

(Supreme Court Of India)

Handigas Dealers, Distributors & Consumers Association & Others

v.

Union of India & Others

(R.C. Lahoti and G.P. Mathur,Jj.,)

Writ Petition (Civil) No. 612 Of 1998 | 04-04-2005

1. This writ petition was filed in the year 1998 invoking the jurisdiction of this Court under Art.32 of the Constitution demanding an enquiry through CBI into what was alleged to be a scam or large scale fraud indulged in by influential persons of a business family which resulted in hundreds of middle and lower class persons being deprived of their small savings for the recovery whereof they would not be able to approach the civil courts inasmuch as if they were to have recourse to the ordinary remedy of filing civil suits for recovery, it might have taken endless time and yet they might not have got any relief as they would have been pitted against powerful persons and maybe the cost of litigation would have gone much beyond the stakes involved and the relief which would ultimately have been allowed by the courts.

2. Briefly stated, the case of the petitioners is like this. Olympia Gas (P) Ltd., a company registered under the Companies Act, 1956 commenced the industrial and business activity of filling and distributing of liquid petroleum gas. This and Associated Cylinder Industries (P) Ltd. (Respondents 9 and 10) are the subsidiaries of Malkotra Troika Group. All these are owned by a single business house belonging to Ranjit Malhotra, Respondent 10. Attractive advertisements on large scale were inserted in newspapers which resulted in a number of small investors belonging to lower and middle class making deposits for having LPG connections. Dealers and distributors were appointed who also made the deposits with Respondents 9 to 12. However, the project did not see the light of day. The consumers, dealers and distributors all lost their deposits, each running into small sums but yielding several crores to Respondents 9 to 12.

3. In the writ petition, there are 8 petitioners. Petitioner 1 is an association formed by various consumers, dealers and distributors. Petitioners 2, 3, 4 and 5

are individual consumers. Petitioners 6 and 7 are distributors. Petitioner 8 is an association of the distributors in South India.

4. The primary relief sought for in the writ petition was to have an enquiry conducted through CBI so as to expose the corruption at high levels without which the petitioners could not have been duped into parting with the money. On notices being issued, several intervention applications were filed.

5. On the appearance of Respondents 9 to 12 on 24-4-2000, the Court, after hearing the learned counsel for the parties, directed as under:

"We direct Respondents 9 - 12 to file complete list of distributors, dealers and consumers for supply of gas and the amount received from them. The said respondents shall furnish details of the assets of their Company as well as of the Directors including the statement of bank accounts as on today. The said respondents shall not transfer, alienate or part with any of the assets, excluding the stock intrade, till the matter comes up for hearing. In the meantime the petitioner may also furnish list of such distributors, dealers and consumers who had taken supply of the gas."

6. The petitioners filed details of the claims which were due and payable by the respondents to them. The respondents were allowed time for verifying the correctness of the claims.

7. It appears that better sense prevailed with Respondents 9 to 12 who came out with an offer to amicably settle the claims of the petitioners by filing a scheme of payment/settlement.

8. In this process, it was found that there was some dispute as to the exact amount as to which the petitioners could be held entitled and the respondents could be held liable to pay. As there were certain factual issues which were to be gone into, we requested by order dated 21-7-2003 Mr Sunil Gupta, Senior Advocate to assist the Court as amicus and also intervene to settle the dispute

between the parties as also to suggest a scheme of payment by holding a meeting with all those who may be concerned.

9. The learned amicus curiae first prepared and submitted to the Court a compilation of tabular charts and supporting documents titled as "Consolidated Statements of the Claims" of the petitioners. The tabular charts sought to tabulate the admitted (undisputed) and disputed amounts between the parties under the aforementioned four heads viz. distributor deposit, trade balance, security deposit and rent. Copies of the compilation were also given to the respective counsel. The counsel for the respondent submitted a response to the consolidated statement taking certain objections to the same. Thereafter, on 3-2-2004 an order was passed directing that the parties may sit together with the amicus and "sort out the discrepancies". Accordingly, the parties attended meeting called by the amicus and put forth their respective contentions before him. Consequently, the amicus prepared and submitted to this Court his report dated 13-10-2004 wherein he recorded that the petitioners have not pressed their claim under the head, rent, and he also recorded his conclusions with regard to the moneys due from the respondents to the petitioners under the other three heads of distributor deposit, trade balance and security deposit.

10. When the said report came up for consideration by the Court, the parties did not express any objection to the same and, therefore, it can safely be said that the findings recorded by the amicus in respect of the monetary claims of the petitioners under the aforesaid three heads enjoy the status of consensus arrived at by the parties in regard to the said monetary claims.

11. However, on 25-10-2004, the Court asked the learned amicus to convene a meeting with the parties again and also make his suggestions on three remaining points, namely:

(i) The 800 - odd additional cylinders lying with the petitioners which remain to be returned to the respondents.

(ii) Interest, if any, payable by the respondents to the petitioners on the amounts due.

(iii) The payment schedule to be followed by the respondents.

In pursuance of the said order, the learned amicus again held a meeting on 11-12-2004 and after hearing the parties filed an addendum dated 11-1-2005 to his earlier report dated 13-10-2004. No objection was taken by the respondents to any of the other suggestions made by the amicus in the addendum on the aforementioned three remaining points. The petitioners also expressed no objection to any of the suggestions made in the addendum. It can safely be inferred that the suggestions made by the amicus on the aforementioned three points also enjoy the status of consensus arrived at between the parties.

12. Since largely and substantially the parties have arrived at a consensus both as regards the monetary claims and the three remaining points, it is possible to cut short the controversy and make directions for giving effect to the report dated 13-10-2004 and the addendum dated 11-1-2005 submitted by the amicus with the modifications incorporating the Court's view on the two aspects of the Court Commissioner and the rate of interest.

13. We have heard the learned counsel for the parties and during the said hearings also the learned amicus has remained present to assist the Court.

14. We are of the opinion that the principal relief asked for in the petition seeking directions for investigation by CBI is not an appropriate relief to be granted in the facts and circumstances of the present case for it may be difficult to record a clear finding as to criminal activity designedly having been entered into by Respondents 9 to 12. Maybe it was an ambitious adventure which turned out to be a misadventure and hence failed. Respondents 9 to 12 are inclined to make payments in the terms settled by the learned amicus and we feel that the solution suggested by the learned amicus is most reasonable and ought to be accepted. The learned counsel for the petitioners as also for Respondents 9 to 12 are agreeable to do so.

15. The writ petition is disposed of in terms of the following directions which shall be binding on the petitioners on the one hand and Respondents 9, 10 and

12 on the other as they are the parties truly interested in and affected by the reliefs sought for in the writ petition, the proceedings before the learned amicus and the directions which we propose to make hereby. In the following directions the term "petitioners" refers to the 8 petitioners and the term "respondents" refers to Respondents 9, 10 and 12. It is directed as under:

(i) Ever since 1995, the following amounts are held to be due to the petitioners from the respondents

(a) Distributor

Deposit :Rs. 12,25,000/-

(b) Trade Balance :Rs. 5,04,111/-

(c) Security Deposit for

cylinders already returned :Rs. 8,52,768/-

Total Rs. 25,81,879/-

(ii) As regards the additional 800 - odd cylinders to be returned by the petitioners to the respondents, it is directed that the petitioners shall hand over the cylinders to the respondents at Bangalore on 21-5-2005. Respondent 12 Mr Ranjit Malhotra, shall be personally present at the time of return of cylinders. The exercise of return of cylinders shall be under the supervision of a Court Commissioner to be appointed by the Karnataka High Court at Bangalore. The Court Commissioner shall be present at the time of return of cylinders at Bangalore on the aforesaid date, shall supervise the return of cylinders and shall submit a compliance report to this Court by 6-6-2005.

(iii) The amount due to the petitioners on the 800 - odd or such other number of additional cylinders which shall have been reported by the Court Commissioner

to this Court to have been returned by the petitioners to the respondents on 21-5-2005 in the compliance report (which is expected to be filed by him on 6-6-2005) shall be computed at the rate of Rs 658 per cylinder. The Court Commissioner shall indicate the total amount due to the petitioners on such number of cylinders applying the rate of Rs 658 per cylinder. Such amount shall stand added to the aforementioned amount of Rs 25,81,879 and the aggregate amount of dues thereby obtained shall constitute the amount of "principal dues" to which the petitioners are entitled from the respondents since 1995.

(iv) As regards the payment of interest, the respondents shall be liable to pay interest to the petitioners on the aforementioned aggregate amount of "principal dues" only with effect from 1-1-1999 up to the date of payment. The interest shall be payable @ 6% per annum and, in the event of default @ 9% per annum.

(v) The aforementioned aggregate sum of "principal dues" (comprising of Rs 25,81,879 and the sum reported by the Court Commissioner as due for additional cylinders) shall be paid by the respondents to the petitioners in six equal instalments in accordance with the following payment schedule:

Instalment Due Date

1st Instalment 15th June, 2005

2nd Instalment 1st November, 2005

3rd Instalment 1st April, 2006

4th Instalment 1st October, 2006

5th Instalment 1st April, 2007

6th Instalment 1st October, 2007

As directed above, the respondents shall pay interest @ 6% per annum on all the aforesaid instalments to the extent of the unpaid balance and in default thereof @ 9% per annum with effect from 1-1-1999 up to the date of actual payment.

(vi) Each one of the aforesaid instalments along with the requisite sum of interest shall be paid by means of a bank draft in favour of the Advocate on Record for the petitioners, Shri S. Ravi Shankar. The bank draft shall be handed over by Shri Ashok Mathur, the Advocate on Record for the respondents, to Shri S. Ravi Shankar, on or before the due date as indicated above. The handing over of such bank draft shall be deemed to be an effectual discharge of the liability of the respondents towards the petitioners. The petitioners shall be entitled to collect from their Advocate on Record Shri S. Ravi Shankar, amounts on a pro rata basis in satisfaction of their respective claims, the claims being subject to computation and distribution on a conjoint reading of the consolidated statement and the amicus's report dated 13-10-2004 and addendum dated 11-1-2005.

(vii) The actual task of returning the cylinders may be accomplished, as suggested by the learned counsel for Respondents 9, 10 and 12 as also by the learned amicus curiae, in about a day or two. The remuneration of the Court Commissioner is appointed at Rs 10,000. The Court Commissioner shall be at liberty to indicate in his compliance report any other costs or expenditure incurred by him in respect of the task assigned to him and the parties shall also bear the same on a 50:50 basis. The respective counsel for the parties shall ensure the payment of the remuneration and cost, expenses, etc., if any, to the Court Commissioner on a 50:50 basis on the date on which the return of cylinders takes place.

(viii) We request the learned Chief Justice of the Karnataka High Court at Bangalore to appoint a middle level advocate or a retired judicial officer of the rank of a District Judge or Additional District Judge to act as Court Commissioner for performing the task as abovesaid. For the purpose of nomination of Court Commissioner by the learned Chief Justice of the High

Court, the parties are directed through the respective counsel to appear before him on 2-5-2005.

(ix) This order shall fully and finally settle the claims of the parties and no proceedings before any other court shall be entertained at the instance of either of the parties.

16. The writ petition stands disposed of. No costs.

17. Before parting, we would like to place on record our appreciation of the performance as amicus curiae by Shri Sunil Gupta, Senior Advocate. He not only willingly responded to the call of the Court but exerted his energy and invested time, both substantially, to resolve the disputes. Such settlement has gone a long way in relieving small depositors who would otherwise have been remediless. Persuasively, he brought the parties to terms. The consumers, dealers and distributors, not so affluent may not have been able to get relief but for the interest taken by the learned amicus in finding out solutions acceptable to all the parties.

18. The report of the amicus curiae dated 13-10-2004 and the addendum dated 11-1-2005 to the report dated 13-10-2004 shall be treated as part of this order and be annexed herewith.

AMICUS CURIAE'S REPORT

Dated 13-10-2004

1. Introduction

"1.1. The Hon'ble Court was pleased to pass the order dated 21-7-2003 appointing me to assist the Court in this matter. On 7-1-2004, I submitted a consolidated statement of the claims with supporting documents compiled with

the assistance of the counsel for the petitioners. On 30-1-2004, a response to the consolidated statement was delivered to me on behalf of Respondents 9, 10 and 12. On 3-2-2004, an order was passed directing that the parties may sit together with me and "sort out the discrepancies".

1.2. On 10-10-2004, 11-10-2004 and 12-10-2004, I had an opportunity to sit together with the counsel and representatives of the two sides. Apparently, the two sides had also met earlier and confabulated amongst themselves to some extent on the issues.

1.3. The two sides were represented before me as follows: Petitioners: Shri S. Ravi Shankar, Advocate and Shri Kalyana

Sundaram, Proprietor, M/s Aradhana Marketing Agencies, whose name also appears as General Secretary against Respondent 8.

Respondents 9, 10 and 12 : Shri Ashok Mathur, Advocate, Shri Ranjit Malhotra (Respondent 12) and the latter's Chartered Accountant Shri Ravi Kumar Gupta.

1.4. Respondents 9 and 10, namely, Olympia Gas (P) Limited and Associated Cylinder Industries (P) Limited are referred to hereinafter as OGPL and ACIP respectively. Admittedly, OGPL was set up by ACIP at Bangalore to manage its business in South India.

1.5. The basis for the present report is the aforementioned consolidated statement. As mentioned above, it is in respect of this report that the Hon'ble Court has been pleased to direct the parties to "sort out the discrepancies".

2. The approach

2.1. While talking to the parties, drawing conclusions and preparing the present report my approach has been twofold. One, this Hon'ble Court's desire to help resolve and decide a matter involving public interest is duly honoured and fulfilled and second, at the same time the Hon'ble Court is not put to undue inconvenience in its extraordinary writ jurisdiction under 32 on account of petty and unwarranted issues of fact or issues requiring appreciation of evidence.

2.2. Accordingly, either I have been able to bring around the parties to an agreement on certain claims or else, keeping in mind that the disputed sums are not very big amounts, I have endeavoured to state my opinion on the basis of high probability in the natural and normal course of business.

2.3. After the three rounds of meetings with the aforesaid persons, the position of claims under the four different heads occurring in the consolidated statement (CS), viz. the heads - Rent, Distributor Deposit, Trade Balance and Security Deposit are as follows:

3. Rent

The petitioners have not pressed the claim of Rs 30,81,315.80 under this head.

4. Distributor deposit

4.1. There was an agreement between the parties insofar as the amounts of Rs 50,000 + 2,00,000 + 1,25,000 + 2,00,000 + 1,25,000 + 2,00,000 + 3,25,000 appearing against Distributors 2 to 8 at p. 1 of the CS are concerned. These amounts aggregate to Rs 12,25,000. 4.2. M/s Agne Marketeers (Distributor 1)

4.2.1. As regards the remaining sum of Rs 1,25,000, it has been claimed by the petitioners on behalf of M/s Agne Marketeers, the distributor for Dindigul district, that by means of a letter dated 11-8-1995 (CS, p. 5), OGPL had intimated to one M/s Easy LPG Bottlers & Distributors (Madurai) that as requested by M/s Easy, OGPL had requested its head office to effect the transfer

of a sum of Rs 1,25,000 from M/s Easy's credit balance to M/s Agne. On the basis of the said letter, the petitioners make the claim of Rs 1,25,000 as distributor deposit on behalf of M/s Agne.

4.2.2. The letter appears to have been issued by the Regional Manager of OGPL at Bangalore, one Mr R. Prasad. The respondents acknowledged that they used to have such an employee at Bangalore but did not accept that the letter reflected the correct position of balance between OGPL and M/s Easy inasmuch as in the ledger account of OGPL as on 31-3-1995, there was actually a debit balance of Rs 4,09,406.84 due from M/s Easy to OGPL.

4.2.3. Be that as it may, it is not possible to accept this claim made by the petitioners because:

(i) the letter dated 11-8-1995 is a communication addressed by OGPL to a third party, namely, M/s Easy;

(ii) it is not clear as to what was the understanding or what were the circumstances or reasons on account of which OGPL effected the transfer of the credit balance of Rs 1,25,000 from the account of M/s Easy to the account of M/s Agne; and

(iii) in any case, the letter does not mention that the sum was being transferred towards distributorship deposit payable by M/s Agne for the business of OGPL which is the subject matter of enquiry in the present proceedings.

4.2.4. Accordingly, the claim of Rs 1,25,000 does not appear to be properly established or substantiated by the petitioners.

4.3. To sum up, the claim of Rs 12,25,000 alone stands established under this head. The claim of Rs 1,25,000 is not made out.

5. Trade balance

5.1. The parties are in agreement with the claims of sums shown against Distributors 1, 2, 3 and 5 of the CS at p. 1 viz. (Rs 7803 + 716 + 1,22,927 + 72,838 = Rs 2,04,284)

5.2. M/s Jayajothi Gas Agency (Distributor 4)

5.2.1. As regards Jayajothi Gas Agency, the petitioners have claimed Rs 62,184 on the basis of a photocopy of the relevant pages (CS, pp. 15 - 16) relating to M/s Jayajothi as existing in the ledger account maintained at the regional office of OGPL at Bangalore. The photocopy of that extract from the ledger has been signed by the Regional Manager of OGPL, Shri R. Prasad, on behalf of OGPL. The photocopy also bears the stamp and seal of OGPL.

5.2.2. OGPL in its response has only said that the ledger statement is "not up to date" and that the details of certain credits are not reflected therein. Insofar as the details are concerned, the petitioners or M/s Jayajothi are not responsible, for it is a document admittedly maintained by OGPL's own personnel. As regards the ledger statement being "not up to date", OGPL has not produced the ledger at the Bangalore office which is up to date according to them. Instead, they have sought to rely on a computerised version of the ledger account to be maintained at its head office at Jammu. In that account, a debit balance of Rs 19,168 is shown against M/s Jayajothi.

5.2.3. M/s Jayajothi is in no manner a signatory or party to the said account statement maintained at OGPL's head office at Jammu. On the other hand, the sum of Rs 62,184 appearing as credit balance in OGPL's own admitted regional office ledger statement at Bangalore signed by its own Regional Manager appears to be a sum outstanding due from OGPL to M/s Jayajothi.

5.3. M/s New Best Enterprises (Distributor 6)

5.3.1. As regards M/s New Best Enterprises, the petitioners are relying for the claim of Rs 75,000 upon two cash receipts for the sum of Rs 45,000 and Rs 30,000 issued by the abovementioned Regional Manager, Shri R. Prasad, on behalf of OGPL at Bangalore on 7-3-1995 and 1-4-1995 respectively.

5.3.2. The representatives of OGPL did not deny the fact that the aforesaid Shri R. Prasad was their Regional Manager at Bangalore. He was held out by OGPL to be their agent at Bangalore having the competence to act on behalf of OGPL.

5.3.3. Also OGPL does not in its response deny the said two receipts produced by the petitioners as fabricated or forged.

5.3.4. The objection of OGPL is that the aforesaid cash receipts are "informal" receipts. Again, it seeks to rely on computerised versions of its head office account which, according to it, after giving a credit of Rs 30,000 against a formal receipt, still shows a debit balance of Rs 54,155 against M/s New Best.

5.3.5. For the same reasons as stated above in the case of M/s Jayajothi, the computerised version of OGPL's own account at the head office to which M/s New Best is in no manner a party, cannot offset the weight of the cash receipts signed by the Regional Manager of OGPL at Bangalore.

5.3.6. In that view of the matter, whereas the debit balance theory of OGPL for the sum of Rs 54,155 does not carry weight, the claim of Rs 75,000 by the petitioners on behalf of M/s New Best appears to be correct. 5.4. M/s Kongunadu Marketing Enterprises (Distributor 7)

5.4.1. The petitioners have relied for the claim of Rs 1,62,643 on behalf of M/s Kongunadu on the extract from the ledger account maintained by OGPL and signed by its officer stationed at Bangalore.

5.4.2. The only objection to the said claim which OGPL has taken in its response is that the same is not "up to date". It has also by means of a

computerised version of its account statement at its head office at Jammu sought to show a credit balance of Rs 84,700 only in favour of M/s Kongunadu.

5.4.3. In other words, the case of either side is very similar to the stand taken by it in respect of the claim of M/s Jayajothi. Hence, for the same reasons as stated in respect of the claim of M/s Jayajothi above, the claim of M/s Kongunadu to the tune of Rs 1,62,643 appears to be correct.

5.5. M/s Powrnami Distributors (Distributor 8)

5.5.1. The claim made by the petitioners on behalf of M/s Powrnami Distributors is for the sum of Rs 15,939. It is based on a statement of account allegedly bearing the signature of some officer of OGPL (CS, p. 22). There is neither any stamp nor seal of OGPL nor does it appear from the same as to from which account statement it has been extracted.

5.5.2. OGPL has denied the aforesaid document on the ground that it is an "unauthentic account statement that too only for two months". The objection of OGPL seems to be in order.

5.5.3. At the same time, the debit balance claim of OGPL to the tune of Rs 89,706 against M/s Powrnami, founded as it is on its unilateral computerised version of account, can also not be relied on for the same reasons as stated above in the case of M/s Jayajothi.

5.5.4. Accordingly, the claim of Rs 15,939 on behalf of M/s Powrnami is not made out.

6. Security deposit (against cylinders)

6.1. The details of the claim by the petitioners under this head, are given in the CS at p. 23.

6.2. The petitioners have produced store receipt vouchers issued by OGPL against the return of cylinders for the following number of cylinders of three of the distributors:

Table:#3

6.3. As regards M/s Jayajothi, the lorry receipt (in the CS at p. 31) issued by M/s South East Carriers (Reg.) for dispatch of 270 cylinders to OGPL, Bangalore has been produced. In the natural and normal course of business, the claim of M/s Jayajothi founded on such evidence of dispatch can be taken to be reliable. (The absence of store receipt in its case appears to be for the reason that the cylinders were dispatched and not handed over by the party personally to OGPL). Hence, the claim of return of 270 cylinders by M/s Jayajothi to OGPL can be taken to be correct.

6.4. However, the evidence of return of cylinders filed by the petitioners as regards M/s Kongunadu and M/s Pownami does not measure up to even the standard of normal and natural course of business stated above. The said evidence is one sided and not of any conclusive value. Hence, the claim of return of cylinders by the said two parties is not made out.

6.5. Accordingly, the claim of return of only $283 + 284 + 270 + 459 = 1296$ cylinders to OGPL is made out.

6.6. OGPL in its response admits that upon the return of cylinders the security deposit was "refundable". However, it gives certain reasons for not making the refund. The Hon'ble Court may very kindly examine the question as to whether the reasons are justified.

6.7. Be that as it may, if the refund is to be directed to be made by OGPL then @ Rs 658 per cylinder the amount for return of 1296 cylinders would come to $1296 \times 658 = \text{Rs } 8,52,768$. Therefore, the claim of Rs 11,70,582 by the

petitioners in the CS at p. 1 under the head "Security" needs to be limited to Rs 8,52,768.

6.8. The petitioners claim that there are more cylinders lying with them or their consumers which have to be returned to OGPL and that they would be so returned if there is assurance of refund. In the event of the parties concerned actually returning the cylinders, they may be entitled to refund of the security deposit @ Rs 658 per cylinder for such number of cylinders as they return.

7. Other issues

7.1. As directed by the Hon'ble Court, the task of sorting out the discrepancies has been done above.

7.2. Issues such as award of interest, modalities of payment, etc. are issues on which it will be appropriate for the parties to make their respective submissions before the Hon'ble Court at the hearing.

(SUNIL GUPTA)

Senior Advocate

Amicus Curiae

ADDENDUM

Dated 11-1-2005

On 25-10-2004 this Hon'ble Court passed an order directing the undersigned to meet the parties again and make suggestions on the remaining points.

Accordingly, a meeting was held on 11-12-2004 and the present suggestions are being respectfully made by me on the following remaining points: 1. Additional cylinders

1.1. Apart from the 1296 cylinders already returned, the petitioners claim that about 800 more cylinders are still in their custody and waiting to be returned. They could not be returned since 1995 on account of the stoppage of supply of gas cylinders by the respondents.

1.2. An arrangement needs to be worked out for the return of the cylinders by the petitioners to the respondents and refund of the corresponding security deposit by the respondents to the petitioners.

1.3. The petitioners were keen that the cylinders be received back by the respondents by 31-12-2004. However, the respondents expressed difficulty in making payment if the cylinders were returned before 31-3-2005.

1.4. Without getting into any controversies in this regard, I think it would be appropriate to accommodate the request of the respondents. The petitioner may therefore hand over the cylinders at Bangalore on mutually convenient dates in the week commencing on 21-3-2005. The payment schedule as suggested by me below, in any case, shall not be commencing now on a date before 31-3-2005. Hence, the difficulty of the respondents in this regard stands automatically resolved. And also well in advance before 31-3-2005, the transaction of the cylinders shall have been completed.

1.5. However, the respondents posed a further difficulty of verification of the cylinders. In the earlier meetings with me they have also stated that their own subordinates have betrayed their trust and their employees in Bangalore themselves had been responsible for the collapse of the business. Hence, both the parties will be well advised to return the cylinders only to and in the presence of Respondent 12 Mr Ranjit Malhotra, on the aforesaid dates in the week commencing 21-3-2005.

1.6. In order to prevent any further disputes as regards the transaction of physical return of the aforesaid 800 - odd cylinders, the Hon'ble Court may kindly consider the appointment of a Supreme Court advocate as Court Commissioner. The Court Commissioner would be present at the time of return of the cylinders in Bangalore on the aforesaid dates in the week commencing 21-3-2005 and submit a compliance report to this Hon'ble Court on 28-3-2005 (Monday).

1.7. For the aforesaid services, the Court Commissioner may be paid his remuneration and cost of transportation by air, boarding and lodging, etc., by the parties on a 50:50 basis.

2. Interest

2.1. Ever since 1995, the following amounts have been due to the petitioners from the respondents:

Table:#4

2.2. The amount due to the petitioners on 800 - odd additional cylinders to be returned to the respondents in March 2005 at the rate of Rs 658 per cylinder needs to be added to the aforesaid dues of Rs 25,81,879. That would give the aggregate amount of dues the petitioners are entitled to since 1995.

2.3. The petitioners have suffered from 1995. But they have themselves invoked this Hon'ble Court by means of the present writ petition WP (C) No. 612 of 1998 only as late as on 25-6-1998. Hence, their claim to interest should be justifiable only with effect from 1999.

2.4. Accordingly, on the aggregate sum due to the petitioners, it would be reasonable to award them interest with effect from 1-1-1999 up to the date of payment. The said aggregate sum shall stand determined, as suggested above in

paras 2.1 and 2.2, upon the compliance report being filed by the Court Commissioner before this Hon'ble Court on 28-3-2005.

2.5. As to the rate of interest, keeping in mind:

(i) the ups and downs in the bank rates of interest over the last 5 years,

(ii) the conduct of the parties and the circumstances of the case and also,

(iii) the view taken by the Hon'ble Supreme Court in some of its latest decisions, the reasonable rate of interest would be 6% per annum and in the event of default, 9% per annum.

2.6. Accordingly, I respectfully suggest that the interest be awarded to the petitioners on the aforesaid aggregate amount obtaining under paras 2.1 and 2.2 from 1-1-1999 up to the date of actual payment by the respondents at the rate of 6% per annum and, in the event of default, 9% per annum.

3. Payment schedule

3.1. As suggested above in paras 2.1 and 2.2, the aggregate sum due to the petitioners shall stand determined upon the submission of the compliance report by the Court Commissioner on 28-3-2005. Thus, as on 31-3-2005, a final sum due to the petitioners from the respondents shall stand finally determined.

3.2. At the meeting held by me on 11-12-2004 the petitioners insisted that 50% of the dues should be paid to them by 31-3-2005 and the remaining 50% should be payable in four quarterly instalments by the end of 31-3-2006.

3.3. As against the above suggestions, the respondents expressed serious difficulties on account of grave financial hardships and offered that they would

be able to pay the entire sum only in the form of six half yearly instalments, the 1st instalment not becoming due before 31-3-2005.

3.4 Since the respondents have otherwise been highly amicable and cooperative in assisting this Hon'ble Court in this matter, I would respectfully suggest that broadly their aforementioned offer be accepted.

3.5 Accordingly, the respondents may be directed to make payment of the entire aggregate sum obtained as per the above paras 2.1 and 2.2 in accordance with the following payment schedule:

Instalment due date: 1st instalment, 2005 2nd instalment, 2005 3rd instalment, 2006 4th instalment, 2006 5th instalment, 2007 6th instalment, 2007

3.6 It goes without saying that, as suggested above under the heading of "Interest", the respondents will remain obliged to pay interest at the rate of 6% per annum on all the aforesaid instalments to the extent of the unpaid balance and in default thereof at the rate of 9% per annum w. e. f. 1-1-1999 up to the date of actual payment.