those costs and expenditures incurred in carrying out Production Operations as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of Section 3 thereof.

1.77 "Profit Petroleum" means, the total value of Crude Oil, Condensate and Natural Gas produced and saved from the Contract Area in a particular period, as reduced by Cost Petroleum and calculated as provided in Article 16.

8.3 The Contractor shall having due regard to GIPIP.

8.3(a) ...

8.3(b) ...

8.3(c) in the preparation and implementation of Work Programmes and in the conduct of Petroleum Operations, follow Good International Petroleum Industry Practices with such degree of diligence and prudence reasonably and ordinarily exercised by experienced parties engaged in a similar activity under similar circumstances and conditions.

8.3(f) establish and submit to the Management Committee for approval appropriate criteria and procedures including tender procedures for the acquisition of goods and services as provided in Article 23.2 and for the purchase, lease or rental of machinery, equipment, assets and facilities required for Petroleum Operations based on economic considerations and generally accepted practices in the international petroleum industry with the objective of ensuring cost and operational efficiency in the conduct of Petroleum Operations....

(k) be always mindful of the rights and interests of India in the conduct of Petroleum operations.

18.1 Until such time as the total availability to the Government of Crude Oil and Condensate, from all Petroleum production activities in India meets the total national demand, each Company comprising the Contractor, shall be required to sell in the domestic market in India all of the Company's entitlement to Crude Oil and Condensate from the Contract Area in order to assist in satisfying the national demand.

18.6 The Government shall, throughout the term of this Contract, have the right to separately take in kind and dispose of its share of Crude Oil and shall have the obligation to lift the said Oil on a current basis and in such quantities so as not to cause a restriction of production or inconvenience to the Contractor.

19.1 For the purpose of this Contract, the value of Crude Oil, Condensate and Natural Gas (refer Article 21) shall be based on the price determined as provided herein.

19.2 The basis of valuation given in this Article for the purpose of Article 15, 16 and 17 shall apply only where Government is of the view that sale prices realised by the Company(ies) are not consistent with the price realisable at Arms Length Sales. 19.10 The price of Natural Gas shall be determined as provided in Article 21.

21.1 Subject to Article 21.2, the Indian domestic market shall have the first call on the utilisation of Natural Gas discovered and produced from the Contract Area. Accordingly, any proposal by the Contractor relating to Discovery and production of Natural Gas from the Contract Area shall be made in the context of the Government's policy for the utilisation of Natural Gas and shall take into account the objectives of the Government to develop its resources in the most efficient manner and to promote conservation measures.

21.6 Valuation of Natural Gas.Valuation of Natural Gas.Valuation of Natural Gas.

21.6.1 The Contractor shall endeavour to sell all Natural Gas produced and saved from the Contract Area at arms-length prices to the benefits of Parties to the Contract.

21.6.2 Notwithstanding the provision of Article 21.6.1, Natural Gas produced from the Contract Area shall be valued for the purposes of this Contract as follows:

(a) Gas which is used as per Article 21.2 or flared with the approval of the Government or re-injected or sold to the Government pursuant to Article 21.4.5 shall be ascribed a zero value;

(b) Gas which is sold to the Government or any other Government nominee shall be valued at the prices actually obtained; and

(c) Gas which is sold or disposed of otherwise than in accordance with paragraph (a) or (b) shall be valued on the basis of competitive arms length sales in the region for similar sales under similar conditions.

21.6.3 The formula or basis on which the prices shall be determined pursuant to Articles 21.6.2(b) or (c) shall be approved by the Government prior to the sale of Natural Gas to the consumers/buyers. For granting this approval, Government shall take into account the prevailing policy, if any, on pricing of Natural Gas including any linkages with traded liquid fuels, and it may delegate or assign this function to a regulatory authority as and when such an authority is in existence.

25.3 The Contractor shall submit to the Government regular Statements and reports relating to Petroleum Operations as provided in Appendix C.

73. The other relevant articles for references are: Article 6 "Management Committee", Article 7 "Operatorship, Operating Agreement and Operating Committee", Article 8 "General Rights and Obligations of the Parties", Article 10 "Discovery, Development and Production", Article 15 "Recovery of Cost Petroleum", Article 16 "Production Sharing of Petroleum", Article 17 "Taxes, Royalties, Rental and Duties", Article 18 "Domestic Supply, Sale, Disposal and Export of Crude Oil and Condensate", Article 19 "Valuation of Petroleum", Article 21 "Natural Gas (Valuation of Natural gas)", Article 25 "Records, Reports, Accounts and Audit", Article 30 "Terms and Termination of Contract", Article 31 "Force Majeure", Article 33 "Sole Expert, Conciliation and Arbitration", Article 35 "Entire Agreement, Amendments, Waiver and Miscellaneous".

The relevant clause of "Term & Termination of Contract" is in Article 30 of PSC and relevant portion is as follows:

30.3 This Contract may, subject to the provisions herein below and Article 31, be terminated by the Government upon giving ninety (90) days written notice to the other Parties of its intention to do so in the following circumstances, namely, that the Contractor or a Party comprising the Contractor ("the Defaulting Party")

(e) has assigned any interest in the Contract without the prior consent of the

Government as provided in Article 28; or

(f) has failed to make any monetary payment required by law or under this Contract by the due date or within such further period after the due date as may thereafter be specified by the Government; or

(g) has failed to comply with or has contravened the provisions of this Contract in a material particular; or

(i) has failed to carry out or observe any of the terms and conditions of the License or Lease or the provisions of the Acts or Rules in force thereunder, subject however, to Article 31.

74. The description of contract area is provided in Appendix "A" with map, Accounting Procedure to production sharing contract is provided in Appendix "C" which also deals with cost, expenses, expenditure and incidental income of the contract. It also provides classification, definition and allocation of costs and expenditure. It also provides that requirements of various statements, such as: Profit, value of production and pricing, statement of cost, expenditure, cost recovery, profit sharing, end of year and budget statement.

75. As per the PSC in question, the respondents being contractor required to incur all expenditure for petroleum operation in respect of gas and/or oil blocks awarded under the NELP which is then being recovered from sale of petroleum when produced. The amount of expenditures even though incurred by the contractor for petroleum operation under the provisions of PSC, it is strictly monitored, reviewed and audited from time to time. As per Article 15 of the PSC out of the total production of petroleum, the respondent-contractor can recover the costs from a percentage of the total petroleum produced and saved in any contract year, in this case 90%. 10% of the production of petroleum is treated as profit petroleum. In other words, annual cost recovered is limited to 90% of that year's production. Unrecovered cost being carried forward to the following years. For determining the extent of actual production of petroleum that can be recovered by the contractor, the costs, receipts and income etc. have necessarily to be converted as stipulated in Article 16.5 of PSC into units of petroleum in equivalent terms using the prices as stipulated in Article 21. The price of natural gas shall be determined as provided in Article 21.

76. Another important factor based upon Article 6 of the PSC as referred and relied is the Management Committee for review and its advisory functions on various important aspects which includes the annual Work Programmes and Budgets in respect of Exploration Operation and any revisions or modifications thereto; proposals for surrender or relinquishment of any part of the Contract area by the contractor; proposals for an Appraisal programme or revisions and any other matters required by the terms of the contract concerning inter-Party relationship. The following paragraphs provide that there are various subjects or matters for which the operator on behalf of the contractor with the approval of operating committee to the Management Committee need to be submitted for

approval. This includes, annual work programmes and judgment in respect of development operation and production operation and any modifications or revisions thereto; claims or settlement of claims for or on behalf of or against the contractor in excess of limits fixed by the Management Committee from time to time; Plans for the production of Crude Oil and Natural Gas prior to the date of commencement of Commercial production.

77. The Management Committee is consists of two members nominated by the Government and each constituting contractor's one member or maximum two. The representative of the Government shall be designated as the Chairman of the Management Committee and the second representative of the Government shall be designated as the Deputy Chairman.

78. There it is also provided, how the Management Committee take decisions based upon the votes or unanimous votes or majority votes as mentioned in Article 6.13. It is specifically provided that in case of unanimity, if not achieved within a reasonable period, the decision of the Management Committee may be approved by the majority participating interest of 70% or more, with the Government having a positive vote in favour of the decision.

79. The submission, therefore, is that the Government plays a very dominant role in every aspect of discovery, development, production, sharing of petroleum, taxes, royalties, valuation, natural gas, accounting, inspection, security, guarantee etc. including domestic supply, sale, disposal of crude oil and Condensate. Any breach would result into termination of the contract in so far as the respondents-contractor is concerned. Therefore, the submission is that the conditions of PSC are important and necessary for the respondents to follow. There is no reason that all other contracts or further sale of the gas, even out of the contractor's profit, the approval of the Government in such matter can be overruled. Therefore any private contract or even if entered into by the respondents, even though based upon the MOU, still it is difficult for the respondents to loose sight of the conditions of PSC. Those important facets and factors of PSC are well within the knowledge of the applicants, its officers as the PSC was entered in the year 2002, when Anil Ambani was playing dominant or important role in executing the said PSC. The importance of these conditions, therefore, resulted into the basic clauses draft of GSMA/GSPA.

80. Therefore, without going into the technical and detailed aspect of the PSC at this stage itself one can see that the PSC and its contents are well within the knowledge of, in all respects, to the applicants and its officers. In spite of this, as recorded in Clause 19, as it could not be finalised, both the companies as well as their shareholders agreed to approve the Scheme and it was accordingly sanctioned by the Court. Having once accepted the Scheme in all respects, but the same has been working smoothly except the issue in question, the submission of the applicants that they are not bound by the PSC terms is unacceptable.

81. In the present case, the respondents are not denying the rights and/or entitlement of the applicants as agreed, but the case is it is subject to GSMA/GSPA. The respondents are agreeing to sell the gas from their share to the applicants.

SUITABLE ARRANGEMENT: ARRANGEMENT: ARRANGEMENT:

82. The Supreme Court of India in *Municipal Corporation of Delhi Vs. Qimat Rai Gupta and Others*, , expressed that a relevant consideration while interpreting a word or construction of words and phrase would depend upon its text and context and further upon the purport and object it seeks to achieve. The underlying facts and the object that resulted into the formation of the term "suitable arrangement" in the Scheme are very vital and important.

83. In the background of existence of PSC, MOU, after due deliberation and discussion, the Scheme has been sanctioned. As noted, both the learned senior counsel appearing for the parties have put their submission based upon their respective pleadings and in perspective of the words "suitable arrangement". Clause 19 of the Scheme provides the words "suitable arrangement" only in respect of supply of gas for the power projects of RIL & RNRL. Such "suitable arrangement" would also mean the negotiations and discussion between RIL and RNRL based upon the existing background and underlying facts. It cannot be a unilateral document or agreement. It also means that it should be suitable to both RIL and RNRL. The issue of suitability of arrangement cannot be beyond the Scheme and Government policy pertaining to supply of gas. It is clear to both the parties therefore, even on the date of sanction of the Scheme that the draft agreements and/or arrangement through GSMA/GSPA have been the matter of discussion and deliberation, which were based upon the basic terms of the MOU. It is clear that the successful implementation of the Scheme in no way solely depend upon the "suitable arrangement" in question. Basically the understanding of the parties for the suitable arrangement for supply of gas for the power projects of Reliance Patanganga Power Projects Limited, (RPPL & REL) keeping in view all the existing terms of the PSC, NTPC Contract, the MOU, the commercial and technical aspects therefore, definitely need to be considered from the point of view of both entities and their respective shareholders interest.

84. The reference to NTPC contract and its contents as reflected in the MOU could not have been overlooked. The parties and their officials had been discussing the same, but as unable to finalise, might have agreed for a "suitable arrangement" for supply of gas as reflected in clause 19 of the Scheme. The arrangement between NTPC and RIL as noted is based upon the "Arms Length Transaction". The same has been entered into pursuant to the Global competitive bidding process initiated by the NTPC. The MOU itself provides that the agreement shall be in accordance with the International Best Practices and shall be bankable in International Financial market. All this background therefore culminated and reflected at the relevant time while framing and finalising the Scheme with the rider of "suitable arrangement" for the supply of gas in

question. Therefore, in totality, the Scheme, if read with the MOU, envisages a suitable arrangement to both parties need to be entered into, between RIL and RNRL for the supply of gas, taking into account the basic ingredients of contents & MOU i.e. price, tenure, liability etc. The intention is further reflected that RNRL would, in turn, engage in the business of supply of gas to REL and its affiliates for the purposes of generation of power.

85. In this background, the submission therefore that: The formal document or arrangement must be or expected to be in line with the MOU in question; the imposition of such unilateral terms through GSMA and GSPA on RNRL cannot be said to be suitable arrangement as envisaged in clause 19 of the Scheme has force and accepted accordingly.

INTERPRETATION OF THE SCHEME/DOCUMENTS : OF THE SCHEME/DOCUMENTS : OF THE SCHEME/DOCUMENTS:

86. Therefore, it is also necessary to consider the principle of interpretation of documents, deeds including the Scheme, based upon the following authorities.

87. The Apex Court in the case of Khardah Company Ltd. v. Raymon & Co. (India) Private Ltd. AIR 1962 =Raymon & Co. (India) Private Ltd. AIR 1962 SC Raymon & Co. (India) Private Ltd. AIR 1962 SC 1810 : 1963 (3) SCR 183 : 1963 (3) SCR 183 : 1963 (3) SCR 183 has observed as under:

We agree that when a contract has been reduced to writing we must look only to that writing for ascertaining the terms of the agreement between the parties but it does not follow from this that it is only what is set out expressly and in so many words in the document that can constitute a term of the contract between the parties. If on a reading of the document as a whole, it can fairly be deduced from the words actually used therein that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. The terms of a contract can be express or implied from what has been expressed. It is in the ultimate analysis a question of construction of the contract. And again it is well established that in construing a contract it would be legitimate to take into account surrounding circumstances....

88. In Gopiseti Venkataratnam and Others Vs. The Vijayawada Municipality and Others, , the Supreme Court in para 3 observed as under:

(3) As the meaning of the word is ambiguous, it is legitimate, in order to ascertain its true meaning, not only to study the document as a whole but also to ascertain its meaning from the circumstances whereunder the said agreement came into existence.

89. The principle is further elaborated in The Godhra Electricity Co. Ltd. and Another Vs. The State of Gujarat and Another, . The & relevant paras 11 and 13 reads thus: paras 11 and 13 reads thus: paras 11 and 13 reads thus:

11. In the process of interpretation of the terms of a contract, the court can

frequently get great assistance from the interpreting statements made by the parties themselves or from their conduct in rendering or in receiving performance under it. Parties can, by mutual agreement, make their own contracts; they can also by mutual agreement, remake them. The process of practical interpretation and application, however, is not regarded by the parties as a remaking of the contract; nor do the courts so regard it. Instead, it is merely a further expression by the parties of the meaning that they give and have given to the terms of their contract previously made. There is no good reason why the courts should not give great weight to these further expressions by; the parties, in view of the fact that they still have the same freedom of contract that they had originally. The American Courts receive subsequent actings as admissible guides in interpretation. It is true that one party cannot build up his case by making an interpretation in his own favour. It is the concurrence therein that such a party can use against the other party. This concurrence may be evidenced by the other party's express assent thereto, by his acting in accordance with it, by his receipt without objection of performances that indicate it, or by saying nothing when he knows that the first party is acting on reliance upon the interpretation (See Corbin on Contracts, vol. 3 pp.249 and 254-255).

13. The real reason against taking into account the subsequent conduct of the parties is the rule which excludes extrinsic evidence in the construction of written contract.

90. In Tarapore and Company Vs. Cochin Shipyard Ltd., Cochin and Another, , the Apex Court has observed, in paragraphs 35 and 38, the relevant portion of which reads thus:

35. Undoubtedly, if in the final written contract, there is something contrary to the basic understanding during the formative stage of the contract, the written contract would prevail. But if the contract does not indicate to the contrary and the assumptions appeared to be the foundation of the contract, obviously that aspect cannot be overlooked while determining what were the obligations undertaken under the formal contract.

38. In our opinion, this over-simplification of the clauses of the contract involving works of such magnitude is impermissible. The whole gamut of discussions, negotiations and correspondence must be taken into consideration to arrive at a true meaning of what was agreed to between the parties....

91. In Life Insurance Corporation of India and Another Vs. Shri Dharam Vir Anand, , the Apex Court, while dealing with the construction of deeds and documents construing contractual clause, has observed as under:

...In construing a particular clause of the contract, it is only reasonable to construe that the words and the terms used therein must be given effect to. In other words, one part of the contract cannot be made otiose by giving a meaning to the policy of the contract.

92. Recently, the Apex Court in *Commissioner of Income Tax, Kolkata Vs. Hoogly Mills Co. Ltd.*, , while re-iterating the principle for interpretation of the agreement held that it has to be read as a whole.

93. Apart from that the following extracts from Chitty on Contracts (27th Edition), 1994 in para 12.053 Contracts (27th Edition), 1994 in para 12.053 Contracts (27th Edition), 1994 in para 12.053 is also useful:

Every contract is to be construed with reference to its object and the whole of its terms, and accordingly, the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated word or clause.

94. The Interpretation of Contracts, Second Edition by Kim Lewison, Q.C., 1997, Lewison, Q.C., 1997, Lewison, Q.C., 1997, in reference to the intention of the parties, the author has expressed as under:

1.02 The object sought to be achieved in construing any contract is to ascertain what the mutual intentions of the parties were as to the legal obligations each assumed by the contractual words in which they sought to words in which they sought to words in which they sought to express them. them. them.

It is commonly, though inaccurately, thought that the purpose of interpreting a contract is to discover the actual intentions of the contracting parties. In *Pioneer Shipping Ltd. v. B.T.P. Tioxide Ltd.* [1982] A.C. 724 Lord Diplock said:

The object sought to be achieved in construing any contract is to ascertain what the mutual intentions of the parties were as to the legal obligations each assumed by the contractual words in which they sought to express them.

Thus in *Reardon-Smith Line Ltd. v. Hansen-Tangen* [1976] 1 W.L.R. 989 Lord Wilberforce said:

When one speaks of the intention of the parties to the contract one speaks objectively-the parties cannot themselves give direct evidence of what their intention was-and what must be ascertained is what is to be taken as the intention which reasonably people would have had if placed in the situation of the parties.

A similar point was made by Lord Reid in *Mc. Cutcheon v. David MacBrayne Ltd.* [1964] 1 W.L.R. 125 approving the following quotation from Gloag on Contract:

The judicial task is not to discover the actual intentions of each party it is to decide what each was reasonably entitled to conclude from the attitude of the other.

It is therefore more accurate to say that the object of a court of construction is to ascertain the presumed intention of the parties, on the assumption that both parties are reasonable. In *Codelfa Construction Pty Ltd. v. State Rail Authority of New South Wales* (1982) 149 C.L.R. 337 Mason J. said:

...when the issue is which of two or more possible meanings is to be given to a contractual provision we look not to the actual intentions, aspirations or expectations of the parties before or at the time of the contract, except in so far as they are expressed in the contract, but to the objective framework of facts within which the contract came into existence, and to the parties' presumed intention in this setting. We do not take into account the actual intentions of the parties and for the very good reason that an investigation of those matters would not only be time consuming but would also be unrewarding as it would tend to give too much weight to these factors at the expense of the actual language of the contract.

95. The same author has further elaborated the principles of construing the documents as a whole as under:

6.02 In order to arrive at the true interpretation of a document, a clause must not be considered in isolation, but must be considered in the context of the whole of the document.

6.03 In construing a contract all parts of it must be given effect where possible, and no part of it should be treated as inoperative or surplus. The construction of a document as a whole necessarily involves giving effect to each part of it in relation to all other parts of it. Accordingly, as a corollary of the principle that a document must be construed as a whole, effect must be given to each part of the document. This in turn means that in general each part of the document is taken to have been deliberately inserted, having regard to all the other parts of the document, with the result that there is a presumption against redundant words (usually called "surplusage").

96. For interpretation and to gather the intention and object of the MOU, the Scheme and the GSMA, the above principles are extendable and applicable. I am of the opinion that the term or phrase "suitable arrangement" referred back to all the ingredients of the PSC, MOU and the Scheme. However, it also means the arrangement should be suitable to all the concerned and not only to one party.

MAINTAINABILITY OF THE APPLICATION & JURISDICTION OF THE OF THE APPLICATION & JURISDICTION OF THE OF THE APPLICATION & JURISDICTION OF THE COMPANY COURT : COURT : COURT:

97. Now in this background, it is necessary to consider the basic submission and plea as raised by the learned senior counsel for the respondents about the maintainability of this application u/s 392 of the Companies Act, 1956. The learned senior counsel for the respondent contended that this Company Court

has no jurisdiction u/s 392 of the Companies Act, to read, into a Scheme, sanctioned u/s 394, provisions of family arrangement which was an extraneous document and was not placed before the shareholders of these respondents and of which no reference is made even in the Scheme. He further contended that without prejudice to the above submission this Hon'ble Company Court has no jurisdiction to direct modification either of the Scheme sanctioned u/s 394 of the Companies Act or of any document executed in pursuance to such a Scheme as such document was never before the shareholders or creditors. The learned senior counsel for the respondents further submitted that the construction of any Company (a) under a Scheme of amalgamation or demerger or (b) transfer of whole or any part of the Undertakings, property or liability of Company being re-constructed are matters essentially governed and sanctioned u/s 394 of the Companies Act. Therefore, the Company Court has no jurisdiction to amend or modify the Scheme of re-construction, amalgamation or demerger as approved by the shareholders and creditors. The role of the Court is to supervise at the time of grant of sanction. It obviously cannot be expanded to interfere with a Scheme that has been sanctioned. Therefore, he further submitted that u/s 392 of the Companies Act, the Court may supervise and in certain cases modify, an arrangement between the company and its own members sanctioned u/s 392 of the Companies Act but the Court has no such powers in respect of Schemes of re-construction of a company (amalgamation or demerger) as approved by the shareholders and creditors and sanction u/s 394 of the Companies Act.

98. In Company Application No. 1122/2006, the applicants have invoked basically Section 392 of the Companies Act. This is an offshoot of the Scheme sanctioned by this Court by an order dated 9.12.2005 for demerger of four Undertakings of Reliance Industries Limited (RIL)-Demerged company and their transfer to four Transferee companies as a going concern (resulting companies). Both these terms i.e. Demerger, Demerged company and the resulting company are not defined under the Companies Act. These terms are defined under the Income Tax Act. Those are Sections 2(19AA), 2(19AAA), 2(41A) respectively. For convenience the same are reproduced as under:

(19AA). "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under Sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that:

(19AAA) "demerged company" means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company.

(41A). "resulting company" means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of

demerger.

99. Under the Companies Act, there is no provision except Sections 391 to 394 which deal with the procedure and power of the Company Court to sanction the Scheme which fall within the ambit of the requirements as contemplated under these Sections. In the absence of any other provisions except Section 392, it is difficult to accept the contentions as raised that the present Application u/s 392 of the Companies Act as filed by the applicant is without jurisdiction. The parties cannot be rendered remediless. The Company Court, therefore, considering the Scheme and purpose of Chapter V and basically Sections 391 to 394 has ample power and jurisdiction to supervise the Scheme as sanctioned under the Companies Act. The respective Scheme of Sections 391 to 394 are as under:

391. Power to compromise with creditors and members.- creditors and members.- creditors and members.- (1) Where a compromise or arrangement is proposed:

(a) between a company and its creditors or any class of them; or

or make arrangements

(b) between a company and its members or any class of them; the [Tribunal] may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound-up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

(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, where proxies are allowed under the rules made u/s 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, 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:

Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the company or any other person by whom an application has been made under Sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under Sections 235 to 251, and the like.

(3) An order made by the Tribunal under Sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

392. Power of Tribunal to enforce compromise and arrangement. - (1) Where the Tribunal makes an order u/s 39 sanctioning a compromise or an arrangement in respect of a company, it:

(a) shall have power to supervise the carrying out of the compromise or an arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned u/s 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made u/s 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of the Companies (Amendment) Act, 2002 sanctioning a compromise or an arrangement.

393. Information as to compromises or arrangements with creditors and members. -(1) where a meeting of creditors or any class of creditors, or of members or any class of members, is called u/s 391.:

394. Provisions for facilitating reconstruction and amalgamation of companies. - (1) Where an application is made to the Tribunal u/s 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal:

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies; and

(b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as "the transferee company"); the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters:

(i) the transfer to the transferee company of the whole or any part of the undertaking property or liabilities of any transferor company;

(ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(iv) the dissolution, without winding up, of any transferor company;

(v) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and

(v) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound-up, with any other company or companies, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest:

Provided further that no order for the dissolution of any transferor company under Clause (iv) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Tribunal that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

If default is made in complying with this sub-section, the company, and every the company who is punishable with fine which may extend to five hundred rupees.

(4) In this section:

(a) "property" includes powers of every description, and "liabilities" includes duties of every description; and

(b) "transferee company" company, other than a meaning of this Act; includes any body corporate, whether a company within the meaning of this Act or not. officer of in default, shall be property, rights and does not include any company within the but "transferor company"

100. The Bombay High Court in 2004 (121) Comp Cas 523 - in Re: Larsen &

Toubro Ltd. (by Anoop V. Mohta, J.) has considered the Scheme of Sections 391 to 394 of the Company Act while sanctioning the Scheme of arrangement.

101. The title and purpose of Section 392 to enforce compromise and arrangement and further the power of the Court to supervise the compromise and/or arrangement the Court which has already sanctioned u/s 391 is also sufficient to consider this Application filed by the applicants on merit.

102. The Supreme Court in S.K. Gupta and Another Vs. K.P. Jain and Another, , has elaborated further the purpose and object of Section 392. The relevant paragraphs are as under:

13. When a scheme is being considered by the Court, in all its ramifications, for according its sanction, it would not be possible to comprehend all situations, eventualities and exigencies that may arise while implementing the scheme. When a detailed compromise and/or arrangement is worked out hitches and impediments may arise and if there was no provision like the one in Section 392, the only obvious alternative would be to follow the cumbersome procedure as provided in Section 391(1) viz., again by approaching the class of creditors or members to whom the compromise and/or arrangement was offered to accord their sanction to the steps to be taken for removing such hitches and impediments. This would be unduly cumbersome and time-consuming and, therefore, the legislature in its wisdom conferred power of widest amplitude on the High Court u/s 392 not only to give directions but to make such modification in the compromise and/or arrangement as the Court may consider necessary, the only limit on the power of the Court being that such directions can be given and modifications can be made for the proper working of the compromise and/or arrangement. The purpose underlying Section 392 is to provide for effective working of the compromise and/or arrangement once sanctioned and over which the Court must exercise continuous supervision (see Section 392(1)], and if over a period there may arise obstacles, difficulties or impediments, to remove them, again, not for any other purpose but for the proper working of the compromise and/or arrangement. This power either to give directions to overcome the difficulties or if the provisions of the Scheme themselves create an impediment, to modify the provision to the extent necessary, can only be exercised so as to provide for smooth working of the compromise and/or arrangement. To effectuate this purpose the power of widest amplitude has been conferred on the High Court and this is a basic departure from the scheme of the U.K. Act in which provision analogous to Section 392 is absent. The sponsors of the scheme u/s 206 of the U.K. Act have tried to get over the difficulty by taking power in the scheme of compromise or arrangement to make alterations and modifications as proposed by the Court. But the legislature, foreseeing that a complex or complicated scheme of compromise or arrangement spread over a long period may face unforeseen and unanticipated obstacles, has conferred power of widest amplitude on the Court to give directions and, if necessary, to modify the scheme for the proper working of the compromise or arrangement. The only limitation on

the power of the Court, as already mentioned, is that all such directions that the Court may consider appropriate to give or make such modifications in the scheme, must be for the proper working of the compromise and/or arrangement.

14. Sub-section (2) provides the legislative exposition as to who can move the Court for taking action u/s 392. Reference to Section 391 in Sub-section (2) of Section 392 merely indicates which compromise or arrangement can be brought before the Court for taking action u/s 392. The reference to Section 391 does not mean that all the limitations or restrictions on the right of an individual to move the Court while proposing a scheme of compromise or arrangement have to be read in Sub-section (2) merely because Section 391 is referred to therein. Unlike Section 391, Section 392 does not specify that a member or creditor or in the case of a company being wound up, its liquidator, can move the Court u/s 392. On the other hand, the legislature uses the expression "any person interested in the affairs of the company" which has wider denotation than a member or creditor or liquidator of a company. In fact, the ambit of the power to act u/s 392(2) can be gauged from the fact that the Court can suo motu act to take action as contemplated by Section 392(1) or it may act on an application of any person interested in the affairs of the company.

16. The Court has to reach an affirmative conclusion before acting u/s 392(2) that the compromise and/or arrangement cannot be worked satisfactorily with or without modification (see J.K. (Bombay) P. Ltd. supra). It follows as a corollary that if the compromise or arrangement can be worked as it is or by making modifications, the Court will have no power to wind up the company u/s 392(2).

The submission, therefore, as raised that the present dispute is a case of Scheme of arrangement involving transfer of assets from a transferor company to a transferee company and, therefore, the provisions of Section 394 would be applicable and not Section 391, is unacceptable. It is difficult to dissect these provisions and to read in isolation for the purpose of supervise and/or modification of the Scheme and/or passing appropriate order to see that the Scheme has already sanctioned must run smoothly in the interest of all. All these Sections are inter-linked and inter-connected and operates coherently. Therefore, the submission that once the Scheme is sanctioned, Section 392 is not applicable after passing the order u/s 394 become functus officio and Section 394 operates in an occupied field, is also unacceptable. All these sections are in addition to and in aid of the primary power of the Court while sanctioning any such Scheme. The Bombay High Court (Anoop V. Mohta, J.) while considering the Scheme and the meaning of "arrangement" has observed as under:

The first and foremost issue is meaning, scope and purpose of "arrangement". The scheme of arrangement in question falls within the ambit of the provisions of Sections 391 to 394 of the Companies Act and the rules made thereunder. The word "arrangement" is not specifically defined under the Companies Act. This scheme of arrangement has the ingredients of demerger and reduction of share capital and scheme of arrangements with the concerned companies and trust,

cannot be said to be beyond the purview of Sections of the Companies Act. The scheme of arrangement in question, therefore, is maintainable. The word "arrangement", though not defined specifically, has a wide range and ambit. The present scheme of arrangement is between the petitioner-companies and its shareholders and/or creditors and a trust. By that itself it cannot be said that the scheme of arrangement in question is not maintainable or not sustainable. The scheme is affecting the shareholders and the creditors as the cement division of the petitioners is being transferred to the transferee company. There is no objection raised even by the Regional Director about the maintainability of the scheme of arrangement. It is difficult to reject the whole scheme of arrangement like this, which has definitely an element of demerger and reduction of shares which are a permissible mode of various schemes under the provisions of Sections 391 to 394 merely on technical grounds. In *Re: Investment Corporation of India Ltd.*, the word "arrangement" has been interpreted in a wider manner. Another case is *Guardian Assurance Company, In re* [1917] 1 Ch. D 431 to demonstrate that the word "arrangement" has a wide meaning and interpretation, even under the English laws.

103. Admittedly, the present Scheme of arrangement has all the ingredients of demerger and the formation of resulting companies and/or ongoing companies and in this background the arrangement therefore as arrived at by the parties, in the absence of any other provision, it is difficult to accept the submission that once the Scheme is sanctioned and in the present case u/s 394, the Court becomes functus officio.

104. In *Miheer H. Mafatlal Vs. Mafatlal Industries Ltd.*, , after dealing with even *S.K.Gupta (supra)* at para 28 it is observed "the aforesaid provisions of the Act show that the compromise or arrangement can be proposed between a company and its creditors or any class of them or between a company and its members or any class of them. Such a compromise would also take in its sweep any scheme of amalgamation/merger of one company with another."

105. In *Indian Hardware Industries Ltd. v. S.K. Gupta and Anr.* 1981 (51) Comp Cases 51 Delhi High Court has observed at page 54 by referring to *S.K. Gupta (supra)* as under:

Now, Section 392 empowers the Court sanctioning a scheme or at any time thereafter to give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement. We cannot read any limitation in it so as to exclude the power to call a meeting of the company for the purpose of electing the directors if the court feels that it is necessary for the proper working of the scheme to know who are the real directors of the company. The amplitude of the power u/s 392 is no longer in doubt. Section 392(1) confers powers of the widest amplitude on the High Court to give directions and if necessary to modify the scheme with the only limitation that such directions or modifications must be for the proper working of the

compromise or arrangement. In *S.K. Gupta and Another Vs. K.P. Jain and Another*, the court further observed.

106. On the same line, Karnataka High Court has observed in *Ind-Telesoft Private Limited v. Jawad Ayaz*, in *Ind-Telesoft Private Limited v. Jawad Ayaz*, in *Ind-Telesoft Private Limited v. Jawad Ayaz* 2003(43) SCL 478 as under:

...Sub-section (1)(a) confers power on the Court to supervise the carrying out of the compromise or arrangement. Sub-section (1)(b) confers a discretion on the Court to issue such directions in regard to any matters or make such modifications in the compromise or arrangement as it may consider necessary of the proper working of the compromise or arrangement either at the time of making such order or at any time thereafter. Similarly, Sub-section (2) expressly gives the Court the power to modify a compromise or arrangement. Parliament has conferred power on the Court not only to make modification at the time of sanctioning the scheme, but at any time thereafter during the period when the scheme is being implemented. The power seems absolute and of widest amplitude. Subsequent developments can also be taken into account for considering desirability of the modification. A scheme can be modified by the Court either at the time of order or after it is sanctioned. Only such modifications to the scheme, which are necessary for the proper, efficient and smooth working of the scheme could be made. Modification can be made at the instance of any person who is interested in the affairs of the company and the court can also introduce modification suo motu. But the paramount consideration while issuing any such direction by way of modification is that, such direction must be necessary for the proper working of the compromise or arrangement. The power of the court under the Section does not go beyond the implementation of a scheme already sanctioned u/s 391, and, if necessary, its modification. Therefore, the power of the Court to modify the scheme either at the time of according sanction to the scheme or subsequently, at the time of working of the sanctioned scheme is statutorily provided under the aforesaid provision and such power has to be exercised only for the purpose of proper working of the scheme, which is the only limitation which is imposed on the court under this provision.

107. The Bombay High Court also in *D.S. Venkatraman v. Gujarat Industries Pvt. Limited*. 1977 (47) Com Cases 352 has observed that "If any difficulty arises in the working-out of a Scheme, the Court can modify the same so that its purpose can be achieved for the mutual advantage and benefit of the Company and the class of its creditors or members who are parties to it." The same view has been taken by the Kerala High Court in *K. Meenakshi Amma v. Sreerama Vilas Press* 1992 (73) Amma v. Sreerama Vilas Press, 1992 (73) Amma v. Sreerama Vilas Press 1992 (73) Comp Cas 285

108. The *J.K. (Bombay) P. Ltd. Vs. New Kaiser-I-Hind Spg. and Wvg. Co. Ltd. and Others*, , while interpreting the Scheme has observed as under:

Though a Scheme prepared by the Company to pay the creditors is not a mere

agreement, but has statutory force, it has to be construed as a commercial document, that is in the manner in which businessmen would read it.

109. Apart from above, the learned senior counsel for the applicants has strongly relied on *Divya Vasundhara Financial Limited v. K.N. Samant*, Company Cases (69) 646 Gujarat, by relying on the observation at pages 656 to 658 and submitted that power under Sections 391 and 392 of the Companies Act is wide enough and it is an independent power available to the Court in connection with the Scheme of compromise and arrangement and such power cannot be fettered by the provisions contained in general law on a foundation that "So far as the Scheme of compromise and arrangement is concerned, it is to be supervised by the Court with a view to seeing that the Scheme of compromise and arrangement does not meet with rough weather or get impeded and that it is fully implemented.".

110. He further relied on *Mysore Electro Chemical Works Limited v. G.K. Paramshiv* Company Cases (86) 570-Karnataka at page 578 that "When a Scheme has been sanctioned by the Court and the Company survives because of the Scheme, the persons who are entitled to certain benefits or entitled to certain rights under the Scheme certainly could approach the Court u/s 392 of the Act to seek appropriate direction from the Court when the Scheme has not been worked out satisfactorily in the manner envisaged touching their rights.".

111. In view of above, in my opinion, the company applications as filed are maintainable. The Company Court has jurisdiction to pass appropriate order or direction or to modify the Scheme but only on given facts & circumstances. The exigencies, facts and circumstances play dominant role in passing any order under Sections 391 to 394 after sanctioning of the Scheme. The Company Court is not powerless. The Company Court can never become *functus officio* under the present Scheme and object of Sections 391 to 394 in all such cases. The parties or persons interested cannot be rendered remediless. All these Sections 391 to 394 are interlinked and interconnected. This is a complete Code for sanctioning any Scheme including of arrangement, demerger, merger and amalgamation.

112. The words "arrangement" and/or "compromise" are not defined under the Companies Act. Both the words have their different meaning and purpose. In the present case, there is an arrangement between the demerged company and the resulting company. The said arrangement, therefore, take into its sweep all the earlier events, MOU and various discussion between these two entities till and even after the sanctioning of the Scheme. There is no dispute that the demerged companies and/or the resulting companies were separate entity but under the control of one group until by the arrangement, they agreed and, accordingly, the Bombay High Court has sanctioned the Scheme. Both these new group/entities have been formed & divided only thereafter. There is no other provision wherein or whereby such arrangement and/or such application for modification and/or direction and/or supervision by the Court, can be considered. The application, therefore, u/s 392 is maintainable and it is within the jurisdiction of the Company

Court who has sanctioned the Scheme to pass appropriate order or direction if case is made out.

THE POWER OF COMPANY COURT TO GRANT RELIEF AS PRAYED OR POWER OF COMPANY COURT TO GRANT RELIEF AS PRAYED OR POWER OF COMPANY COURT TO GRANT RELIEF AS PRAYED OR TO MODIFY THE SCHEME. MODIFY THE SCHEME. MODIFY THE SCHEME.

113. Now, the important question is whether the facts and circumstances are sufficient with the material on record, to grant the reliefs as claimed in these applications of the applicants, specially in view of the following observation while considering the Scheme of Sections 391 to 394 in question. In *Larsen & Toubro Ltd. (2004) 3 Comp LJ 304*, (Bom.) this Court (Anoop V. Mohta, J.), after considering the *Hindustan Employees Labour Union v. Hindustan Lever Limited 1995 (1) Supp. 499* and *Mihir Mafatlal (supra)* has expressed the restriction and/or limitation of the Company Court's power in such matters. The relevant conclusion as arrived at in *Larsen & Toubro Ltd.* *Larsen & Toubro Ltd.* *Larsen & Toubro Ltd. (supra)* is as under:

(e) All the experts/professionals submitted their report and opinion and accepted the scheme. These experts/professionals include financiers, Auditors, Chartered Accountants, bankers, creditors, financial institutions, and above all company managements, apart from unanimous majority decisions to support the scheme.

(i) In the present case, no other alternative or possible view was explained or suggested, on any material issues, including that of share ratio. In my opinion, any view should not be given or expressed, as it will amount to thrusting and imposing decision against unanimous and majority decisions of the shareholders, creditors, financial institutions, such imposition is out of the court's domain.

(j) In this competitive market, the corporate world with exhaustive strategies is a must. Companies know how to make or arrange and adjust their business to run with the national and international markets,. Third person may not be in a position to provide them business strategies and, above all, companies know their respective shareholders' need, may not be bound by the views expressed by the third persons, unless there is apparent illegality, unfairness, unreasonableness where it is essential to pierce the veil of corporate strategies. Otherwise, it is difficult to have judicial review of this aspect of globalisation and utility of material sources by the businessman or experts in the field. Business strategy is not the court's domain. It is difficult for the courts to express their opinion on such matters. Business adjustments or arrangements cannot be decided or thrust or imposed by the courts, specially, when such arrangement or adjustment or such scheme is within the framework of the law.

(k) The scheme has taken care of all significant aspects of law, public policy and it is based on need and time of particular business and market. The scheme is fair, sound, reasonable and takes into consideration interest of shareholders, creditors, workmen and employees.

114. Therefore, though there is a power available to the Company Court to pass appropriate order including of modification of the Scheme for smooth working as contemplated u/s 392 of the Companies Act as defined and explained in S.K.Gupta and other cases (supra), yet the observation of the Apex Court in *Mihir Mafatlal* at pages 602 in paragraph 29, which is reproduced as under, just cannot be lost sight of.

29. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

115. The respective business strategy of the companies is not the Court's domain. In the competitive market the Corporate exhaustive strategies are essential. Companies know how to make or arrange and adjust their business to run with the national and international markets. Third person may not be in a position to provide them business strategies and apart from that the views expressed by the third person is of no consequence to the respective Company's decision. It is difficult for the Court to express their opinion on such matters. The business adjustment or arrangement cannot be decided and/or trusted or imposed by the Court specially when such arrangement or adjustment or such Scheme always means exigencies of the particular business, an insightful and unanimous or majority decision of the Shareholders, Board of Directors, experts, creditors, secured or unsecured, within the frame work of law and Government policy. The judicial review of such commercial aspects is impermissible specially at this stage of settlement of draft or terms of any such contracts in these proceedings.

116. As noted, there is no problem in so far as the working of the Scheme as demerged companies as well as resulting companies, as they have been doing their respective business and/or managing the affairs of the respective entities smoothly and without any problem or objection. The respondents are not ready and/or accepting to change the terms and conditions particularly of the GSMA.

117. In such situation, the Company Court u/s 392 or even otherwise, can not impose and/or direct in either of the entitles to put or delete or add the conditions in the said GSMA or GSPA specially when both the parties are not agreeing to change and/or to amend the protested points.

THE PROTESTED POINTS: PROTESTED POINTS: PROTESTED POINTS:

118. The objectionable aspects as per the appellants are; of tenure, as per clause 3.1(b) of GSMA and; the quantity of gas to be supplied based upon a

formula in clause 3.1(c) of GSMA; the formula of calculation of volume of actual quantities to be supplied to RNRL as per GSMA based upon clause 7.1 of NTPC contract; the identity of buyer including the expression as defined in GSMA of affiliate; and the limitation of liability (clause 14.3(i) of GSMA). In the present case both the parties are insisting that their respective clauses of GSMA should be modified, altered or retained. The rest of the GSMA clauses therefore not much in dispute. Importantly, whatever may be the consequence of modification or deletion of these six clauses as rightly contended by the learned senior counsel for the respondents would have repercussions and/or affect the other clauses also. Therefore, even otherwise in such type of transactions or agreements, the clauses are always interconnected and interlinked. In the present case, it is not possible to hold that deletion of one clause would not affect other clauses. The result would be therefore the whole GSMA and/or GSPA itself would be unclear and unworkable.

119. In the written submission filed by the applicants and even after considering the rival pleading and submission made by the learned senior counsel in the matter, the following are the protested points. Those are tabulated as under: The appellants are insisting for proposed revision. The respondents submitted to retain the provision of GSMA.

Nature of the Provision in Provision in Proposed Contractual Scheme/NTPC 12-1-2006 Revision Term contract GSMA Parties to The contract The GSPA is to The definition the GSPA is executed be entered into of buyer and between NTPC between RIL & the scope of and RIL such affiliate the contract of RNRL which needs to be actually sets amended to mean up the power RNRL. The defi-plant rather nition of than RNRL itself affiliate needs (p.371). This is to be amended to contrary to the bring it in line scheme and with the NTPC renders non- contract. existent the entire substratum of the business of RNRL. (clause A(f) (ii) on p.83 read with clause 1.12 on p.96). Limitation There is no A cap on the sellers This clause of liability cap on sellers liability has been needs to be liability in imposed under each deleted. In event of the GSPA. This is order to breach or roughly equal to assuage the termination of the monetary value concerns of the contract of 6 months of gas RIL, at best (p.299) supply assuming the this clause contract period could be to be 17 years pressed into (p.443) action only in case of a default for reasons beyond the control of RIL. Period of Gas is to be Period of supply is A fixed supply supplied for uncertain. As per period of a fixed term Clause 3.1(b)(i) of 17 years, of 17 years the GSMA, the term as provided (p.270) of the contract is in the NTPC to be calculated contract. according to a formula which contains many variables and is hence uncertain (p.372).

Annual A fixed amount Annual quantity is A fixed contract of gas is to be uncertain. As per quantity quantity supplied during clause 3.1(c) of as provided the currency of the GSMA, the in the NTPC the contract quantity of gas contract. (p.276) to be supplied each year is determined according to a

formula containing many variables(p.373) This becomes even more uncertain when regard is had to provisions of clauses 3.1 (f) and 6.2 which expressly record that RIL does not warrant the existence of any quantity or amount of daily supply of gas. Price The NTPC Clause 13.8 read with This approval by contract, not 13.9 make price clause Government the MOU, provide approval by the should for a price Government necessary. be approval by the In case the GOI deleted. Government. fails to accord approval, the contract ceases to exist. Definition Entities managed For other than To be of affiliate and controlled REL and Reliance amended to by NTPC with no Patalganga Power be in line linking to 51% links to 51% with NTPC ownership ownership contract interest. interest. or even to PSC or other agreements (such as Non Competition Agreement) signed by RIL pursuant to the Scheme. 120. For tenure, both the learned senior counsel have relied on Clause 3.1(b) of GSMA which is as under:

3.1(b) The tenure over which volumes of Gas will be available for contracting under this Agreement from any Development Plan ("Tenure") shall be the period in Years determined under this Clause (b) but in no event beyond 31 March 2025.

(i) The Tenure of volumes available for RNRL from the Initial Block KG-D6, Development Plan shall mean the result (in years) of the following:

$$\text{Tenure} = [(CPR-2.63) \times 10^6] / [(APV-N) \times 35.3147 \times 365]$$

121. Referring to clause 3.1(b) of the GSMA dated 12.1.2006, the submission made by the learned senior counsel for the applicants that the above clause is very vague and artificially designed. Such formula and such related clauses are not based upon any established national or international practice to execute such agreement of supply of gas. The Clause is complex, uncertain and unworkable formula. The supply of 17 years as per the MOU will hamper and there will be no guarantee for receiving the gas for 17 years as agreed. The clause of tenure and the period of any agreement should be clear and must be understandable to both the parties as well as to third person. The NTPC terms provide following words:

4.1 NTPC Terms.

This Agreement shall, subject to Article 3, come into force for all purposes and intents on the date of its execution and shall continue to be in full force and effect for 17 years from Start Date unless terminated earlier pursuant to the provisions of this Agreement (Voll.1/Pg.270)

122. Both the learned senior counsel appearing for the parties have explained this formula during the course of the argument from their respective point of view. The applicant objected the same clause along with others. The submission in reference to this tenure clause is as under:

12. The plea of RIL that the tenure of the contract is based on the total supply of gas is also false and misleading. A simple analysis of the formula would demonstrate that the term of the contract has nothing to do with actual quantity

of gas available but depends on artificial factors that can be manipulated by RIL to its own advantage. The main area of manipulation is the definition of CPR.

13. CPR has been defined (see p.372, Volume II) as "Certified Proved Reserves attributable to the Initial Block KG-D6 Development Plan, in TCF". There are several mischievous aspects to this definition. First, the reserves have been restricted to the KG D6 basin. However, the entitlement of the applicant is not merely from the KG D6 basin but from any gas fields of RIL. This artificial restriction limits the CPR and reduces the tenure of the gas supply agreements.

14. Secondly, the definition is restricted to the Initial Development Plan. This is distinct from the Development Plan. The difference is that the Initial Development Plan contains only the preliminary assessment of the quantity of gas which would have been made.

15. Thirdly, the definition of Certified Proved Reserves for the purposes of the formula is different from the definition of Certified Proved Reserves in the main definition clause at p.368, Volume II. The main definition of Certified Proved Reserves at p.368 refers to the Development Plan of any field of RIL. This is different from the Initial Development Plan, of the KG D6 basin. This distinction makes clear the mala fide intent of RIL. RIL could simply have used the definition of Certificate Proved Reserves given in the main definition section. However, by giving a separate definition exclusively for the purposes of the tenure calculation, the effort to artificially diminish the Applicant's entitlement has been laid bare.

16. Fourthly, the linking of the tenure to proved reserves is artificial. What is relevant in the gas field is the actual production of the gas and not the proved reserves. The proved reserves are merely, and often conservative, estimates of the gas available. The total reserves are in fact a mixture of three components, namely Proved, Probable and possible reserves. Proved Reserves are only a small fraction of the actual reserves stated in the Development Plan. The calculation of tenure, assuming that it should be based on a formula at all, should have been based on actual production or at least on all three reserves.

17. Finally, Clause 3.1(c) (f) at pg.374 of Volume II make it clear that that "RIL does not warrant the Certified Proved Reserves in any certificate". The absence of a warranty, therefore, makes the calculation of the term of the contract even more uncertain and completely contingent on action of RIL and its experts". RNRL will have no control or certainty even about the extent of the CPR. This is completely commercially unacceptable and was in fact so admitted by Mr. Salve during the course of his arguments when he expressly stated that a Certificate is essential before any banker would lend money for a power project. However, in the absence of a warranty, such a Certificate is meaningless.

123. To this the respondent's reply is as under:

5.125.125.12 Clause 5 of the draft at Exhibit-J read with Clause 3.1 thereof requires the GSMA to be valid in perpetuity unless it is mutually agreed to be

terminated and further that each GSPA executed during the subsistence of the GSMA will have a term of 17 years.

In this behalf, it is submitted as follows:

(i) The lease in respect of KGD6 would expire on 31st March 2025. Accordingly, the GSMA dated 12th January 2006 stipulates that it would remain valid till 18th June 2015 and that the Tenure of all GSPA executed during the subsistence of the GSMA dated 12th January 2006 would, in any event, expire on 31st March 2025. These Respondents submit that it is inconceivable that a contractual commitment be made by these Respondents to the Applicants for supply of gas beyond the term of the lease in respect of KGD6 block.

(ii) The precise manner in which the Tenure of each GSPA is to be arrived at and fixed in the GSPA has been duly provided in the GSMA dated 12th January 2006.

5.13.5 Quantity and Term of GSPA and Term of GSPA and Term of GSPA

(i) Clause 3.1 and 3.2 of the draft at Exhibit-J stipulates that the Annual Contract Quantity will be fixed throughout in the duration of the GSPA and that such duration shall not be less than 17 years. This is to be an absolute requirement irrespective of the fact whether these Respondents have adequate reserves of gas to make such a commitment as certified by independent consultants.

(ii) In the course of arguments, it was submitted by the Applicants' advocate that the GSPA ought to stipulate that 28 of gas would be supplied for term of 17 years and that too, to RNRL and to enter into such a commitment without a stipulation of any limit on liability.

(iii) Such a stipulation would require these Respondents to make a commitment to supply quantity of gas even if the Respondents have no proven reserves making the very existence of such reserves as doubtful and to undertake to do so without any limitation on liability.

(iv) By no stretch of imagination, can these Respondents be expected to make such a commitment at all, since it would expose these Respondents to huge claim in damages. The doctrine of Force Majeure in such cases would be difficult to invoke if commitments such as above are made with full knowledge of the fact that adequate reserves may not exist to fulfill such commitments.

(v) These Respondents cannot themselves to such claims in arrangement would certainly not be a suitable arrangement as far as these Respondents are concerned.

(vi) The Applicants have also be expected to expose damages and such an accepted the position that any supply of gas by RIL to entitlement of gas. RIL's of PSC would be broadly commitment for supply of 28 there should be P1 reserves of 18 TCF. This is demonstrated in Charts (Compilation R-13-e).

RNRL will be only from RIL's entitlement over the period 50%. Therefore, for

making a MMSCMD of gas for 17 years

The applicants have strongly relied on the MOU and put up their submissions accordingly. Even as per the MOU, the quantum of supply and/or source of supply are from the Proven P-1 reserves of RIL "Whether the KGD-6 basin or elsewhere", the concept therefore of supply of gas from Proven P-1 reserves of RIL is well within the knowledge of the applicants. The formula and/or aspect of P-1 reserves itself flow from the PSC. It, therefore, also follows the requirement of certified crude reserves attributable to such development plan. The CPR therefore as defined means certified proved reserves attributable to KGD-6 development plan in Trillion Cubic Feet (TCF). The respondents themselves submitted that this formula in no way restricts the block KGD-6. The insistence therefore that the available quantity "would have to be calculated" cannot be said to be beyond the MOU and/or the Scheme. The lease in respect of the KGD-6, if expire on 31.3.2025, the applicants cannot insist that respondents should supply and provide the gas even after 31.3.2025. It will depend on the facts and circumstances and subject to extension of lease. The fixation of price, if Government insists for value in the gas even for their own share for 5 years or more, the price of respondent's gas, therefore, would definitely affect by the said fluctuation and/or change in the price fixed by the State Government. The insistence of fixing the price at this stage itself by the applicants is therefore also not correct. The respondents, as noted, and considering the whole MOU and the Scheme and the purpose of demerging, bound to provide and supply gas to the resulting companies at least to the period and quantity to the nearest possible time and quantity. It is a matter of mutual understanding and negotiation. The survival of both the parties is essential and not the destruction, because of some clauses like this in GSMA or GSPA. The respondents cannot be asked to perform their part of the contract beyond their capacity. They further cannot be insisted upon signing and executing the document blindly even for future basically considering the nature of natural resource and the business of production of gas in question.

THE QUANTITY OF GAS TO BE SUPPLIED: QUANTITY OF GAS TO BE SUPPLIED:
QUANTITY OF GAS TO BE SUPPLIED:

124. In reference to the quantity of gas to be supplied, the basic clause of GSMA under challenge is 3.1(c) which reads thus:

(c) The quantity of Gas that is available for contracting under GSPA for any Year "n" during the Tenure ("Available Quantity"), expressed on an average daily basis in MMSCMD, shall be determined for each Development Plan as follows:

$$AQ_n = [(GP_n - GS_n) \times RP] - [0.03 \times GP_n] - N_n$$

125. The submission of the appellants is that the above formula depends upon a number of variables wholly controllable and manipulable by RIL and hence there is no guarantee that a fixed quantity of gas will be supplied in any year. Referring to clause 3.1(f), as submitted, RIL expressly stated that it does not warrant that

quantity are actually available. Further, as per clause 6.2 RIL's share of production of gas on any day under the PSC, if less than the quantity agreed to be supplied under the relevant GSMA, RIL will be under no obligation to supply shortfall.

126. A chart showing the calculation of actual quantities has been relied for calculation of volume under GSMA based upon a formula again, which reads thus:

4. A chart showing the calculation of actual quantities to be supplied to RNRL is set out hereinbelow: Calculation of Volume under the GSMA dated of Volume under the GSMA dated of Volume under the GSMA dated 12.1.2006.

Formula for calculation of volume: for calculation of volume: for calculation of volume:

$AQ_n = [(GP_n - GS_n) \times RP] - [0.03 \times GP_n] - N_n$ Assumption being that N (NTPC volume) is 12 MSCMD and GS_n (Government share) for a year is 45% of GP_n .

Year Total Production Quantity for each (i.e. GP_n) in year in MMSCMD MMSCMD
1. 38 6 2. 54 13 3. 60 16 4. 74 22 5. 80 25

The quantity varies each year.

5. A perusal of above chart shows that quantity of the gas to be supplied to RNRL will vary from year to year. This will vary from 6 MMSCD in year 1 to 25 MMSCMD in year 5. Therefore, even the commitment of 28 MMSCMD will not be complied, let alone any promised option volume.

6. Therefore, the quantity clause is lower than designed by RIL to make the Agreement completely un-workable. The quantity promised is 28 MMSCMD. However, what will actually be supplied, is a fraction of the same and in any event, would not exceed 25 MMSCMD. Further, ACQ is totally manipulable by RIL as the GSMA/GSPA as it stand today, allows RIL to enter into any number of fresh gas supply commitments for periods not exceeding five years even without proving that the available reserves are sufficient to meet the existing long term commitments (such as to NTPC and RNRL) and the proposed five year commitments.

Internationally, gas supply contracts are always for fixed guaranteed quantities. Gas being a fuel, if the quantity and continuous availability is not assured, the contract is not bankable and no capital investments can be committed.

127. The submission is, therefore, that such gas supply contracts are always fixed guaranteed quantities. In the present case, as agreed and gas being a fuel unless its quantity and continuous availability is not assured, such contract is not bankable and no capital investment can be committed. The submission further is that in the NTPC contract with the RIL, a fixed quantity of gas provided as per clause 7.1 which is reproduced as under:

ARTICLE 7 QUANTITIES

Article 7.1 Annual Contract Quantity.

Annual Contract Quantity ("ACQ") is the quantity of Natural Gas required by Buyer in any Contract Year and shall be expressed in TBtu in respect of each Contract Year. During Build-Up period, ACQ shall be as specified under Article 6.1(a). ACQ for the remaining Contract Years shall, subject to any upward revisions made in accordance with the subsequent provisions of this Article 7.1 be 132 TBtu.

During Contract Term, Buyer may by notice request Seller for an increase in ACQ for any specified period or the remaining period of Contract Term. Buyer and Seller may thereafter reasonably discuss and agree on any upward revision to ACQ, provided however that such increase in ACQ shall be on the same terms and conditions as contained in this Agreement.

In the case of any Contract Year that is less than 12 months, ACQ shall be adjusted by the same proportion as the number of Days in such Contract Year to 365.(p.276, Volume I).

128. Therefore, the submission is that the contract terms must be clear and the clauses of NTPC contract need to be followed for the purposes of assuring the agreed quantity and to make the scheme workable.

IDENTITY OF BUYER AND/OR MEANING OF AFFILIATE & USE OF OF BUYER AND/OR MEANING OF AFFILIATE & USE OF OF BUYER AND/OR MEANING OF AFFILIATE & USE OF GAS FOR THE POWER PLANTS OF RPPL & REL. FOR THE POWER PLANTS OF RPPL & REL. FOR THE POWER PLANTS OF RPPL & REL.

129. In so far as the identity of buyer is concerned, as per clause A(f)(i) of the Preamble of the Scheme and in the backdrop of the MOU, it is clearly envisaged that gas would be supplied by RIL to RNRL so that RNRL could supply the same to REL and its affiliates for the generation of power. The submission is that the business of supply of gas to REL and its affiliates was the very reason for which RNRL had been contemplated. The execution of individual agreements as provided in the GSMA, it would be between RIL and REL and its affiliates. It means, such agreements would be entered directly with RIL by REL or such other affiliates. The RNRL will not be in picture. The relevant clauses of Preamble A(f) (ii) is reproduced along with clause 1.12 which defines "Gas Based Energy and Undertaking":

...Consequently, REL has announced setting up of gas based power generation projects in India. RIL proposes to use part of its gas discoveries for the generation of power for which purpose an appropriate gas supply arrangement will be entered into between RIL and Global Fuel Management Services Limited, pursuant to which gas will be supplied to REL for their power projects, including Reliance Patalganga Power Limited, for the generation of power. The above mentioned business of supply of gas to REL for their power project including Reliance Patalganga Power Limited, for generation of power as an integrated

whole, constitute the Gas Based Energy Undertaking of RIL.

1.12 Gas Based Energy Undertaking" as described in item (i) of Sub-clause (f) of Clause A of the Preamble means the Demerged Company's undertaking, business, activities and operations pertaining to supply of gas for the generation of power by Reliance Patalganga Power Limited and REL for their power projects (hereinafter referred to as "Gas Based Power"...).

THE AFFILIATE:

130. The insistence that affiliate company must be 51% of shareholding in other company to exercise the control in order to make it an affiliate as defined in the GSMA is contrary to the other RIL agreements contemplated under the scheme and even to the definition of "affiliate" under the Production Sharing Contract between the Government of India and RIL and to the definition given in the NTPC contract.

131. Clause 19 of the scheme requires that the respondent to supply the gas to the power plants of RPPL and REL. As per the MOU and/or as per the scheme, no other person or entity are entitled for this supply of gas. There is no dispute by the RIL to supply of gas to the power plants of RPPL and REL and also to the power projects of these entities. The requirement of 51% share of RPPL or REL in this backdrop cannot be said to be unjust or bad. The appellant/applicants cannot insist that any company which the applicants hold any shares whatsoever irrespective of the percentage is not within the scheme and never contemplated under the MOU. In my view, therefore, there is force in the submission of the learned senior counsel for the respondent that such clause cannot be said to be contrary to the Scheme. In view of that such insistence by the applicant goes beyond the scheme and contrary to the intent of MOU. Further the fact that the learned senior counsel for the applicants restricted and conceded that the gas supplied by the respondents-RIL to the applicant would be only for the power plants of RPPL and REL. Therefore, on this aspect, no case is made out by the applicant to amend this clauses relating to "Affiliate" in respect of identity of buyer.

LIMITATION OF LIABILITY : OF LIABILITY : OF LIABILITY:

132. With regard to the limitation of liability, the main clause is clause 14(3)(i) of GSMA which reads thus:

14(3)(i). Notwithstanding anything to the contrary provided in this Agreement, in no event shall the Seller's liability for Supply Deficiency Quantity or Delivery Default Quantity whether singly or cumulatively exceed the sum of USD(.) Million. (To be determined based on [Contract price "(Sum of ACQ in Schedule 7.1/Basic Term) x [1/2] x [Basic Term/17].

133. As per the applicants' senior counsel, this clause is also complex formula. It restricts RIL's liability to pay damages to RNRL in the event of the default, this formula limits caps the maximum liability of RIL in the event of its failure to

supply gas to a maximum period of six months. This formula, according to applicant, protect only the respondents even in the circumstances which are not in the control of RIL. Therefore, in case, if the prices of gas increases substantially RIL would be in a position to terminate the contract and can proceed to sell the gas in open market at higher price while paying nominal damages to the RNRL. The applicant thereafter would require to purchase the gas in open market at higher prices and would not be adequately compensated by RIL for any deliberate breach. The NTPC contract does not contain any such clause limits or capping the liability though subsequently some time in December, 2005, the respondent-RIL has added this clause in the NTPC contract. The NTPC is also not accepting the same. The production and supply of such gas is depend on various other factors. The respondent-RIL is not the owner of the gas. Subject to terms and conditions of PSC and policy which itself are not of permanent nature and basically policies which changes from time to time, the insistence that the RIL should supply the gas uninterruptedly irrespective of its production and/or various other changes basically the prices, policies, environment apart from force majeure or frustration just cannot be overlooked.

134. Basically the principle of frustration and/or force majeure are normal clauses of such contracts. The respondents inability to supply gas for various other factors, if cropped up and in that case such clause would protect both the parties to avoid further complication and/or litigation. As noted, the respondents had added this clause even to the NTPC contract also. This type of transaction definitely need protection from all aspects. In the facts and circumstances of the present case, it is expected that the respondents shall act bonafide as per the MOU and as per the agreed terms of the Scheme.

135. As this is a case of demerging, it also means the existing companies and/or entities have decided to separate and work by different entities. So this voluntary arrangement is always with the background to see that both entities should work smoothly and develop like other commercial entities. The apprehension that by this clause, the respondents would wriggle out its commitment is all on presumptions and assumption. The principle of frustration and/or force majeure and further the background that the respondents would be in a position to supply the gas from his share only if it is available and permissible others than the Government is applicants also in such circumstances would be entitled to claim the damages for such express breaches if any.

136. The learned senior to sell and/or to supply very relevant factor. The counsel for the respondents, further submitted that the limit on liability does not relate to damages for deliberate default. Article 13(c) of GSPA draft in both NTPC and RNRL cases make the position clear that priority will be given to supply of gas to NTPC & RNRL in that order. As per Article 14.3(d) supply deficiency in quantity or delivery default quantity are both premise from sellers daily shortfall. Therefore, the respondents are right in putting this clause in this background to submit that because sellers daily shortfall is the quantity which he is unable to deliver to the

buyer and not quantity which the seller deliberately fails to deliver. The stipulated limit on liability is not for deliberate default and it is non-deliberate default, the apprehension of the applicants has no substance. The clause of force majeure, and the frustration and damages in case of deliberate default are imperative in such type of contracts and transaction.

137. The PSC, GSMA and/or GSPA are all these complex documents, considering the transaction and/or nature of business in question as it revolved around the complex commercial issues and are interconnected and interdependent. However, it does not mean that the parties still cannot sit together and decide such clause and/or contract while finalising or dealing with such nature of transaction based upon Government policy and the laws of the land to make it "suitable arrangement" in the context of the Scheme in question. Both the parties need to decide and settle all the clauses in such type of complicated and commercial transaction of supply of gas. The document should be integrated. All the clauses need to be connected and interpreted from the point of view of national and international level of contract. Some time it may take years to settle and negotiate such type of contracts. In the present case, except for above clauses, basically the parties are in agreement, though these clauses themselves cannot be the matter of interpretation or decision and, therefore, the parties need to see and settle and negotiate the clauses which are of a commercial nature and specially when the Company Court has no authority and/or power imposed in such nature of transaction to accept or not to accept the particular clause or clauses.

138. Furthermore, the terms and conditions of the GSMA based upon above referred clauses and formula are not foreign to such nature of agreement of supply of gas. When the PSC agreement was entered into, Anil Ambani was a dominant member being important official of the RIL, at the relevant time, and was fully aware of such practice and procedure of such clauses based upon the formulas. As referred in the MOU itself, it has been observed that the agreements shall be subject to the international policy and/or practice. The PSC itself refers to various such international practices. Considering the peculiarity of the business in question and being the contract or agreement arising out of natural resources of the Government of India, the submission that such formula ought not to have been placed on record and/or ought not to have been the terms and conditions of the contract is unacceptable. Both the parties must be having the expert team of consultants, engineers of national and international level, which is otherwise a requirement to commence such business of exploration/production and supply of gas. Though unable to settle and finalise the terms and conditions as objected and discussed in the present petition, that itself cannot be the reason that Court should, without expertised knowledge in the subject or in the area, express and/or direct and/or impose and/or modify these terms and conditions on either side. It is not the domain of the Court to pass such directions merely because the parties have failed to arrive at settlement and/or failed to finalise such technical & complex terms and conditions, inspite of discussions prior or

even after the Scheme.

139. As the arrangement and/or compromise of any such Scheme like the present one has always the foundation of unanimity or the acceptance of respective terms and conditions. Now at the stage of the proceeding, it is expected again that for proper working and/or smooth working of the Scheme the parties should settle themselves for a "suitable arrangement" for supply of gas.

THE GOVERNMENT'S ROLE & ITS APPROVAL: GOVERNMENT'S ROLE & ITS APPROVAL: GOVERNMENT'S ROLE & ITS APPROVAL:

140. The submission of the learned senior counsel for the applicants that they are not concerned with the agreement between the Government of India and the respondents/contractor is not correct. Once we talk about the commercial transaction and wisdom, it is very clear that no commercial person would take any risk, by breaching the terms and conditions of the PSC or such other agreements and invite termination notice or such other adverse action from the Government. The transaction of such nature i.e. gas production and supply and/or further transfer or sale of gas by the contractor to third person, out of the profit gas need every sort of protection and precaution. In such transaction and business where great financial and infrastructure support is necessary based upon the existing policy of Government apart from various aspects of Force Majeure or natural calamities or adverse impact on environmental and/or field of national or international sale prices. These important facets which need to be respected by the contractor like the respondents. As noted, the Government has signed PSC with the contractor (including the respondent-RIL). After allotment of the block the respondents are now required to follow and take all necessary steps for the exploration and production. This includes the various compliances of various laws and policies. The financial support for the large infrastructure, experts, technical, Engineers and huge staff and their involvement in respective field. The contractor in the present case has invested huge money and have commenced the exploration and production. After the commercial discovery, the contractor/respondents have already moved to the Government, as per the development plan for approval which includes the proposed capital expenditure and production from the blocks. The Government, therefore, even at all these stages plays important and dominant role to monitor and review all these facts through their Management Committee.

141. The Government's interest, apart from the maximum utility and use of the natural resources to the benefit of people at large is also to have royalties and taxes and its share of profits. The profit share is only after cost recovery of all capital and operating expenditure of the contractor. The price formula for valuation purposes is also need to be approved by the Government. Subject to this PSC and Government policy, the contractor is the owner of his share of the gas, though the natural resources are within the control and ownership of the Government. The contractor has full right to dispose of the gas so produced

according to his commercial wisdom to the third person or parties, but only from his share and that is after the respective profit share to the Government as agreed. The contractor has, therefore, full freedom to market his portion of the gas.

142. The Government shall, as per Article 16.4, have the option to take its entitlement to profit petroleum either in cash or in kind by exercising such option and by notifying the same to the contractor not later than 30th June in each year preceding the year in which the entitlement is due.

THE PRICING OF GAS AND THE GOVERNMENT'S ROLE : PRICING OF GAS AND THE GOVERNMENT'S ROLE : PRICING OF GAS AND THE GOVERNMENT'S ROLE:

143. The Production Sharing Contract (PSC) signed between the Government of India and various E. & P. contractor envisages a national gas utilisation policy as per Article 21 of PSC. The Government's share of profit petroleum in kind as per Article 16 of PSC provides a notice to the contractors based upon the production of the gas, in the present case some time in June, 2008. The Managing Committee as per the PSC required the quantum capital expenditure to be approved. The detail scrutiny of the capital expenditure proposed by the contractor is very essential. It appears that there is no published or clear policy in this regard on the record. The requisite guidelines on policy therefore is a must specially when the Government's profit share depends upon the same. The gas pricing formula and/or its principle for valuation purposes is very essential to consider the Government's share of profit petroleum.

144. The Government, therefore, need to take care of its share of profit. The share of profit petroleum/gas of Government further determined and decide the contractor's share of gas and price. Both are interlinked for pricing as well as for quantity or quality. Therefore, the contractor's share of gas price just cannot be determined in isolation. The various factors as per the PSC apart from natural calamities and/or force majeure are quantity, delivery point, price floor and cap and end use. The fluctuation in economic/competitive market at national and international level also play very important role while determining the price. The gas demand which is a very important natural resource and as it is important source of energy for the development of the country, its commercialisation in this competitive market, need to be respected for the development of the country. The commercial aspect of all sorts of dealing and documentation of development, exploration, production, supply and sale of gas definitely need constant scrutiny and deliberation. Therefore, the principle of fair, transparent and clear policy and/or procedure is always a bone of contention specially when it is a natural resource owned by the Government. They provide or allow and/or permit the contractors to utilise the same natural resource, in view of this NELP, for domestic purposes only. The competitive bidding or maximum earning or income are therefore always insisted upon in such type of contracts and/or transactions. The role of Government, therefore, just cannot be overlooked and has rightly contended by the learned senior counsel for the RIL-respondent that the approval

even to GSMA and/or GSPA and or such other transaction by the contractors with the third person, even though from the share of profit of contractors. The Government definitely need to see and check firstly that the contractors should supply and sale the gas in the domestic market and secondly, it should be utilised to the maximum extent for the benefit of people at large and for development of the country.

145. The contractor while fixing the price need to be considered the floor price first based upon the USD per MMBTU. The Government has still power to check the rationale basis for fixing such floor price. The crude price of USD per barrel is also an important element. The contractor need to protect itself from price risk. The contractor's investment, expenditure taking into consideration the annual availability of the gas from a particular source, its estimated period, the gas exploration, development, production and thereafter marketability after considering the Government's share profit are the essential factors pricing of gas. The Government has therefore to check, scrutinise before approving the contractor's price which should be in line with the global standard and best international practice of similar trade and business of supply of gas.

146. The formality of getting the approval from the Government having once acted upon, the applicants are atleast bound and precluded from raising such challenge in the present proceeding u/s 392 is not proper. This Court has no jurisdiction even to pass such order to sit in appeal over the grant or refusal of Government's approval. The remedy is elsewhere. The contractor is free to commercially utilise the gas profit of his share. The Government cannot interfere with the commercial aspect of the contractor's transaction after getting Government's share. But to say that the Government has no say at all even in the gas price agreed between RIL and RNRL and/or such party is not correct.

147. The pricing factor of the Contractor and/or even otherwise, it cannot be decided in isolation without taking note of the various factors as recorded above, in that case unless both the parties agree for a particular price and if it is approved by the Government, then only such clause and/or agreement can be recorded and/or be treated as part and parcel of clause 19 of the Scheme and not otherwise.

148. The Government's revenue has direct link with the valuation of natural gas. The royalty on natural gas is depend upon the sales prices. The sales realisation after deducting the cost petroleum results into profit petroleum. The other related factor is of the Government's profit share. A contractor's price if on higher side than the minimum price fixed or valued by the Government, it will affect a share of profit petroleum to the Government. The contractor's right to sell at the market discovered price is very important aspect even otherwise. Therefore the Government's role in all these is undissectable.

149. Though particular prices have been agreed, the aspect of price need to be considered from all angles on the date of actual commencement of supply or a

reasonable period. There is no question of fixing the floor price for all the time to come. It needs to be revisable from time to time, as per the practice and Government policy having a price review clause.

150. The price so fixed and agreed by the RIL and RNRL is based on the NTPC contract. It was agreed and determined by following the then procedure and Government policy. Therefore the competitive bidding prices, as followed cannot be overlooked, based upon the then declared policy or decision.

151. To what extent RIL should commit and respect the MOU, even in respect of pricing and/or tenure and/or quantity is a matter between both the parties to settle and decide, that is too after taking into consideration the Government policy and clauses. The interest of shareholders and/or respondent-RIL just cannot be overlooked. The respondents cannot be directed to sale or supply gas at subsidised rate and to incur losses. The effect of MOU therefore need to be interpreted to mean that the applicant is entitled to the share and supply of gas reasonable price, quantity & tenure provided both the parties agreed to the suitable arrangement. Such agreement cannot be unilaterally. Therefore, once they come to a particular settlement which should be suitable to both and if it falls within the ambit of Government policy and/or Regulation, there is no reason that even the Government should not grant approval.

152. The profit share of contractor and/or of Government varies from time to time and/or year to year basis. There is no fixed profit share of gas of either of the parties. The fixing of price therefore cannot be of permanent nature even by the Government and/or even by; the contractor. The fluctuation of the market and based on various factors need to be revised and considering from time to time the commitment of price therefore also throughout particular contract period and/or even for 17 years has prayed by the applicant in the present case, is also not acceptable.

153. The respondents cannot supply the gas unless there is actual production and after deducting the Government's profit share. The balance be reserved subject to the certificate as per PSC the contractor-respondent would be in a position to supply to the respective supplier's as agreed based upon valid and binding contract. In the present case, as contended 12 MMSCMD to the NTPC and 28 MMSCMD to the applicant, apart from the other ratio. Such supply therefore would also depend upon the actual recovery and certification of such gas share of the contractor. It is difficult for any party to make any confirm commitment without having the actual certified gas for such transfer and/or sale. This Court cannot direct the respondents to provide, supply the gas in such fashion without ascertaining the actual market position and actual availability of the gas. The positive direction from the Government to supply fixed quantity of gas out of their share and/or remaining shares to particular sectors and/or Undertakings just cannot be overlooked. The respondents need to respect and consider the demand/or direction made by the Government, if occasion comes.

154. Further material aspect from the point of view of the contractor is that under the PSC, the contractor takes risk and takes all steps in such commercially exploitable reserves of oil and gas, as done in the present case by the respondent-RIL. The contractor, in the present case, is successful in its effort. Therefore, he would first recover investments made in the block from the sale of petroleum production from the field. As per the PSC, it is only after recovery of the cost, the surplus of the production, if any, would be shared between the Government and the contractor based on a given formula of increased share to Government. The respondents-RIL have already made huge investment based upon the PSC and licence granted by the Authorities. The prescribed period of licence granted to the RIL to explore the block is upto the year 2025. The respondent, based upon the PSC, entitled to recover the investment in particular exploration of block only from oil and gas which is recovered and produced from that block. Therefore, at this stage, the entitlement of respondent would be worked out by converting the cost and profit into equivalent of oil and gas produced from the field in question.

155. In consideration the contractor is entitled only to a share in the gas and/or oil, if any, which may actually be produced and save for recovering its gas and a share of profit. As per the PSC, the title to contractor's entitlement of oil and gas, will be transferred to it after it is produced and brought to the delivery point. The detail process as stipulated in the PSC which includes the petroleum operations always subject to review and approval by the Government. There are various checks and balances as provided in the PSC to ensure that the Nation's oil and gas resources are exploited by the contractors in a commercially prudent and and utilise it to a maximum extent in the domestic market. The entitlement of the contractor as provided in Articles 15 and 16 need to be calculated.

156. Under the KGD-6 PSC the contractor's entitlement of cost petroleum is limited to 90% of each year's production. In case there is any unrecovered part of the total costs at the end of any year, the same is carried forward to the next year for recovery. Therefore, profit control on cost incurred and on the price at which the gas produced and sold is required to be valued for the purpose of determining the entitlement of each part. Therefore, if the contractor's sales cost at the sub-market price and/or if the gas is undervalued then the Government's entitlement to profit petroleum from the total production will be reduced. The contractor still off-take a greater volume of gas as it is cost petroleum entitlement. The amount of expenditure incurred for petroleum operation, under the provisions of PSC is therefore need to be strictly monitored, reviewed and audited from time to time. Therefore, the price at which such gas will be valued is also need to be produced by the Government to ensure all transactions are entered into on "arms length basis" at arms length price. The submission, therefore, that if RIL sales the gas at a price lower than the price acceptable to the Government and as in the present case, the Government has already rejected the same. Therefore, if RIL compelled to sell at the price as demanded by the applicant he would be paying a huge subsidy to the applicants, if

Government insists for the market price for such sale. The respondents-RIL further cannot commit sale of higher quantity than it is entitled to under the PSC. There is force to some extent in the submission as raised by the learned Senior Counsel for the respondents as regards to the point of pricing and Government approval and tenure based upon the terms and conditions of the PSC and the Government policy in question but it is as recorded subject to suitable arrangement based upon the MOU and the Scheme.

157. The respondents as supply and/or sale 40 (28 + 12) far as the price is concerned, decide together as the price at US D 2.35 per MMBTU has already been rejected by the Government. agreed must provide and/or MMSCMD of gas but in so the parties must sit and

158. The respondents-RIL cannot be compelled to commit such breaches to face the risk of termination of the PSC itself. Therefore, there is a force in the submission that RIL cannot sell or commit quantities of gas which are in excess of P-1 reserves in hand. Therefore, the provisions in the GSMA that RIL would enter into commitment for sale of gas upto 28 MMSCMD as agreed to provide to RNRL to the extent of 28 MMSCMD for 17 years from RIL's entitlement is just and proper. The applicants-RNRL is entitled, as agreed between RIL and RNRL, from RIL's entitlement and share and not otherwise.

159. The further submission of applicant that in case the NTPC contract with RIL does not materialise and as agreed in the MOU and even otherwise, they are entitled for the said 12 MMSCMD of NTPC from the total P-1 reserves for 17 years. As noted, the entitlement of RNRL would only be to the extent of available and as and when gas available from P-1 reserves even in future also as per development plan filed by RIL from time to time. RIL, therefore, can only supply those gas which are available from time to time from present as well as future P-1 reserves from its entitlement, after deducting the shares of Government, NIKO and in case of NTPC.

160. Both the parties have the team of expert technicians. They are free to consult and decide and finalise the terms. In this background, they are at liberty to re-negotiate and finalise. The Government has no role to play in respect of the share of gas of the RIL/contractor in view of the freedom already provided under the PSC. The RIL/contractor is free to sell his share of gas in the domestic market. The aspect of transparency, fair and market price in such nature of business is imperative. Both the parties therefore in such nature of transaction, must re-assess, revalue and renegotiate amongst themselves to particular conclusion and settlement as per the Scheme and the Government policy.

161. Another facet is that as per the MOU itself in reference to price and commercial terms it has been agreed that "the firm quantity 28 MMSCMD/40 MMSCMD at a price no greater than NTPC price" and further "option gas at the market rates" and "other commercial terms, same as those of NTPC contracts and further shall be in accordance with the international best practices" and

further "and lastly shall be bankable in international financial markets". It is very clear even from the above clauses that the parties have agreed for price and commercial terms in accordance with international best practices and such documents"transactions shall be bankable in international financial markets. The price of NTPC should be restricted to the applicants, as claimed, at least upto 28 MMSCMD and/or 40 MMSCMD in case NTPC contract does not materialise or cancelled, still the pricing policy of Government and the requirement of PSC, including the other statutory approvals and joint cooperation in this respect by both the entities as agreed by, even as per the MOU need to be complied with by both the parties and even now as per the Scheme.

162. Principally the parties are bound by their commitments. Its terms and conditions including quantity and tenure, specially in the facts and circumstances of the case, but those terms and conditions are always subject to the change in the Government policies and laws apart from national and international policies of supply of oil & gas.

NO FURTHER TRADING OF GAS BY RNRL: FURTHER TRADING OF GAS BY RNRL:
FURTHER TRADING OF GAS BY RNRL:

163. In so far as the trading by RNRL concerned, during the course of argument, the learned senior counsel for the applicants, on instructions, has expressly given up this issue of trading and submitted that the gas supply would be only for the power plant of any REL and RNRL. They are not pressing and/or pleading that RNRL is entitled to trade in gas. They are restricting their claim and submission only in respect of the supply of gas which will be for their power plants.

THE APPLICANTS ARE NOT A SHELL COMPANY : APPLICANTS ARE NOT A SHELL COMPANY : APPLICANTS ARE NOT A SHELL COMPANY:

164. There is a force in the contention as raised by the learned senior counsel for the respondents based upon the statement made in the annual report of the applicants company of the year ended March 2007 published on 25.4.2007 that the applicants-company has already an income of Rs. 250 crores, cash profits of Rs. 41 crores and further that RNRL is getting various concessions for exploration of oil and gas. The Director's report spelt out the projects in hand also. Reliance Fuel Resources limited will lay the pipeline to Dadri for supply of gas from K.G.Bhasin of North India. Therefore gas if not routed through the applicants and supplies are directly made to the power plants the applicants would become a Shell Company is not correct. Except the issue in question i.e. supply of gas, all other resulting companies, based on the same Scheme in question are working smoothly.

THE MAJORITY DECISION/RESOLUTION BY RIL BOARD DT.11.1.2006 & 12.1.2006 & THE EXECUTION OF GSMA/GSPA IS & 12.1.2006 & THE EXECUTION OF GSMA/GSPA IS & 12.1.2006 & THE EXECUTION OF GSMA/GSPA IS AGAINST THE SCHEME SCHEME SCHEME

165. As per the Scheme clause VIII and Sub-clause (xvii) the respondents-company shall cause the Board of Directors of each of the resulting companies to be re-constituted in such manner as is agreed between each resulting companies and Anil Ambani and thereupon each of the resulting companies shall be controlled and managed by Anil Ambani. The demerged company constituting the remaining Undertakings shall continue to be controlled and managed by Mukesh D. Ambani. As per the preamble of the Scheme and even otherwise the respondents-RIL being contractor in pursuance to the PSC, remained under the control of Mukesh D. Ambani having object to commence the production and sale of gas and further as REL has announced setting up of Gas Based Power Generation of India, RIL proposed to use part of its gas discovered for the generation of power for which purpose an appropriate gas supply arrangement agreed to be entered into between RIL and Global Fuel Management Services Limited (now applicant) pursuant to which gas agreed to be supplied to REL for their power projects including Reliance Patalganga Power Limited, for the generation of power. This business of supply of gas to REL for their power projects is an integrated and/or constitute the Gas Based Energy Undertaking of RIL. The intention therefore throughout was even under the Scheme to reorganise and segregate the business and undertakings to provide focussed management attention. In this background, it was necessary that RIL should have given full and proper opportunity to the applicants before passing such resolution hurriedly on 11.1.2006 and before executing such GSMA and GSPA in question. As per clause 19 as recorded the suitable arrangement should be suitable to both the parties in all respects. In this aspect, the decision as taken hurriedly on 11.1.2006, therefore, was one sided, specifically taking into consideration the background and/or events followed upto the sanctioning of the Scheme. As noted, the control over the Board of the applicants on 10.1.2006 was of RIL, as control over had not been handed over to Anil Ambani. On 26.1.2006 final copy of GSPA was made available by nominee of RIL to nominee of Ambani Group. The drafts of GSMA and GSPA were only circulated on late night of 10.1.2006 through mail. It is to be noted that shares of RNRL were allotted/ transferred to Anil Ambani only on 27.1.2006 to themselves admittedly after the Board meeting dated 27.1.2006 as referred above. The New Board was reconstituted in accordance with clause 17 of the Scheme on 7.2.2006. As per clause 6 RIL continued to manage the resulting companies till the effective date in the capacity of trustees. Therefore, the Board of the Meeting and the Resolution and/or execution of the said GSMA on 11.1.2006/12.1.2006 before the actual transfer of control of the resulting companies to Anil Ambani and before reconstitution of the Board as per clause 17 of each resulting companies was against clauses 17 and 19 and the basic purpose of the Scheme in so far as the supply of gas is concerned.

166. The main crux of the problem arose because of the Resolution by the Board of Directors of RIL on 11.1.2006/12.1.2006. A company is a juristic person and acts through its Board of Directors. The Board of Directors act collectively for the

company. It is specialised and body of responsible person. The decision by the Board is for the company's interest and for its benefit. The Board of Directors act as agents, trustees and in a fiduciary capacity. They are the trustees of the shareholders of the company. Their decision binds the company. In the present case, pending the decisions and discussion on various aspects of gas supply agreement hurriedly inspite of objection by so-called representatives of the applicants, the Board on 12.1.2006 took decision by majority and approved the GSMA and GSPA. Such decision if not acceptable and as objected prior and even after the said Board decision, before and immediately after the decision, as it is not in the interest of resulting companies including the applicant. Any such Resolution or decision in the present case cannot be said to be bonafide. The Resolution dated 12.1.2006 without new Board of Directors of resulting companies therefore is not as per the agreed terms of the Scheme.

167. The circumstances are glaring on the record. The decision as taken hurriedly on 12.1.2006 raises various doubts and as contended also that it is one sided and in the interest of RIL and not in the interest of RNRL or resulting companies as it was by the Board of Directors of the RIL, the trustee company after the Scheme, but before the nomination and/or formation of Board of Directors of the applicant. The procedure as followed to adopt or resolve or to execute the GSMA was unfair and unjust. The Court, therefore, in such circumstances, need to consider whether the parties have committed any basic breach of the clauses of the Scheme which is creating hurdle and/or resulting into smooth working of the Scheme as sanctioned. In this backdrop, meeting as held and the decision as taken hurriedly by the RIL, in my view, is not as per the sanctioned Scheme and it is in the breach of the said Scheme.

BANKABLE DOCUMENT: DOCUMENT: DOCUMENT:

168. The learned senior counsel for the applicants has rightly pointed out that as per MOU and even in the agreement of RIL with NTPC, the terms were clear in respect of tenure, price, cap liability and even of damages. Even when the same Government policy and PSC well within the knowledge of the respondent-RIL, based upon MOU and those clauses of NTPC both the parties have been discussing and deliberating on this issue.

169. The availability of gas and its impact on Indian economy is very important. There is no dispute that the comprehensive policy and guidelines to supply and utilise the gas through various procedure and chain in this country's need of energy, security, market and competitiveness is very important. The substantial contribution to the national exchequer by way of royalty, taxes and Government of India's share of profit petroleum and, therefore, to maximise the potential benefit of such huge gas finds for the country's economic growth is very essential. It also means the end user of gas like power sector, who are gas consumer in the country need to be encouraged, promoted and provided or supplied gas at affordable price. Considering the requirement of huge finances for the exploration, production and supply of gas, huge finance is necessary. The

documentation, therefore, for all these purposes must be clear and must be without any ambiguity, uncertainty and/or doubt. The commercial and economic aspects of such transaction have repercussions at national as well as international level. The gas being a rare commodity and demand is very great at all level, all documents from one stage to the other till the crude oil or basic material are used into power plants or fertiliser plant or such other plant, for converting the gas into energy and/or such other products, the document must be bankable document. Every person or any other entity involved in various ways must have a clear documentation for respective finance and for all other purposes considering the Government policies and the laws into account. The requirement of various compliance, of laws including Acts, Rules and Regulations, Policies need to be clearly defined and expressed. Such documents in this background just cannot be segregated and/or dissected from each other. All these documentations as interlinked and interconnected must be drafted or worded in clear terms so that all the concerned financial institutions, Government Authorities, Regulatory Authorities and if necessary, even the lay man should understand specially when we talk about free, fair and transparent documentation. The expert engineers or technician in the field, though are involved in finalising such documents, yet when it comes to the Banks or even to the Regulatory Authorities, it is desirable that the documentation should be clear, plain, unambiguous and without any doubt. The learned senior counsel for the applicants therefore is right in contending that in GSMA or GSPA various important clauses in reference to price, tenure, cap liability, supply of quantity and clauses of damages are very complicated and difficult to understand and/or explain to lay man or third person. In a technical and the transactions of such nature, the understanding between the two parties basically two entities to the contract is normally sufficient. Both entities have their respective expertised technicians of national and international level. Therefore, once we talk about the Bankable document for finance, then though parties or one of the entities may be expert in drafting such agreement based upon the alleged international practice, still, unless such formula or such clauses made explainable and/or understandable to the lay man or consumer who is not expert in the field, just cannot be ruled out. It is not that every one should know or understand all the technical or electronic formulas, when we discuss and deal with the agreements and documentation, based upon the Government policy, everyone should be in a position to understand and rightly submitted to avoid further complication and litigation in the matter apart from bankable for the purpose of financial help from the Banks and Financial Institution.

ALLEGATIONS OF FRAUD : OF FRAUD : OF FRAUD:

170. There are various allegations made in the application while questioning the GSMA and/or GSPA by the applicants by referring the said documents to be a hollow, sham as the same were executed in fraudulent manner. Those are sham documents. These documents are unreasonable, un-conscionable, one sided and, therefore, it is a fraud on the shareholders of the resulting companies and also

on this High Court.

171. After hearing both the parties and considering the averments and denial as made and specially when for both the parties and their representatives/officials were definitely working and discussing the clauses till the date of its execution and even in the said Board meeting, the representative of the applicants was present. Therefore, merely because it was executed by majority that cannot be the case of fraud as contemplated u/s 17 of the Contract Act. The objection to the said clauses and documents itself are the bone of contention even in these applications. The respondents are not totally denying to supply the gas.

The dispute is about tenure, period, liability etc. Both the parties are disputing and targeting the words "suitable arrangement" as referred in clause 19 of the Scheme. Apart from this, there is no submission that the applicants are elected or choose to discard the agreement in toto. The application itself is for substitution of some clauses based on the respective interpretation of MOU and the effect of MOU or Government policy and lastly the Scheme. The submission, therefore, of fraud to the part of such agreements and seeking modification of the same that itself sufficient reason to reject the case of fraud as alleged by the applicants against the respondents. The party one who leads and/or aver fraud, misrepresentation need to prove the same by leading and/or by placing various evidence on the record by invoking appropriate forum and the proceeding, but certainly not in these applications as raised. These submissions therefore is misconceived and untenable.

172. The applicants-company have several Gas Based Power Plants/Projects including Dadri Project (7480 MW), Shahapur Project in Maharashtra (4000 MW). The total requirement of gas for these projects and/or such other projects subject to finalisation of the agreement between RNRL and RIL would be RNRL's lookout which include the purchase of gas from the market if available at the market price other than 28 plus 12 MMSCMD as noted above. The RIL is under obligation to supply the gas subject to the settlement and suitable terms and conditions as per the MOU and/or the Scheme. It is true that as per the Scheme to start with any such power project and specially in reference to the Undertakings of the RNRL, it is necessary to secure the basic infrastructure, raw-material and necessary permissions and approvals for the RNRL also. In the present case, it appears that gas is the basic raw material. Unless agreed and provisions are made and/or commitment is recorded to have a regular supply of gas, other partners or third person including Bank or such Financial Institutions would not like to commit such projects, but still it does not mean that the RIL must commit supply of gas without agreeing to suitable arrangement even though based on the MOU or the Scheme in question. Both the parties therefore on this issue also must come forward and settle to make the document Bankable, if required by executing such agreements by taking into consideration the MOU, the Scheme, PSC and the Government policy. The applicant is therefore also required to purchase the gas from the market for their projects being commercial

entity in all respects, who wants to and/or start such Undertakings. RIL being committed through MOU and/or in the Scheme also must see that the resulting companies like the applicant should develop and therefore must provide the gas from the available quantity to the applicants, but certainly not at subsidy rate as claimed by the applicants. The applicants even though invested huge amount of its power projects, if any, still that itself cannot be the reason for this Court to pass interim & final orders and/or directions as prayed. The RIL, under the facts and circumstances, must perform their part of obligation based upon the events, MOU and the Scheme in question, but definitely on agreed terms and conditions. The RIL cannot say and/or deny their obligation as referred and agreed throughout from the date of MOU and even after the sanction of the Scheme. The quantity, the tenure and all other such required aspects of gas price and/or option definitely need detail study and scrutiny and negotiation based upon the existing PSC and the Government policies in this regard. Therefore by adding such clauses and/or amending clauses as prayed by the applicant, without considering the PSC and/or Government policy is beyond the scope of Section 392. It will be in fact contrary to the Scheme as sanctioned.

173. I am of the opinion that based upon the MOU and the Scheme in question, RIL is under obligation to see that the resulting companies or its undertaking should be provided with the gas as agreed for setting up of their power projects/ Undertakings, but this should be definitely based on the suitable arrangement and agreements. There cannot be the commitment and/or agreement beyond the scope and capacity of the RIL in reference to the period, quantity, liability and/or non-supply of gas for various bonafide and genuine reasons beyond the control of the RIL and against any Government policy.

174. The applicants in a way are challenging some of the terms of the agreements of GSMA and GSPA which have been, according to the respondents, duly executed between the parties in view of the majority decision taken on 11/12-1-2006. As per clause 3.3 of GSMA these agreements are draft GSMA and required further negotiation and/or final agreement at the time of sale and purchase of the gas on such terms and conditions agreed in future. The respondents can commit supply of gas based upon the possible quantity of gas produced on yearly basis. The respondents-RIL preferably must commit to supply the gas if available to RNRL to achieve the object and purpose of the scheme itself and to see that the RNRL or its Undertaking establishes and develop. It is in the interest of both the companies/entities that after investments huge amount in such projects and after deducting the Government's share as contemplated under the PSC, the RIL/contractor should be in a position to cover up the investments already made for the protection and exploration of the gas. The "suitable arrangement" therefore need to be re-amended and re-considered and negotiation by the parties taking into consideration all the facets, commercial, economic and above all Government policies and law. What should be the arrangement for supply and sale of the gas by the RIL to RNRL and at the same stroke to cover up the investment already made and/or earn the money out of

the share of contractor.

175. In totality the MOU as provided for a demerger and transfer of Gas Based Energy Undertaking. It was at that time admittedly the gas which has been allotted to RIL and it has been decided to utilise the gas to the Group power projects. Both the companies RIL & EEL, therefore, agreed and recorded that RIL would support the Gas Based Power Projects of REL. The MOU has been agreed in the presence of the mother after the death of late Shri Dhirubhai Ambani, the founder of RIL and the father of Mukesh Ambani, Chairman & Managing Director of RIL and Anil Ambani, Chairman & Managing Director of REL. Even more than two million shareholders of RIL in this background of settlement of dispute between the two brothers, by the mother, approving the Scheme for sanctioning the transfer of part of the gas supply based business of RIL, being the Gas Based Energy Undertaking to the RNRL. Keeping in the mind the said MOU and the terms and conditions basically in respect of the transfer of companies and formation of resulting companies on the assurance of supply of gas at US \$2.34 MMBTU for 17 years based upon the NTPC term. The said commitments and assurance of Mukesh Ambani, the Board of RIL and approval by the body of shareholders of RIL to supply the gas to RNRL for the power project of REL is relevant factor to consider the case of the applicants in this regard.

176. There is a force in the submission as raised by the learned senior counsel for the respondents that the relief as claimed and as referred in Exhibit "J" cannot be granted as it is as the same amounts to deviation from the scheme and beyond the powers of the Court. As noted and discussed, all these respective clauses and its resulting effects is a matter of national and/or international expert on production sharing contract and/or such type of gas supply transaction. Both the parties as they are working on such power projects since long and wants to develop their power project industries in all respects must be handling through their expert and/or consultants, there is no question of giving direction to appoint an expert and/or seek opinion from the expert at this stage of the proceeding. The parties are at liberty, all the time, to have opinion on these clauses from all angles.

177. Therefore, the relief as claimed just cannot be granted in favour of the applicants. At the same stroke the GSMA and/or GSPA clauses as imposed are also not liable to retain. The suitable arrangement be made considering the events prior and post to MOU and the Scheme. The Company Court is not expert and has no say and in fact should not express its own or say any such technical and complicated nature of transaction, business and/or clauses of gas supply agreement or such other agreement having national and international markets policies. A suitable arrangement also therefore means the parties must themselves see and settle and put-forth their submission for proper and suitable working of the scheme specially when the scheme has been working smoothly except for this gas supply agreement.

INTERIM ORDERS: ORDERS: ORDERS:

178. As noted, the applicants have prayed for interim relief of injunction in terms of prayers (c) and (d) in Company Application No. 1122/2006 at the time of the filing of the said application. By another Company Application No. 1123/2006 the main application in question, the applicants on 16.11.2006 have prayed for orders for injunction as quoted in para 42, whereby the prayer has been sought against the respondent-RIL from creating any third party interest or rights in respect of 40 MMSCMD of gas from supplying to any third person. By order dated 3.5.2007 as reproduced in para 51, this Court has granted ad-interim relief in terms of prayer (a). The applicants thereafter have filed another Company Application No. 695/2007 on 19.6.2007 and further prayed that the respondents be restrained from committing the sale or auction of any quantity of gas to any third party and further from seeking requisite approval under the Production Sharing Contract for any sale, auction from the Government and further prayed for restraining the RIL from creating any third party interest without first satisfying the first option rights of the applicants. This Company Court by order dated 20.6.2007, without granting the ad-interim order as prayed observed that any gas supplied to third party that will be subject to the outcome of the Company Application No. 1122/2006 in referring to the para 20 of the earlier order dated 3.5.2007. By that order, this Court has observed while granting the prayer (a) that "the respondent-company may proceed with the process of sale of gas through auction, but of the remainder quantity of the gas explored and produced by it to ensure that a satisfied quantity of gas to be supplied to the applicants is set apart and made available if and when directed."

179. It appears that the respondent's process for arriving at a market determined price by inviting price quotation from power and fertiliser companies having existing facilities, capital of consumer gas from the expected date of commencement of production of gas from Block KGD-6 was going on. Based upon the quotation received from an application made to the Government for approval of the market determined price. The term sheets are also submitted for approval of price by the Government. However, the respondents by letter dated 9.6.2007 addressed to the MOPNG pointed out that the order dated 3.5.2007 passed by this Court with a request not to proceed with the approval. The respondents, however, resisted the said letter by letter dated 15.6.2007 and tried to point out the correct factual and legal position and further requested to approve the price as sought. Company Application (Lodging) No. 721/07 (i.e. 695/2007) was filed on 19.6.2007. By order dated 20.6.2007 this Company Court has observed as under:

that in the event, the respondents (the appellants herein) taking benefit of the observations made in paragraph 20 of my order dated 3rd May 2007 were to commit itself in relation to any gas produced to third party, that will be subject to the outcome of the main Company Application No. 1122 of 2006. This position needs to be clarified which, in fact, will be stating the obvious. Ordered accordingly.

180. The original respondents-RIL have also challenged the order of grant of interim relief in terms of prayer (a) in Company Application No. 1123/2006 dated 3.5.2007 i.e. in Appeal No. 440/2007. The respondents, therefore, have also filed the Appeal No. 441/2007 and challenged the said order also. The Division Bench, after hearing both the parties on 18.7.2007 has observed in the following paragraphs as under:

2. Upon hearing the learned Counsel for the parties for sufficient time and having gone through the impugned orders, we do not find anything in the impugned orders which prevents the Central Government from going ahead with the matter of the price fixation under the PSC between the Central Government and the appellant.

3. This is of course recorded without prejudice to the rights of both the parties in the main Company Application No. 112 of 2006.

4. The hearing of these Appeals stand adjourned for eight weeks. In the meanwhile, the learned Company Judge is requested to proceed with the hearing of the Company Application No. 1122 of 2006.

5. Liberty to the learned Counsel for the parties to mention the matter if any contingency arises.

The Division Bench has passed an identical common order in both the appeals. Both the appeals are still pending. However, in view of the above order, main Company Application No. 1122/2006 has been heard on merits.

181. The entitlement of the gas of the applicant as per the pleading at this stage is not more than 40 MMSCMD (28 as per MOU Plus 12 as per NTPC). The applicants have definitely no right or interest in respect of the balance quantity of gas explored and produced by the respondents-company. The respondents-company therefore are entitled to explore the market to see and assess the potentiality of the gas in the open market referring to price and its requirement. The supply price with RNRL would definitely be different than the market price on the date of sale by the RIL to the third person. The supply price would be determined by RIL and RNRL at the time of final execution and/or commitment for supply of gas which should be prior to the date of actual sale. It is also necessary to consider the immediate requirement, if any, of the applicant for such gas. The respondents-company need to ensure therefore at this stage that no third interest or right is created in respect of the specified quantity of gas and it should be made available as and when required by the applicants from the respondent's share. The respondents therefore need to take all precautions to ensure the specified quantity of gas to be supplied to the applicants and made available if and when directed as rightly observed by the Company Court while passing the order dated 3.5.2007. After taking into consideration the entire events and the facts and circumstances, the applicants-RNRL therefore cannot claim and/or halt the entire sale and supply of gas by the respondents in this proceeding. I am convinced that pursuance to the events, MOU and the

sanctioned scheme unless these agreements in question are finalised, in view of the observation made in this judgment, the parties need to follow the orders passed by this Court on 3.5.2007, 20.6.2007 and 18.7.2007 as recorded. However, the parties are at liberty to take out appropriate proceedings, if so advised. Admittedly the applicants-RNRL has not challenged any part of the order dated 3.5.2007.

182. As I am deciding the main matter, all other applications arising out of and related to the same proceeding are also need to be disposed of accordingly. It is difficult to keep pending those company applications in view of the disposal of the present application as the Division Bench of this Court in Appeal Nos. 440/2007 and 441/2007 arising out of interlocutory order in C.A. No. 1123/2006 and C.A. No. 695/2007 has in fact permitted to proceed with the hearing of Company Application No. 1122/2006.

183. Thus for the present purpose I have come to the following conclusions and passing the resultant order:

184. The conclusions are:

(1). The present company application u/s 392 of the Companies Act is maintainable.

(2). The Company Court, however, u/s 392 of the Companies Act cannot direct or dictate to maintain or amend or modify and/or insist for a particular clause or clauses of such gas supply agreement or such other commercial agreement/contract.

(3). The GSMA as formed and finalised in the Board of Director's Meeting of RIL on 11/1/2007 and modified on 12/1/2007 is in breach of the Scheme.

(4). The MOU (Memorandum of Understanding/Family Arrangement) and its content are binding to both parties RIL and RNRL and all the concerned, Mr. Mukesh Ambani and his group of Companies and Mr. Anil Ambani (ADA) and his group of Companies have already acted upon at the pre and post stages of the MOU and the pre and post stages of the Scheme accordingly.

(5) The term "suitable arrangement" as referred in the Scheme needs to read and interpret by taking into account the terms of the MOU as well as the Scheme as referred above. It is also necessary for the complete and full working of the Scheme.

(6) The terms as mentioned in be suitable for both the Government's policies and national, international practice in supply of gas or such other products.

(7) The contract of such the MOU and GSMA need to parties subject to the nature is subject to the Government's approval in view of NELP & PSC and such related Government policies, but keeping in view the several factors including the freedom and right of the contractor/RIL and the limited and restricted scope of interference in such permissible commercial aspects of the contractor, unless,

it is in breach of any public policy and public interest.

(8) The supply of gas contract/agreement needs to be clear and bankable documents for all the concerned parties.

183. The resultant order is:

(i) For the aforesaid reasons and conclusion, it would be appropriate for both the parties to re-negotiate, re-consider and settle the terms of existing GSMA & GSPA afresh within four months or as early as possible.

(ii) In view of this the interim order dated 3.5.2007 (in C.A. No. 1123/2007) & 20.6.2007 (in C.A. No. 695/2007) and further modified on 18.7.2007 in Appeal Nos. 440/2007 and 441/2007 are continued and be maintained only for further four months.

(iii) In view of above, Company Application No. 1122/2006 is disposed of with liberty.

(iv) Therefore, accordingly, all other interlocutory and related Company application Nos. 1123/2006 and 697/2007 are also disposed of with liberty in the above terms.

(v) No costs.