Mohan Lal & Anr.

Vs

Grain Chamber Ltd., Muzaffarnagar & Ors.

Civil Appeals Nos. 114 and 115 of 1965

(J. C. Shah, S. M. Sikri JJ)

15.11.1967

JUDGMENT

SHAH, J. -

The Grain Chamber Ltd., Muzaffarnagar, a Company registered under the Indian Companies Act, 1913 with a share capital of Rs. 1,00,000 divided into 1,000 shares of Rs. 100 each, was formed for the purpose of carrying on business of an exchange in grains, cotton, sugar, gur, pulses and other commodities. By Art. 5 of its Articles of Association no person or firm could remain a member of the Company who was found not to be doing any transaction or business through the Company for a continuous period of six months. By Art. 46 it was provided that a member of the Company who owned 10 share of the Company in his own name or in the name of the firm of which he was a proprietor or partner may be elected a director of the Company. By Art. 51, until otherwise fixed, the quorum in the meetings of directors was to be four.

In the years 1949 and 1950 the Company was carrying on business principally in "futures" in gur. The method of carrying on business in "futures" was explained as follows by the parties to the dispute in an agreed statement submitted before the Company Judge. The transactions for sale and purchase of gur have to be in the units called 'Bijaks' of 100 maunds. The buyer and the seller who are members of the Company negotiate transactions of sale and purchase in gur through their respective brokers and then approach the Company. The Company enters into two independent contracts whereby the Company is the purchaser from one and is the seller to other at rates agreed upon between the seller and the buyer. The seller has therefore to sell to the Company a specified quantity and the buyer agrees to purchase the same quantity from the Company under an independent contract. For the due performance of their contracts, the buyer and the seller deposit with the Company rupee one per maund as Sai and annas eight per maund as Chook - 'margin'. If there is a rise in the price, the Company calls upon the seller to pay the difference, and if he fails to deposit the difference demanded, the Company enters into a reverse transaction with a purchaser at the current rate of the day and squares up the transaction of sale. The purchaser is also entitled to withdraw from the Company the profits he has made consequent on the rise in price. If the seller is adjudged an insolvent or for any other reason is incapable of performing his obligations the buyer remains unaffected. Even if the Company is unable to recover anything from the seller, it has still to pay to the buyer the profits earned by him. Similarly if there is a fall in the price, the buyer has to make good the difference. If on the day fixed for delivery of goods the parties intend to settle the transaction by paying and receiving the difference, the Company fixes the rate at which the transaction is to be settled and the transaction is settled at the rate fixed by the Company. Both the buyer and the seller send bills known as "Dailies" setting out the amounts paid and received according to the rates fixed.

On March 14, 1949, the Board of Directors of the Company passed a resolution, sanctioning transaction of business in "futures" in gur for Phagun Sudi 15, Samvat 2006 (March 4, 1950) settlement. On August 9, 1949, Seth Mohan Lal and Company purchased one share of the Company and qualified for membership. They commenced dealing with the Company in "futures" in gur. By December 1949 Seth Mohan Lal and Company - who will hereinafter be called 'the appellants' - had entered into transactions with the Company which aggregated to 1136 Bijaks of sale of gur for the Paush Sudi 15, 2006 delivery. The appellants also claimed that they had entered into sale transactions in 2137 Bijaks in the benami names of five other members. In January 1950 there were large fluctuations in the prices of gur, and in order to stabilise the prices, the directors of the Company passed a resolution in meeting held on January 7, 1950, declaring that the Company will not accept any settlement of transaction in excess of Rs. 17/8/- per maund. The sellers were required to deposit margin money between the prices prevailing on that date and the maximum rate fixed by the Company. The appellants deposited in respect of their transactions Rs. 5,26,996/14/- as margin money. They claimed also to have deposited amounts totaling Rs. 7 lakhs odd in respect of their benami transactions.

In exercise of the power conferred by s. 3 of the Essential Supplies (Temporary Powers) Act 24 of 1946, the Government of India issued a notification on February 15, 1950, amending the Sugar (Futures & Options) Prohibition order, 1949, and made it applicable to "future" and options in gur. By that Order entry into transactions in "futures" after the appointed day was prohibited. On the same day the Board of Directors of the Company held a meeting and resolved that the rates of gur which prevailed at the close of the market on February 14, 1950, viz., Rs. 17/6/- per maund be fixed for settlement of the contracts of Phagun delivery. It was recited in the resolution that five persons including Lala Mohan Lal, partner of the appellants, were present at the meeting on special invitation. In cl. 2 of the resolution it was recited that as the Government had banned all forward contracts in gur it was resolved to take the prevailing market rate on the closing day of February 14, 1950, which was Rs. 17/6/- per maund for Phagun delivery and to have all outstanding transactions of Phagun delivery settled at that rate.

Entries were posted in the books of account of the Company on the footing that all outstanding transactions in futures in gur were settled on February 15, 1950. In the account of Mohan Lal & Company an amount of Rs. 5,26,996/14/- stood to the credit of the appellants. Against that amount Rs. 5,15,769/5 - were debited as "loss adjusted", and on February 15, 1950, an amount of Rs. 11,227/9/- stood to their credit. Similar entries were posted in the accounts of other persons who had outstanding transactions in gur.

On February 22, 1950, the appellants and their partner Mohan Lal filed a petition in the High Court of Judicature at Allahabad for an order winding up the Company. Diverse grounds were set up in the petition. The principal grounds were that the Company was unable to pay its debts, that it was just and equitable to wind up the Company, because the directors and the officers of the Company were guilty of fraudulent acts resulting in misappropriation of large funds, and that the substratum of the Company had disappeared, the business of the Company having been completely destroyed.

On February 23, 1951, another petition was filed by the appellants and their partner Mohan Lal for an order winding up the Company. It purported to raise certain grounds which it was submitted had not been raised in the first petition and which had arisen since the first petition was instituted. In the second petition it was averred that by virtue of the notification issued by the Government, the forward contracts in gur had become void and the appellants were entitled to be repaid all the amounts deposited by them, that the outstanding contracts stood rescinded, and the Company having

paid out large sums to its directors and other shareholders was not in a position to meet its liability to the appellants.

Brij Mohan Lal, J., held that the Company was not unable to pay its debts and that it was not just and equitable to wind up the Company on the grounds set out in the petition. Orders passed by Brij Mohan Lal, J., dismissing the petitions were confirmed by the High Court of Allahabad in its appellate jurisdiction. With certificates granted by the High Court, these two appeals have been preferred by the appellant's and their partner Mohan Lal.

The High Court held that by the notification dated February 15, 1950, the outstanding transactions of "futures" in gur did not become void; that in fixing the rate of settlement by resolution dated February 15, 1950, and settling the transactions with the other contracting parties at that rate the directors acted prudently and in the interests of the Company and of the shareholders, and in making payments to the parties on the basis of a settlement at that rate the directors did not commit any fraudulent act or misapply the funds of the Company; that the case of the appellants that apart from the transactions entered into by them in their firm name, they had entered into other transactions benami in the names of other firms, and the Company had mala fide settled those transactions with those other firms was not proved; and that the Board of Directors was and remained properly constituted art all material times and no provision of the Companies Act was violated by the directors trading with the Company.

Counsel for the appellants contended (a) that by virtue of the Notification issued by the Central Government on February 15, 1950, all outstanding "futures" in gur became void; (b) that the resolution dated March 14, 1949, was void because there was no quorum at the meeting of the Company; (c) that the resolution dated February 15, 1950 by the Board of Directors was not passed in the interests of the Company but to serve private interests of the directors; (d) that the Company having repudiated the outstanding contracts, it was bound to refund the deposits received from the members; and (e) that in any event, the substratum of the Company ceased to exist, and the Company could not after the Government Notification carry on business in gur.

In support of his contention that by the order issued by the Central Government on February 15, 1950, the outstanding transactions in futures in gur became void, counsel for the appellants relied upon a press-note issued by the Government of India relating to the amendments made in the Sugar (Futures and Options) Prohibition Order, 1949. In the press-note apparently it was stated that all transactions in "futures" in sugar, gur, gunshakkar, and rab made before the commencement of the order or remaining to be fulfilled shall be void and not enforceable by law. The interpretation of the order depends not upon how the draftsman of the press-note understood the notification, but upon the words used therein. The relevant clauses of the Order, after the amendment, read as follows :

> "2 (d) 'Futures in sugar and gur' mean any agreement relating to the purchase or sale of sugar of gur on a forward basis and providing for delivery at some future date and payment of margin on such date or dates, as may be expressly or impliedly agreed upon by the parties.
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> 2 (e) 'margin' means the difference between the price specified in an agreement relating to the purchase of or sale of sugar and gur and the prevailing market price for the same quality and quantity of sugar or gur on a particular day.
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> 2 (f) 'Option in sugar or gur' means an agreement for the purchase or sale of a right to

buy or a right to sell or a right to buy and sell, any sugar or gur in future and includes a teji-mandi and teji-mandi in any sugar.

3. On or after the appointed day no person shall -

(a) save with the permission of the Central Government in this behalf or of an officer authorised by the Central Government in this behalf, enter into any futures in sugar or gur, or pay or receive or agree to pay or receive any margin in connection with any such futures.

(b) enter into any option in sugar or gur.

4. Any option in sugar or gur entered into before the appointed day and remaining to be performed whether wholly or in part shall be void within the meaning of the Indian Contract Act, 1872, and shall not be enforceable by law."

By cl. 3(a) all persons are prohibited, save with the permission of the Central Government in that behalf from entering into "futures" in sugar or gur : the clause also prohibits receipt or payment of, or agreement to pay or receive any margin in connection with any such futures. The clause in terms operates prospectively. Clause 3(b) prohibits options in gur and sugar, and cl. 4 expressly invalidates options in sugar and gur entered into before the appointed day and remaining to be performed whether wholly or in part. The contrast between the provisions relating to "futures" and "options" is striking. While imposing a prohibition on options, the Central Government has also expressly provided that all outstanding options shall be void. No such provision is made in respect of outstanding "futures". Counsel for the appellants however contended that when the Central Government imposed a prohibition against payment or receipt, or agreement to pay or receive, any margin in connection with the outstanding "futures," the "futures" were also prohibited. But the prohibition imposed against payment or receipt, or agreement to pay or receive, margin is made in connection with such futures, and the expression such "futures" means "futures" of the like or similar kind previously mentioned, i.e., transactions in "futures" to be entered into on or after February 15, 1950. If it was intended by the Central Government to declare void outstanding transactions in "futures", the Central Government would specifically have imposed a prohibition against payment or receipt of, or agreement to pay or receive, margin in connection with all "futures". A transaction in "future" in gur may be settled by payment of margin or by actual delivery, and the Order does not prohibit the settlement of the transaction by specific delivery of goods. If the plea for the appellants be accepted, the Central Government may be attributed a somewhat singular intention of permitting outstanding futures in gur to be carried out by giving and taking actual delivery of goods contracted for, but not by payment and receipt of margin. If it was intended to invalidate transactions in futures which were outstanding on February 15, 1950, an express provision to that effect could have been made. No such provision has been made, and there are clear indications in the terms of the notification which show a contrary intention. Prohibition against payment or receipt of margin money under transactions entered into after February 15, 1950 is not redundant : it was enacted presumably with a view to maintain control over the transactions made with the sanction of the Central Government.

But, said counsel for the appellants, the resolution dated March 14, 1949, which permitted the Company to enter into transactions in "futures" in gur was invalid, because the directors who took part in the meeting were disqualified under ss. 86I(1)(h) and 91B of the Indian Companies Act, 1913, and the Company could not retain money paid in pursuance of unauthorised transactions. It

was resolved unanimously in the meeting of the Board of Directors convened on March 14, 1949, that forward transactions in gur for Phagun Sudi 15, Samvat 2006, i.e., March 4, 1950 "may be started according to the rules" laid down therein. It was said that the resolution which authorised transactions of "futures" in gur in the manner in which the Company was carrying on its business entailed disqualification of the Directors and as the Directors were disqualified there was no quorum and no proper resolution and therefore all transactions entered into and any payment made pursuant to that resolution were invalid and the Company was bound to refund the amounts paid by the appellants from time to time. The Company had 11 directors : out of these 9 directors were carrying on business with the Company. It appears that at the meeting dated March 14, 1949 all the directors present were those who carried on business in "futures" in gur with the Company, and did after March 14, 1949, carry on that business. Under the Indian Companies Act, 1913, as originally enacted, there was no prohibition against a director entering into transactions with the Company, and on that footing the scheme of the Company's business was devised. Under the Articles of Association no person could remain a member of the Company who was found not to be doing any transaction or business through the Company continuously for six months, and a person could be elected a director if he held 10 shares in his own name or in the name of the firm of which he was a proprietor or a partner. A director of the Company had therefore to hold ten shares and had to carry on business with the Company. If he ceased to do business for a period of six months he ceased to be a member of the Company, and on that account ceased also to be a director of the Company. The Article of Association prescribed diverse contingencies in which a director was to vacate his office, but carrying on business with the Company was not made a ground of disqualification.

The Company had started business in the year 1931. In 1936, several important amendments were made in the Indian Companies Act 1913. By s. 86F which was incorporated by Act 22 of 1936, it was provided :

> "Except with the consent of the directors, a director of the company, or the firm of which he is a partner or any partner of such firm, or the private company of which he is a member or director, shall not enter into any contracts for the sale, purchase or supply of goods and materials with the company, ..."
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> Section 861 enumerated the conditions or situations in which the office of director was vacated. Insofar as the section is material it provides :
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> "(1) The office of a director shall be vacated if -
>
> #* * *##
>
> (h) he acts in contravention of Section 86F.
>
> #* * *"##
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> Section 91B which was inserted by Act 11 of 1914 as modified by Act 22 of 1936 by the first sub-section provided :
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> "No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested not shall his presence count for the purpose of forming a quorum at the time of any such vote; and if he does so vote, his vote shall not be counted :"

After the amendment of the Indian Companies Act by Act 22 of 1936, the Rules of the Company were not modified and the Company apparently carried on business in the same manner in which it was originally carrying on its business. It appears that the directors were oblivious of the requirements of s. 86F and of the provisions of s. 86I and s. 91B, and the modus operandi of the business continued to remain the same as it was previously. On the terms of s. 86F(1) all directors of the Company were prohibited, unless the directors consented thereto, from entering into contracts for the sale, purchase or supply of goods and materials with the Company. On behalf of the Company it was urged that by the resolution dated March 14, 1949, the directors resolved generally to sanction all transactions of the directors for the sale and purchase in commodities in which the Company carried on business, and on that account notwithstanding the prohibition contained in s. 86F, the directors did not vacate their office. Counsel for the appellants urged that the consent of the directors contemplated by s. 86F is consent in respect of each specific contract to be entered into and no general consent can be given by the directors authorising a director or directors of the Company to sell, purchase or supply goods and materials to the Company. Such a general resolution without considering the merits of each individual contract would, it was urged, amount to repealing the provisions of s. 86F. Strong reliance was placed upon the judgment of the Bombay High Court in Walchandnagar Industries Ltd. and others v. Ratanchand Khimchand Motishaw [I.L.R. [1953] Bom. 623].

It is not necessary for the purpose of this case to decide whether in any given set of circumstances a general consent may be given by the Board of Directors, to a director or directors to enter into contracts for sale or purchase or supply of goods and materials with the Company so as to avoid the prohibition contained in s. 86F of the Indian Companies Act, for in our view, the resolution dated March 14, 1949, cannot be challenged in view of Regulation 94 of Table A which for reasons to be presently mentioned must be deemed to be incorporated in the Articles of Association of the Company.

Regulation 94 of Table A in the First Schedule is not one of the obligatory regulations which is to be deemed by s. 17(2) of the Indian Companies Act 1913 to be incorporated in the Articles of Association. Section 18 provides :

> "In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are not registered, insofar as the articles do not exclude or modify the regulations in Table A in the First Schedule those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles."

The respondent Company is limited by shares and was registered after the commencement of the Indian Companies Act, 1913 : the Company has adopted special Articles of Association, but there is no Articles which excludes or modifies Regulation 94 of Table A, and by the operation of s. 18 of the Act that Regulation must be deemed to apply in the same manner and to the same extent as if it was contained in the registered articles of the Company. We are unable to hold that because the Company has not incorporated regulation 94 of Table A in its Articles of Association, an intention to exclude the applicability of the regulation to the Company may be inferred. Regulation 94 of Table A is not expressly excluded by the Articles of the Company : that is common ground. It is not excluded by implication : for it is not inconsistent with any other express provision in the Memorandum of the Articles of Association. It therefore, follows that Regulation 94 must be deemed to be incorporated in the Articles of Association of the Company. That Regulation provided

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> "All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director."

There is no evidence that the directors were aware of the disqualification which would be incurred by entering into contracts of sale or purchase or supply of goods with the Company without the express sanction of the directors. By the subsequent discovery that they had incurred disqualification, because they had entered into contracts with the Company for sale or purchase or supply of goods, the resolution passed by them is not rendered invalid. It is in the view we have taken, unnecessary to decide whether s. 86 of the Indian Companies Act 1913 also grants protection to acts done by directors who are subsequently discovered to be disqualified.

> Section 91B imposes a prohibition against a director voting on any contract or arrangement in which he is either directly or indirectly concerned or interested. But the directors of the Company are not shown to have voted on any existing contract or arrangement. At the meeting dated March 14, 1949, they resolved that the Company shall commence business in "futures" in gur according to the rules setforth in the resolution. Thereby the directors were not voting on a contract or arrangement in which they were directly or indirectly concerned or interested.

It must then be considered whether the resolution of February 15, 1950, was passed by the Board of Directors with a view dishonestly to make profit for themselves and for others who were purchasers, and to cause loss to the appellants. In the light of the situation prevailing on February 15, 1950 in our judgment, the Board of Directors acted, in passing the resolution, as prudent businessmen for the protection of the interests of the Company and the members. Since the promulgation of the Sugar and Gur (Futures and Options) Prohibition Order, 1950, if any member of the Company failed to pay the margin, the Company could not enter into a reverse transaction. That was prohibited. Whereas the outstanding transactions were valid, a very important sanction which the Company could impose against the member who failed to pay the margin became ineffective. It was therefore necessary in the interest of the Company to devise an effective scheme for settlement of those transactions. Again in view of the imposition of severe restrictions by the Government on transport of gur by rail or by mechanised transport, it was well-nigh impossible for the members to give or take delivery of gur. If was therefore resolved that all outstanding contracts shall be settled at the rate prevailing on the evening of February 14, 1950. It may be recalled that on January 7, 1950, the Board of Directors had resolved, because the prices of gur were spiralling that all outstanding transactions in gur will be settled at the rate of Rs. 17/8/- per maund whatever may be the price ruling at the date of settlement. The appellants had sold 1,123 Bijaks of gur at an average rate of Rs. 12/13/9 per maund, and those transactions in "futures" were not invalidated by the notification issued by the Government. But since no reverse transaction to protect the Company against loss, if a member failed to pay margin, was possible the only practical way out was to provide for settling the outstanding transactions. This the Board of Directors did by taking the rate which was prevailing in the evening of February 14, 1950, as the rate of settlement of all the outstanding transactions. The resolution, however, did not put an end to the outstanding contracts as on February 15, 1950 : the resolution merely fixed the rate at which the transactions were to be settled on the due date, the possibility of any fresh transactions in futures so long as the Order

remained in force being completely ruled out. It may be noticed that the appellants representative was present at the meeting, and he was apparently heard. Whether or not he agreed to the passing of the resolution in immaterial. But we are unable to hold that the resolution was passed with a view to benefit the directors : it appears that the resolution was passed with a view to protect the interests of the Company and its members.

But it was urged that simultaneously large amounts were intended to be paid to the members who had purchase contracts outstanding, and for that purpose it was resolved to borrow money from the Allahabad Bank and the Central Bank of India Ltd. This, it was urged, disclosed anxiety on the part of the directors to appropriate to themselves the liquid funds and to deprive the appellants of the benefit of any fall in the prices after February 15, 1950. It is true that in the books of account of the Company the transactions were shown to have been settled as on February 14, 1950. But we agree with the High Court that the entries in the books of account of the Company were not in accordance with the resolution, and no intimation was given to any of the members of the Company that the transactions were so closed. There is no clear evidence about the dates on which payments were made to the purchasers in respect of their outstanding transactions. But that in our judgment is not material. It appears from the agreed statement filed before the Company Judge that if the seller made a deposit to cover the rise in prices, the purchaser was entitled to withdraw from the Company the profit which he had made under his cross transaction, even before the date of settlement. It was clearly contemplated that when a seller deposited the difference between the price at which he had agreed to sell gur, for future delivery the ruling rate being higher than the rate at which he had agreed to sell, it was open to the purchaser to approach the Company and to call upon it to pay him the profit. Whether or not this right was strictly enforced is irrelevant. It appears from Ext. D-10 that as many as 133 persons having sale transactions had made deposits of diverse amounts with the Company aggregating to Rs. 36,38,932/2/9. The purchasers under the corresponding transactions were entitled to withdrawn the profits earned by them out of the deposits so made. By allowing the purchasers to withdraw the amounts which they were entitled to under the business rules of the Company after the contracts were frozen, the directors of the Company acted according to the rules and not contrary thereto.

The attitude of the appellants in respect of the outstanding contracts since February 15, 1950, has also an important bearing. On February 23, 1950, the managements of the Company addressed a letter informing the appellants that in the interests and for the benefit of the trade, the Board of Directors had passed a resolution on February 15, 1950, to settle to outstanding transactions at the rate prevailing in the market on February 14, 1950. That resolution, it was stated, was for the benefit of the appellants, but if the appellants wanted to deliver the goods, they should intimate the date and place on which they were prepared to give delivery of goods according to the outstanding contracts on Phagun Sudi 15, Samvat 2006 in terms of the rules and bye-laws of the Company. The appellants denied having received this letter. But we are unable to accept that denial. On March 1, 1950, the appellants wrote a letter stating that because of the notification issued by the Central Government the performance of the contracts had become impossible, and that the Company was liable to refund all the amounts deposited with interest thereon, and that the illegal settlement dated February 15, 1950, amounted to repudiation of the contracts by the Company and those contracts stood rescinded. The appellants apparently insisted that the transactions became impossible of performance in view of the prohibition contained in the notification published by the Central Government, and contended that the resolution amounted to repudiation of the contracts by the Company. But by the resolution, in our judgment, there was no repudiation of the contracts by the Company. The contracts, if they were to be settled by payment of differences, could be settled on the due date at the rates fixed : it was however open to the appellants to deliver goods under the

contracts if they desired to do so.

The plea that there was frustration of the contracts, and on that account the Company was liable to refund all the amounts which it had received, has no substance. As we have already held, the outstanding contracts were not at all affected by the Government Order. Imposition by the Central Government of a prohibition by its notification dated March 1, 1950 restraining persons from offering and the Railway Administration from accepting for transportation by rail any gur, except with the permit of the Central Government from any station outside the State of Uttar Pradesh which was situated within a radius of thirty miles from the border of Uttar Pradesh does not lead to frustration of the contracts. Fresh contracts were prohibited : but settlement of the outstanding contracts by payment of differences was not prohibited, nor was delivery of gur in pursuance of the contract and acceptance thereof at the due date by the Company prohibited. The difficulty arising by the Government orders in transporting the goods needed to meet the contract was not an impossibility contemplated by s. 56 of the contract Act leading to frustration of the contracts.

Finally, if was urged that by reason of the notification issued by the Central Government, the substratum of the Company was destroyed and no business could be carried on by the Company thereafter. It was said that all the liquid assets of the Company were disposed of and there was no reasonable prospect of the Company commencing or carrying on business thereafter.

The Company was carrying on extensive business in "futures" in gur, but the Company was formed not with the object of carrying on business in "futures" in gur alone, but in several other commodities as well. The Company had immovable property and liquid assets of the total value of Rs. 2,54,000. There is no evidence that the Company was unable to pay its debts. Under s. 162 of the Indian Companies Act, the Court may make an order for winding up a Company if the Court is of the opinion that it is just and equitable that the Company be wound up. In making an order for winding up on the ground that it is just and equitable that a Company should be wound up, the Court will consider the interests of the shareholder as well as of the creditors. Substratum of the Company is said to have disappeared when the object for which it was incorporated has substantially failed, or when it is impossible to carry on the business of the Company except at a loss, or the existing and possible assets are insufficient to meet the existing liabilities. In the present case the object for which the Company was incorporated has not substantially failed, and it cannot be said that the Company could not carry on its business except at a loss, nor that its assets were insufficient to meet its liabilities. On the view we have taken, there were no creditors to whom debts were payable by the Company. The appellants had it is true, filed suits against the Company in respects of certain gur transactions on the footing that they had entered into transactions in the names of other persons. But those suits were dismissed. The business organisation of the Company cannot be said to have been destroyed, merely because the brokers who were acting as mediators in carrying out the business between the members had been discharged and their accounts settled. The services of the brokers could again be secured. The Company could always restart the business with the assets it possessed and prosecute the objects for which it was incorporated. It is true that because of this long drawn out litigation, the Company's business had come to a stand-still. But we cannot on that ground direct that the Company be wound up. Primarily, the circumstances existing as at the date of the petition must be taken into consideration for determining whether a case is made out for holding that it is just and equitable that the Company should be wound up, and we agree with the High Court that no such case in made out.

The appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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