Mohanlal Dhanjibhai Mehta Vs. Chunilal B. Mehta and ors.

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Court : Gujarat

Decided On : Jul-05-1961

Reported in : AIR1962Guj269; [1962]32CompCas970(Guj); (1962)0GLR165

Judge : P.N. Bhagwati, J.

Acts : Companies Act, 1913 - Sections 153C, 162, 163 and 166

Appeal No. : Company Petn. No. 10 of 1960

Appellant : Mohanlal Dhanjibhai Mehta

Respondent : Chunilal B. Mehta and ors.

Advocate for Def. : H.M. Choksi,; R.J. Daftari,; M.M. Thakore,;

Advocate for Pet/Ap. : J.M. Thakore, Adv. General and; M.P. Thakkar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.N. Bhagwati, J.

1. This is a petition for relief under Section 153C of the Indian Companies Act, 1913, or in the alternative for compulsory winding up of Morvi Vegetable Products Limited, the petition being presented by a shareholder and supported by a number of shareholders. The petition is opposed by other shareholders who acting together constitute a fairly large majority of the shareholders.

2. The Company was registered at Morvi on 29th June 1944 under the provisions of the Indian Companies Act, 1913, as applied to the former State of Morvi. The authorized capital of the Company is Rs. 25,00,000/- divided into 12,500 ordinary shares of Rs. 100/- each, 10,000 deferred shares of Rs. 5/- each and 12,000 five per cent cumulative preference shares of Rs. 100/- each out of which are issued 10,020 ordinary shares of Rs. 100/- each, 10,000 deferred shares of Rs. 5/- each and 5,934 five per cent 'cumulative preference shares of Rs. 100 each, all of which are fully paid up or credited as fully paid up. The subscribed and paid up capital of the Company is thus Rs. 16,45,400/-. At all times material to the petition the Government of Saurashtra held and now the Government of Gujarat as the successor of the Government of Saurashtra holds 2,000 ordinary shares, and 3,000 five per cent cumulative preference shares making up an aggregate share capital of Rs. 5,00,000/-.

3. Clause 3 of the Memorandum of Association specifies the objects for which the Company was established. The objects are set out in paragraphs (1) to (37) and the material paragraphs are as follows :

'(1) To carry on the business of vegetable Ghee Manufacturers and refiners of Vegetable Oils.

(2) To buy, sell manufacture, refine, prepare and deal in all kinds of Oils and oleagenous and saponaceous Substances.

(3) To carry on the business of soap manufacturers.

(4) To carry on the business of extracting sweet edible oil by crushing sweet edible oil bearing substances such as groundnuts; copra, tilseed, cotton-seed, linseed and other seeds by mechanical process of processing and refining oil, of Manufacturing Vegetable Ghee by Hydrogenation and incidentally of exploiting, manufacturing and marketing such by-products and residdal matters as oils, cakes, plastics, acid oils, oxygen, pharmaceuticals, oils, varnishes, soaps, glycerine etc.

(5) To carry on business as Pharmaceutical, Manufacturing and general chemists and druggists and manufacturers of and dealers in all kinds of toilet requisites, and manufacturers of all kinds of boxes and cases and cases of cards, wood, metal or otherwise and printers, colour-printers, publishers, stationers, candle makers, manufacturers of perfumes and collectors of perfume: producing flowers, vegetation and substances.

(6) To manufacture, purchase, produce, refine, store, sell, let, hire trade, import, export and generally to deal in :

(a) Medicinal, Chemical and Pharmaceutical preparations and by-products thereof.

(b) Heavy chemicals and by-products, thereof.

(c) Fatty acids, Soaps, Toilet preparations, Dentrifices etc.

(d) Metals, ferrous and non-ferrous metals including Gold and Silver.

(e) Manures, industrial Lubricants, Printing Inks etc.'' xx xx xx

'(30) To sell, improve, alter, manage, develope, exchange, lease, mortgage, enfranchise, dispose of, turn to account or otherwise deal withall or any part of the land, property, assets andrights and generally the resources and undertaking of the Company in such manner and on suchterms as the Directors may think fit.' x x x x x x x x x x x

Clause 3 ends with the following paragraph :

'And it is hereby declared ..... and the intention is that the objects specified in each paragraph of this clause shall, except where otherwise expressed in such paragraph, be in nowise limited or restricted by reference to or inference from the terms, of any other paragraph or the name of the Company.'

4. The Company after its incorporation commenced business as manufacturers of hydrogenated vegetable oils, soaps and other allied products. The factory of the Company was, situate in Morvi and it was in this factory that the Company manufactured hydrogenated vegetable oils, soaps and other allied products and sold the same in the market. Messrs. Mehta Patel and Company, a partnership firm, were appointed Managing Agents of the Company under an agreement dated 18th June, 1945. Respondents Nos. 2, 12, 14 and 15 were partners of the Managing Agency firm. It appears that disputes arose between the partners of the Managing Agency firm and the Company, therefore, suspended the Managing Agency of the firm on 29th July, 1953 on account of constant internal quarrels between the partners and subsequently terminated the Managing Agency on 30th January, 1954. I am not concerned in the present petition with the Managing Agency or with the termination thereof by the Company. The only reason why I have mentioned it in the narration of facts leading up to the filing of the petition is because it was the termination of the Managing Agency which touched of the deputes culminating in the filing of the petition.

5. Before I come to the actual facts on which the petition is sought to be supported, I must also mention that Messrs. Commercial Sales Agency, another partnership firm, were appointed sole distributors of all manufactures, and products of the Company for a period of ten years under an agreement dated 1st August 1947. At the date when Messrs. Commercial Sales Agency were appointed such distributors, there were two partners in Messrs. Commercial Sales Agency, namely respondents Nos. 19 and 20. Respondent No. 20 retired from Messrs. Commercial Safes Agency and respondent No. 21 who is a son of respondent No. 2 joined respondent No. 19 as a partner in Messrs-Commercial Sales Agency. It is alleged by the petitioner and from the evidence on record in the shape of an affidavit filed by respondent No. 2 in some other proceedings and the cross-examination of respondent No. 2 in those proceedings it may safely be taken as established that respondent No. 21 was a minor at the date when he joined Messrs. Commercial Sales Agency. It may also be taken as established that it was respondent No. 2 who was responsible for putting respondent No. 21 in Messrs. Commercial Sales Agency. According to the sequence of events, respondent No. 19 retired from Messrs. Commercial. Sales Agency on 30th June, 1952 and respondent No. 21 thereafter continued as sole proprietor of Messrs. Commercial Sales Agency upto 31st March 1954. Respondent No. 22, another son of respondent No. 2 joined respondent No. 21 as a partner in Messrs. Commercial Sales Agency from 1st April, 1954 and Messrs. Commercial Sales Agency ceased to be a sole proprietary firm and became a partnership firm from 1st April, 1954. This part of the narration comes to an end on 31st March, 1955 for the business of sole distributorship which, Messrs. Commercial Sales Agency carried on under the agreement dated 1st August, 1947 came to an end by mutual agreement between the parties on 31st March, 1955. It must be noted at this stage that under the agreement dated 1st August, 1947, Messrs. Commercial Sales Agency were required to deposit with the Company a sum of Rs. 1,00,000/- and to advance to the Company from time to time Such sum or sums as the Company might require for its business not in the aggregate exceeding Rs. 4,00,000/- and Messrs. Commercial Sales Agency accordingly deposited a sum of Rs. 1,00,000/- with the Company and also advanced an aggregate sum of Rs. 4,00,000/- to the Company. Finance to the extent of Rs. 5,00,000/- was thus made available by Messrs. Commercial Sales Agency to the Company during the subsiatance of the sole distributorship agreement between the Company and Messrs. Commercial Sales Agency.

6. The Company did well during the first few years of its existence, but the period of

its good fortune appeared to have come to an end with the close of the year 1951. In 1952 the Company made a loss of Rs. 2,28,556/-, the figure of loss being calculated without taking into account depreciation. The result of trading in 1953 was a little better but was nonetheless discouraging. The Company made a profit of only Rs. 15,395/- after providing for depreciation for the years 1952 and 1953. The year 1954 however turned out to be very bad and the Company Suffered a heavy loss of Rs. 3,73,836/- after providing for depreciation for that year. The result was that at the close of the year 1954 the Company carried forward a loss of Rs. 5,17,824/-. The trade conditions, continued to be so adverse and the competition continued to be so keen that during the first three months of the year 1955, the Company suffered a loss of Rs. 70,800/-. This being the position, the Board of Directors of the Company felt that it would be inadvisable to continue to run the factory of the Company and to go on manufacturing hydrogenated vegetable oils, soaps and other allied products under the conditions then existing and they, therefore, decided to give a lease or the factory on condition that the lessees should run the factory and carry on the same business of manufacturing hydrogenated vegetable oils, soaps and other allied products in the factory so that the business of manufacturing hydrogenated vegetable oils, soaps and other allied products should continue and the products of the factory should not go out of market and at the same time the Company should get a certain minimum income. There were three offers which the Board of Directors received for running the factory of the Company on lease. The first offer was from Messrs. Mehta Ladhubhai Maneckchand and Sons, Jamnagar, who offered to pay an annual rent of only Rs. 80,000/- to Rs. 40,000/-. The second offer was from Messrs. Commercial Sales Agency, the monthly rent which they offered being Rs. 6,101/-. The last offer was for an annual rent of Rs. 90,000/- from Messrs. Cooverji Keshavlal and Company, Surendranagar, The first offer from Messrs. Mehta Ladhubhai Manekchand and Sons was for a ridiculously low rent and was, therefore, out of question. The only choice was between the second and the third offers. The Board of Directors preferred the second offer to the third offer for two reasons which are obvious from the record. The first reason was that Messrs. Cooverji Keshavlal and Company who made the third offer failed to remain present at the meeting of the Board of Directors held on 3rd March, 1955 for the purpose of considering the offers even though they had been asked to remain present at such meeting. The second reason was that if the offer of Messrs. Cooverji Keshavlal and Company was accepted, Messrs. Commercial (sic) Agency who were the sole distributor for a period of ten years under the agreement dated 1st August, 1947 would have been entitled to claim compensation from the Company for premature termination of the sole distributorship agreement dated 1st August, 1947, whereas Messrs. Commercial Sales Agency made it a term of their offer that if they were granted a lease for running the factory, they would agree to a premature termination of the sole distributorship agreement without claiming any compensation from the Company for such premature termination. For these two reasons the Board of Directors at the meeting held on 3rd March, 1955 decided to accept the offer of Messrs. Commercial Sales Agency. It was however felt by the Board of Directors that the rent offered by Messrs. Commercial Sales Agency should be increased and a resolution was, therefore, passed by the Board of Directors that the offer of Mesas. Commercial Sales Agency be accepted subject to increase in rent at the discretion of the Chairman and a lease of the factory be granted to Messrs. Commercial Sales Agency for a period of one year with an option of renewal for a further period of one year in favour Of the lessees. It is clear from the record that this resolution was passed unanimously by all the Directors present at the meeting including respondents Nos. 11 to 15 who are now siding with the petitioner and respondent No. 15 who has actually made an affidavit in support of the Petitioner

spoke strongly in favour of the resolution. Pursuant to this, resolution an Indenture of Lease dated 16th March, 1955 was executed by the Company in favour of Messrs. Commercial Sales Agency granting a lease of the factory of the Company to Messrs. Commercial Sales Agency for a period of one year computed from 31st March 1955 with a covenant of renewal for a further period of one year at the option of Messrs. Commercial Sales Agency. There are certain clauses of the Indenture of Lease which are very material to the determination of the questions arising on this petition and they may be briefly set out as follows;

'(2). The Lessees, for themselves and permitted assigns to the intent that the obligations may continue throughout the term created do hereby Covenant with the Company as follows:

X X X X X(b) to work the Company's factory and diligently carry on the business of manufacturing hydrogenated vegetable oils, soaps and other allied products and for that purpose to provide all the necessary finance including the finance for the purpose of raw materials and Stores.

X X X X(h) to use, manage, run and work the Company's said factory and machinery hereby demised in proper workmanlike and customary manner find as an oil mills as is usually run and worked so that there shall be no undue or improper running down or wear and tear of the said machinery.

X X X X X(k) not to carry on or upon any part of the demised hereditaments any work or business other than that of manufacturing vegetable oils, soapsand other allied products.

X X X X X(3) The Company doth hereby covenant with the lessees as follows:

X X X X X(b) To make available to the lessees all such quotas for coal, tin-plates, import licence, Income Tax Certificates as may be necessary or required by the lessees for efficient working of the said factory and the Company will not withdraw the deposits made by the Company with the Chief Director of Purchase, Central Excise and Octroi Departments provided always that the lessees will provide the necessary finances required for the purchase of coal, tin-plates and other commodities.'

It, was provided by Clause 12 of the Indenture of Lease that the sole distributorship agreement between the Company and Messrs. Commercial Sales Agency shall stand terminated by mutual consent on the execution of the Indenture of Lease. The Indenture of Lease bears the date 16th March, 1955 but since the lease created by the Indenture of Lease commenced from 31st March, 1955, the argument before me proceeded on the footing that the sole distributorship agreement also come to an end from 31st March, 1955. It is really immaterial for the purpose of the present petition whether the sole distributorship agreement came to an end on 16th March, 1955 or 31st March, 1955.

7. The Indenture of Lease provided for a rent of Rs. 81,000/- per year. On 18th March, 1955, however, a supplemental agreement was arrived at between the Company and Messrs. Commercial Sales Agency which provided that if the net profits earned by Messrs. Commercial Sales Agency, during the period of the lease exceeded Rs. 3,24,000/- per year from the date of the lease, Messrs. Commercial Sales. Agency

should pay to the Company in addition to the sum of Rs. 81,000 per year as and by way of additional rent such sum as would be equal to the difference between the amount representing 25 per cent Of the net profits and the sum of Rs. 81,000/- payable under the Indenture of Lease. The supplemental agreement was recorded in a letter dated 18th March, 1955 addressed by Messrs. Commercial Sales Agency to the Company. The net result of this arrangement was that the Company became entitled to receive from Messrs. Commercial SalesAgency as and by way of rent, 25 per cent of thenet profits earned by Messrs. Commercial SalesAgency by running the factory and carrying onthe business of manufacturing hydrogenated vegetable oils, soaps and other allied products, with aminimum guaranteed amount of Rs. 81,000/- peryear.

8. Messrs. Commercial Sales Agency consisting of respondents Nos. 21 and 22 as partners entered into possession of the factory as lessees and also purchased from the Company, stores, spare-parts of machinery, chemicals, coal fuel, lubricants etc., together with the entire stock of raw materials and finished goods belonging to the Company as provided by the Indenture of Least. The price of the goods so purchased by Messrs. Commercial Sales Agency from the Company was fixed in accordance with the provision in that behalf contained in the indenture of Lease and such price was adjusted against the amount of rupees 5,00,000/- and interest which was repayable by the Company to Messrs. Commercial Sales Agency on the termination of the sole distributorship agreement and the amount of commission earned by Messrs. Commercial Sales Agency under the sole distributorship agreement upto the date of termination of the same. Messrs. Commercial Sales Agency thereafter continued to run the factory and to carry on the same business of manufacturing hydrogenated vegetable oils, soaps and other allied products.

9. On 27th November, 1955, the petitioner, who is a shareholder of the Company holding 10 ordinary and 5 deferred shares in the share capital of the Company filed the present petition in the Court of the District Judge, Central Saurashtra, Rajkot, for relief under Section 153C of the Indian Companies Act, 1913, or in the alternative for winding up the Company. The petition was filed by the petitioner after obtaining the consent in writing of various members of the Company constituting not less than 1/10th of the total number of members. The petitioner made various allegations in the petition in support of the grounds on the basis of which he claimed the relief under Section 153C of the Indian Companies Act, 1913, or in the alternative the relief of winding up. I shall consider those allegations in detail when I deal with the arguments advanced in support of the petition by the learned Advocate General who appears on behalf of the petitioner.

10. To resume the narration of facts, under the Indenture of Lease Messrs. Commercial Sales Agency had the option to renew the lease for a further period of one year from 31st March, 1956 and such option having been exercised the lease was renewed for the period from, 1st April, 1956 to 31st March, 1957. On the expiration of the renewed period it was decided by the Board of Directors to continue the lease for a further period of one year from 1st April, 1957 to 31st March, 1958 on the same terms, the minimum rent being increased from Rupees 81,000/- to Rs. 1,20,000/-. This action of the Board of Directors was also unanimous and was confirmed by a unanimous resolution passed at the general meeting of the shareholders of the Compariy held on 30th March, 1957.

11. The period of the lease of Messrs. Commercial Sales Agency was coming to an

end on 31st March, 1958. By that time the accounts of the Company for the year 1958 were duly audited and the position was that as at the, close or 1956 there was a carried forward' loss of Rs. 6,54,400-15-9. The audit of the accounts for the year 1957 was not complete but the accounts disclosed that there was a very small profit with the result that the carried forward' toss would still be very large. The present petition was also pending in the then High Court of Bombay, having been transferred to that Court from the High Court of Saurashtra to which it bad been transferred from the Court ot the District Judge, Central Saurashtra, Rajkot. In view of the fact that there was a large carried forward loss, which it had till then not been possible to wipe out and also in view of the fact that the present petition was pending and it was not possible to raise any working funds, the Board of Directors felt that it was neither practicable nor possible to run the factory. The Board of Directors, therefore, thought it advisable to continue to follow the same policy of leasing out the factory for the purpose of running it. The Board of Directors accordingly invited tenders for a lease of the factory. The notice inviting tenders was published in various newspapers but only two tenders were received, one from Messrs. Commercial Sales Agency and the other from Messrs. Thrambaklal Chaganlal Shah. The tender of Messrs. Thrambaklal Chaganlal Shah was, however, not accompanied by the necessary deposit and was withdrawn by them by a letter dated 20th March, 1958. The result was that at the meeting of the Board of Directors held on 31st March, 1958 there was only One effective tender namely that of Messrs. Commercial Sales Agency. It was, therefore, resolved by the Board of Directors to give a lease of the factory to Messrs. Commercial Sales Agency for a minimum period of six months from 1st April, 1958 to 30th September 1958 with an option to Messrs. Commercial Sales Agency to renew the lease for a period of one year from 1st October, 1958 to 30th September, 1959 and with a further option to renew the lease for a further period of one year from 1st October, 1959 to 30th September, 1960, the rent for the first six months being Rs. 45,000/-and the rent for the subsequent two years being Rs. 1,00,000/- per year. This action of the Board of Directors was subject to confirmation by the general body of share-holders and was in fact confirmed at a general meeting of the Shareholders held on 14th June, 1958. It is significant to note that this resolution of the general body of share-holders was also passed unanimously. Messrs. Commercial Sales Agency accordingly continued to run the factory as lessees and the same business of manufacturing hydrogenated vegetable oils, soaps and other allied products continued to be carried on by them as before. The options to renew the lease were exercised by Messrs. Commercial Sales Agency and the renewed lease continued upto 30th September, 1960.

12. Since the lease of Messrs. Commercial Sales Agency was due to expire on 30tb September, 1960, the Board of Directors issued a notice dated 14th September, 1960 convening an extraordinary general meeting of the Company on 8th October 1960 for considering the proposal to lease the factory to Messrs. Commercial Sales Agency for a period of five years from 1st October, 1960 to 30th September 1965 at an annual rent of Rs. 1,00,000/-. It appears that sometime in 1959 the Company was grated sanction by the Government of India to install a solvent extraction plant. The Company had, however, no funds for the purpose of putting up and running the solvent extraction plant. The Company made an application to the Bombay. State Financial Corporation for a loan of Rs. 7,00,000/- for put-tins up and running the solvent extraction plant but the application was turned down by the Bombay State Financial Corporation by their letter dated 29th, September, 1959 on the ground that in view of the pending litigation i.e., the present petition, the Bombay State Financial Corporation could not entertain the application. The Board of Directors, therefore,

proposed to entrust the construction and erection of the solvent extraction plant to Messrs. Commercial Sales Agency for Rs. 4,50,000/- and to give a lease of the solvent extraction plant to Messrs. Commercial Sales Agency for the psriod commencing from the expiration of the month in which the trial of the solvent extraction plant was given by Messrs. Commercial Sales Agency and ending on 30th September, 1965 at an annual rent of Rs. 72,000/-. This proposal also formed the subject-matter of the notice dated 14th September 1960. It was at this stage that the petition after having been transferred to this High Court from the High Court of Bombay on bifurcation came up for hearing before me. I heard the petition for one full day and then adjourned it to a date in the following week which fell beyond 8th October, 1960. In the meantime before the adjourned date of the hearing an extraordinary general meeting of the Company was held on 8th October, 1960 and at that meeting the proposal of the Board of Directors that a lease of the factory should be given to Messrs. Commercial Sales Agency for a period of five years from 1st October, 1960 to 30th September, 1965 was modified and a resolution was passed that a lease of the factory should be given to Messrs. Commercial Sales Agency for a period of one year from 1st October, 1960 to 30th September, 1961 at an annual, rent of Rs. 1,00,000 with an option to Messrs. Commercial Sales Agency to renew the lease, for a further period of one year from 1st October 1961 to 30th September, 1962 on condition that such option should be exercised latest by 30th June, 1961. The main reason why the proposal of the Board of Directors to give a lease of the factory to Messrs. Commercial Sales Agency for a period of five years was modified and the period of the proposed lease was reduced from five years to one year with option of renewal for a further period of one year may be best set out in the words of R. B. Sanghvi, one of he shareholders of the Company, who spoke at the meeting and canvassed the view that the period of the proposed lease should not be five years but should be only one year :

'.....the factory of the Company had to be given on lease from time to time, because of the diputes raised by some shareholders, who have gone to the Court involving the Company and thereby creating obstacles, in its working. Besides the Company bad no sufficient working funds. Now these matters in the Court appear to be concluding and there appear to be good prospects and chances for the Company to run the factory itself. In view of these circumstances now obtaining, the lease should now be given only for such period during which the Company can make necessary arrangements for working funds and for appointment of proper person or persons to manage the affairs, of the Company. Therefore one year's period of lease should be quite sufficient.'

So far as the proposal in regard to the construction and erection of the solvent extraction plant was concerned, it was decided at the meeting that the proposal, should be dropped for the present since it was inextricably linked up with the proposal to give a lease of the factory to Messrs. Commercial Sales Agency for a period of five years and the period of the lease of the factory to be granted to Messrs. Commercial Sales Agency having been fixed at one year instead of five years, the proposal in regard to the construction and erection of the solvent extraction plant could not be considered. The result was that Messrs. Commercial Sales Agency continued as lessees of the factory for a further period of one year from 1st October 1960 to 30th September 1961, with a possible renewal of the lease for a further period of one year from 1st October 1961, to 30th September 1962, the rent being Rs. 1,00,000/- per year. The hearing of the petition was thereafter resumed by me on the adjourned date and further arguments were heard by me on the position as it emerged after this meeting of the share holders held on 8th October 1960.

13. The main relief sought in the petition was under Section 153-C of the Indian Companies Act, 1913, and the relief of winding up was only an alternative relief. The learned Advocate General who appeared on behalf of the petitioner did not press for the relief under Section 153-C of the Indian Companies Act, 1913, but confined his arguments to the alternative relief for winding up. This he could do because even for claiming relief under Section 153-C of the Indian Companies Act, 1913, the petitioner had to establish that the facts were such as would justify the making of a winding up order on the ground that it was just and equitable that the Company should be wound up and that it was because in his submission to wind up the Company would unfairly and materially prejudice the interests of the Company or any part of its members that the petitioner did not want the Company to be wound up but wanted relief under Section 153-C of the Indian Companies Act, 1913. The petitioner bad in any event to establish that it was just and equitable to wind up the Company. If the facts were such as justified the making of a winding up order on the ground that it was Just and equitable to do so, the petitioner could always abandon the relief under Section 153-C of the Indian Companies Act, 1913, and ask the Court to make an order for compulsory winding up of the Company. The only point which I have, therefore, to consider in the present case is whether there are sufficient reasons for making a compulsory winding up order against the Company on the ground that it, is just and equitable that the Company should be wound up.

14. Before I proceed to deal with the arguments advanced by the learned Advocate General in support of the petition, I must observe that this is a shareholders' petition. The principles applicable in dealing with a shareholders' petition are now well-settled and may be stated in the following words of Chagla, J., as he then was in In re Cine Industries and Recording Co. Ltd., 44 Bom LR 387 at p. 398 : (AIR 1942 Bom 231 at p. 238):

'.....It is true that as the law stands today he is under no disability as compared with a contributory nor is he under any obligation, as he at one time was, to satisfy the Court that on a winding-up there would he surplus assets. But there is a special rule that the Courts have laid down in exercising their discretion in winding up a company on the petition of a shareholder. The Court constantly bears in mind that the internal management of the company is its own concern, and it is a much better judge of business prospects of a trading venture than the Court can ever hope to be. If, therefore, the majority of the share-holders show confidence in the management of the Company and have faith in its future prospects, the Court has rarely interfered.'

In Pioneer Bank Ltd., In the matter of, ILR 39 Bom 16 : (AIR 1914 Bom 190), Mr. Justice Macleod stated that it shareholder's petition must be scrutinized much more carefully than a creditor's petition. In In re, Suburban Hotel (1867) 2 Ch A 737, Lord Justice Cairns refused to wind up the affairs of the Company against the wishes of the majority of share-holders of the Company because the business had been carried on at a loss and appeared likely to continue as a losing concern. Similarly in In re, London Suburban Bank, (1871) 6 Ch A 641, the majority of the shareholders were opposed to a winding up, and there too the order was refused. It is clear from these decisions, that it is a well-settled principle that as between share-holders the wishes of the majority shall prevail. 'It is very important,' said James, L. J. in Re, Langham Skating Rink Co., (1877) 5 Ch D 669, 'that the Court should not, unless a very strong case is made, take upon itself to interfere with the domestic forum which has been established or the management of the affairs of a Company.' There must be strong ground for exercising the power of interference at the instance of a share-holder. The

Act creates as between share-holders a domestic tribunal and the Court would be slow to withdraw from it the decision as to whether the Company's business shall be carried on or the Company shall be wound up. In the present case the subscribed and paid up capital of the Company is Rs. 16,45,400/- and out of this, share-holders holding share capital to the extent of Rs. 2,43,210/-support the petition while share-holders holding share capital to the extent of Rs. 9,49,050/-oppose the petition. The rest of the share-holders have not appeared before me but even assuming that they support the petition, the total share capital in support of the petition would be Rs. 5,50,950/-, as against share capital of Rs. 9,49,050/- opposing the petition. It will thus be seen that the majority of the share-holders are against the winding up of the Company. They are of the opinion that the continuance of the Company is in the best interests of the shareholders and that the Company should not be wound up. The Government of Gujarat is the largest single share-holder opposing the petition, its share holding being Rs. 5,00,000/- and the point of view of the Government is succinctly set put in the written statement filed by Shri S. K. Gangopadhyaya as the Government nominated Director on the Board of Directors of the Company. The relevant passage is in paragraph 19 of the written statement and runs as follows:

'.....The Company is solvent, the machinery is in good condition, the industry has a very good future and the continuance of the Company is in the best interest of the Company. The wishes of the main bulk of the persons interested in the assets of the Company are in favour of the continuing the Company, the purpose and substratum of the Company are both subsisting and live, the statement on which the petition is based are mainly, though not admitted, relate to the internal management or affairs of the Company for which the procedure of winding up cannot be legally used.'

The fact that the majority of the share-holders including an independent share-holder like the Government of Gujarat are against the winding up of the Company and desire the Company to continue is an important circumstance which must weigh with me in deciding whether I should of should not make a compulsory winding up order against the Company. Of course if I hold that the substratum of the Company is gone, this consideration would be entirely irrelevant for in such a case the majority cannot force the minority to continue the Company.

15. The grounds on which the winding up of the Company is sought by the petitioner can be broadly divided into five heads:

(1) The affairs of the Company are conducted in a manner prejudicial to the interests of the Company and oppressive to the minority share-holders and the personal and private interests of Respondent No. 2 are advanced at the expense of the Company and the minority share-holders.

(2) Two rival groups are fighting amongst eachother and there are disputes as to who constitutethe Board of Director's and who is the Chairmanof the Company and there is thus a completedeadlock.

(3) The Company is commercially insolvent and its assets are insufficient to meet its liabilities.

(4) The business of the Company is closed from 31st March 1955, and the factory of the Company is leased out to Messrs. CommercialSales Agency since that date.

(5) The substratum of the Company is gone. So far as the first two grounds are concerned the learned Advocate General oil behalf of the petitioner did not press the same. The learned Advocate General gave up--in my opinion rightly- the contention that the Company should be wound up on the ground that there was oppression of minority share-holders and respondent No. 2 and the share-holders supporting him who were in a position to control the affairs of the Company had exceeded or abused their power to the prejudice of the interests of the minority share-holders. This ground could not possibly be made good by the learned Advocate General merely by relying on the fact that respondents Nos. 21 and 22 who are the partners of Messrs. Commercial Sales Agency are the sons of respondent No. 2 or even benamidars of respondent No. 2. In order to substantiate the allegation that the lease of the factory to Messrs. Commercial Sales Agency Constituted advancement of the personal and private interests of respondent No. 2 in disregard of the interests of the minority share-holders, it was necessary for the learned Advocate General to go further and prove that the Company could have run the factory and carried on the business of manufacturing hydrogenated vegetable oils, soaps and other allied products and made profit out of the same, but that in order to oblige respondent No. 2 or respondents Nos. 21 and 22 who are the sons of respondent No. 2, the Company controlled by respondent No. 2 and the majority share-holders supporting him gave a lease of the factory to Messrs. Commercial Sales Agency so that the profit which would have been earned by the Company might be diverted into the pockets of respondent No. 2 or respondents Nos. 21 and 22. This the learned Advocate General was obviously not in a position to do and he, therefore, rightly did not press this ground founded On oppression of minority share-holders. The learned Advocate General also rightly did not press the ground based on deadlock for though there might have been a deadlock at the date of the filing of the petition, it was clear that there was no deadlock at the time of the hearing of the petition and the ground based on deadlock could not, therefore be pressed into service by the learned Advocate General on behalf of the petitioner. Whatever may have been the position regarding the financial position or the Company at the date of the filing of the petition, it was clear from the balance-sheets which were produced before me, that at the date of the hearing of the petition, the Company was perfectly solvent and there were absolutely no creditors of the Company. The third ground based on commercial insolvency also did not, therefore, avail the petitioner. The only two grounds which were really pressed by the learned Advocate General were the last two grounds and I will now proceed to consider these grounds.

16. The learned Advocate General contended that the business of the Company was closed from 31st March 1955, and that the factory of the Company was leased out to Messrs. Commercial Sales Agency since that date and that in his submission this constituted sufficient ground for winding up the Company. Now I do not see how by itself this ground can possibly he a ground for making a compulsory winding up order against the Company. It is no doubt true that under Section 162(iii) of the Indian Companies Act, 1913, suspension of business of a Company for a whole year is a ground for winding up the Company. But in the present case I do not find any reliance placed on Section 162(iii) of the Indian Companies Act, 1913. The only ground on which it has been contended on behalf of the petitioner that the Company should he wound up is that it is just and equitable to wind up the Company and the fact that the business of the Company is closed from 31st March 1955, is relied more as a circumstance showing why it is just and equitable that the Company should be wound up than as an independent ground by itself. The learned Advocate General has not based his case on Section 162(iii) of the Indian Companies Act, 1913, and I need not,

therefore, consider whether the Company has suspended its business for a whole year and is therefore, liable to be wound up. As a matter of fact on the view I am taking as regards the true construction of the Memorandum of Association in the present case it cannot possibly be said that the Company is not carrying on any business since 31st March 1955, and even if any contention based on Section 162(iii) of the Indian Companies Act, 1913, had been urged before me, I would have rejected such contention. I will, therefore, now turn to examine the last ground urged by the learned Advocate General namely, that the substratum of the Company is gone and that it is, therefore, just and equitable to wind up the Company and see how far that ground has been made good by the learned Advocate General.

17. It is now well-settled by authorities that when the substratum of the Company is gone, it is just and equitable to wind up the Company. It was Lord Cairns who first suggested, in (1867) 2 Ch A 737 (supra) that if the substratum of a Company were gone, that might render it just and equitable to make a compulsory winding-up order. In that case the objects of the Company were very general:-- 'To buy lands within twenty miles of the General Post Office, to erect and work hotels, etc.'' The Company had bought land at Hampstend and erected an hotel; it did not pay, but the majority of the share-holder's wished to go on, and Lord Cairns held that the Court could not interfere. Lord Cairns observed--and it is necessary to set out these observations in order to Understand exactly when the substratum of the Company can be said to he gone:

'A case might occur,' proceeded the learrned judge, 'where the Court would be willing to give under the Act to a minority of share-holders the species of relief that sometimes is given in cases of ordinary partnerships when it becomes impossible (I use the term 'impossible' in the Strict sense of the term) to carry on the business any longer. If it were shown to the Court that the whole sub-stratum of the partnership, the whole of the business which the Company was incorporated to carry on, had become impossible, I apprehend that the Court might either under the Act of Parliament or on general Principle's order the Company to be wound up.'

The important words are 'the whole of the business which the Company was incorporated to carry on, had become impossible.' It must be shown that the whole substance or substratum of the venture which the share-holders joined together for the purpose of carrying out has become impossible. This ground for winding up depends upon the principle that share-holders who subscribe money for one purpose are not bound to permit it to be used for another purpose but are entitled to say 'the undertaking in which we all embarked is proved to be impossible to carry out, we decline to enter into any further speculation'. Thus in Re Haven Gold Mining Co., (1882) 20 Ch D 151, the Company was formed to acquire and develop a particular property in New Zealand called the Haven Claim though the Memorandum of Association contained wide power enabling the Company to purchase any material properties in New Zealand and elsewhere. It was found that the Company had no title to the particular property and in the words of Jessel M. R., had 'no reasonable prospect of obtaining the mine from anyone'. The Court of Appeal held that the substratum had gone and that the Company should be wound up. The following passage from the head-note in that case contains a precise and accurate statement of the principle:

'Where the Court is satisfied that the subject-matter of the business has substantially ceased to exist, it will make an order for winding up the Company although the large

majority of the share-holders desire to continue to carry on the Company.'

This passage was adopted as a sufficient statement of the principle by Jenkins, J., In re, Eastern Telegraph Co. Ltd., (1947) 2 All ER 104 and after quoting this passage the learned Judge added the following explanation:

'That I take it, means that, if a share-holderhas invested his money in the shares of the Company on the footing that it is going to carry onsome particular object, he cannot be forced againsthis will by the votes of his fellow share-holders tocontinue to adventure his money on some quitedifferent project or speculation.'

The same principle was applied in In re German Date Coffee Co., (1882) 20 Ch D 169, where it was found on a true construction of the Memorandum of Association, that the main object of the Company was to exploit German patent of making coffee from dates and the patent was never obtained. It was held that the Company was formed with the primary object of acquiring and working the particular patent and all the remaining objects were ancillary to this object and consequently the substratum had failed. The subject-matter which the Company was formed to exploit was a particular mine in one case and a particular patent in the other and since the subject-matter never came into existence or ceased to exist, the substratum of the Company was deemed to have failed. In re, Red Rock Gold Mining Co. Ltd., (1889) 61 LT 785, Company had been formed to purchase and work the Red Rock Mine. There were further objects mentioned in the Memorandum, namely, to purchase and otherwise acquire mines and other properties in the colony of New South Wales and elsewhere, and generally to carry on the business of milling and mining in all its branches. In the following year the Directors reported to the share-holders that the Red Rock Mine was a failure, and that the Company must either go into liquidation or employ the unexpended capital in other ways. At a meeting of share-holders the majority passed a resolution requesting the Directors to find some suitable mode of investing the money. A petition was thereupon filed by a shareholder to wind up the Company and the Court held following, (1882) 20 Ch D 151, (supra) and (1882) 20 Ch D 169, (supra) that the main object for which the Company was incorporated was to purchase and work the Red Rock Mine and since that object had failed, the substratum of the Company must be deemed to be gone and there must be a winding-up order. Kay, J., thus stated the principle:

'The Principle of this Court is that where an association is formed for a particular purpose, it does not matter that it has large powers in addition to that particular purpose; if that particular purpose fails, any share-holder has a right to say 'Put an end to it, pay me my money.'

The history of the principle was considered by the Court of Session in Galbrath v. Merito Shipping Co., (1947) SC 446 and the following passage from the judgment in that case contains a clear and precise enunciation of the principle:

'.....the conception which originated from a mere suggestion of Lord Cairns in the year 1868 that it might he a 'ground for justice and equity' if a share-holder or creditor could demonstrate that the Substratum had completely disappeared are by his very words, and by other judges alike, limited to the case where that object or purpose, held to be primary in the fullest sense, that is, not merely first in order of Importance, but containing the whole substance or substratum of the venture, has now become an impossible purpose.' The main or primary object for which the

Company is formed may become impossible either by reason of the subject-matter of the Company being gone or for any other reason; in either case the substratum of the Company would be deemed to be gone because the share-holders having come together and subscribed money for a particular object, they cannot On the failure of such object be compelled by the vote, of their follow share-holders to 'continue to adventure their money on some quite different project or speculation'. It is, however, necessary for the application of the principle that the main or primary object must have become impossible of fulfilment, it is not sufficient that the main or dominant object should have been abandoned. The abandonment of the main or dominant object may be treated as one of the circumstances leading up to the commercial impossibility of the venture but it is not sufficient to support a petition for winding-up on the ground that the substratum of the Company is gone. The intention of the Board of Directors or share-holders of a Company as regards continuance or abandonment of a particular business which is the main or dominant object of the Company is entirely irrelevant in considering whether the substratum of the Company is gone. What the Board of DIRECTORS OR share-holders of a Company may have abandoned to-day may be resumed by them to-morrow and though they may have considered at one time that the business should not be continued, they may later on find that the conditions have changed and that it is profitable to carry on the business and may accordingly resume the business. The question whether or not the substratum of a company is gone cannot be dependant on the intention of the Board of Directors or share-holders of the Company. The following observations of Lord Greene, M. R. in Re, Kitton and Co., Ltd., (1946) 1 All ER 435 at P. 439 may be usefully cited in this connection: 'The judge, subject to one matter which I am about to mention, as I read his judgment, would quite clearly have refused to make a winding up order. Down to this point he did not comment adversely, and it seems to me he had no material for commenting adversely on the question whether there was a real and bona fide intention to re-embark in the engineering business at the time the matter was before him. Subject again to what I mentioned a moment ago, it is quite clear he was not prepared to question that. I myself would go further than that, became this question of intention on which counsel for the respondents laid very great stress is, I must confess, on the facts in this case, one which does not impress me. To say that the question whether substratum has gone or has not gone can be affected by the intention that happens to exist in the minds of the board at a given moment appears to me to be going into irrelevant considerations. First of all, the board is not the Company. Let it be supposed that at the time of the sale of the Kitson business, so far as the board was concerned they thought that there was no chance and that it was not desirable for the Company ever to start again into engineering. It certainly is not proved nor was it proved that the share-holders had any such intention; but assume that it was. A little time afterwards something might happen to make them change their minds. They might see a profitable opportunity of using the Company's money again in the engineering business. What has intention to do with it? We are dealing with, the question of substratum, and to say that the substratum can exist at one moment and cease to exist a moment later, or vice versa simply through a' change of intention of the board or of the share-holders (I know not which) seems to me to lead into a morass.'

It is, therefore, clear that in order to bring the case within the principle underlying substratum cases, it is not enough to show that the main or dominant Object for which the Company is incorporated has been abandoned or that there is no intention on the part of the Company to carry out such object but it must be proved that such object has become possible of fulfilment either by reason of the subject-matter of the

Company being gone or for any other reason. The requirement of the principle that the main or primary object of the Company must have become impossible is emphasised in all substratum cases and particular reference is to be found in (1867) 2 Ch A 737 (supra), where Lord Calrns confined the application of the principle to cases where 'the whole of the business which the Company was incorporated to carry on had became impossible'. Considerable emphasis was also laid on this requirement in (1947) SC 446. In that case the principal object of the Company was ship-owning but the last of the Company's ships had been disposed of in 1919 and thereafter the Company's capital was invented in securities. The petitioner failed to aver in the petition that the resumption of ship-owning was impossible and on that ground the petition was dismissed.

18. In every case, therefore, where this ground is relied on, tne question is what is the main or primary object or purpose for which the Company is incorporated and whether that main or primary object or purpose has become impossible. This question must inevitably turn on the construction of the Memorandum of Association for it is the Memorandum of Association which specifies the objects which a Company is formed to carry out and the main or primary object or purpose for which the Company is formed can be gathered only from the Memorandum of Association. The difficulty in many cases is to determine which is the main or, primary object or purpose or the 'substance of the venture', particularly having regard to the fact that the objects, clause of the Memorandum is usually drawn in a very wide form. A special rule of construction is in some cases applied where the objects of a Company are expressed in a series of paragraphs, and according to that rule of construction, one or more paragraphs are taken as embodying the main or dominant object of the Company, and all other paragraphs are treated as merely ancillary to this main object and as limited and controlled thereby. This rule may be referred to as the 'Main objects' rule of construction. The learned Advocate General, on behalf of the petitioner relied mainly on this rule of construction and contended that the Company was formed with the primary object of carrying on any one or more of the businesses specified in paragraphs 1 to 6 of Clause 3 of the Memorandum and that all the other paragraphs were merely ancillary to the main object set out in paragraphs 1 to 6. The argument of the learned Advocate General was that though paragraph 30 of Clause 3 of the Memorandum authorised the Company to lease the factory, the object contained in that paragraph was not an independent object but was an object ancillary to the main object contained in paragraphs 1 to 6 and that the power of leasing the factory could, therefore, be exercised only for the purpose of achieving the main object and not in a manner so as to destroy the main object. The learned Advocate General contended that the leasing of the factory to Messrs. Commercial Sales Agency was an act destructive of the main object of carrying on any one or more of the businesses specified in paragraphs 1 to 6 of Clause 3 of the Memorandum and as a result of leasing out the factory to Messrs. Commercial Sales Agency, the whole substance or substratum of the venture came to an end and the substratum of the Company was gone. This contention of the learned Advocate General is, however, untenable and cannot bear examination. This contention is based on the premise that the object of carrying on any one or more of the businesses specified in paragraphs 1 to 6 of Clause 3 of the Memorandum is the main object of the Company and that the objects set out in the remaining paragraph are ancillary to this main object and the premise in its turn depends on the application of the main objects rule of construction. In my opinion, however, the main objects rule of construction cannot apply in the present case. It must be remembered that like every other rule of construction this rule of construction can be excluded or modified by the contents of

the document to be construed namely, the Memorandum, for every rule of construction contains by implication the saving clause 'unless a contrary intention appeals by the document.' Sometimes as in the present case the Memorandum declares the intention to be that the objects specified in each paragraph of the clause shall, except where otherwise expressed in such paragraph, be in nowise limited or restricted by reference to or inference from the terms of any other paragraph or the name of the Company. These words are obviously intended to exclude or modify the main objects rule of construction and the Court is bound to give effect to the intention so expressed. It is no doubt true that in Stephens v. Mysore Reefs (Kangunly) Mining Co., (1902) 1 Ch 745, the Court disregarded the presence of such words but the decision in that case has been expressly dissented from in a subsequent decision reported in Anglo Overseas Agencies Ltd. v. Green, (1960) 1 All ER 244, and can no longer be regarded as good law. In the subsequent decision these words have been construed as excluding the main objects rule of construction and I am in respectful agreement with the reasoning of Salmon, J., in that decision. The same words which were considered by Salmon, J., as excluding the main objects rule of construction occur in the present case at the end of Clause 3 of the Memorandum and in my opinion they clearly indicate an intention on the part of the draftsman that the main objects rule of construction should not be applied and that every object specified in C1ause 3 of the Memorandum should be treated as an independent object for which the Company is established. The words 'all or any' occurring in the opening part of Clause 3 of the Memorandum also emphasise this construction. It cannot, therefore, be said that the object set out in any particular paragraph or paragraphs of Clause 3 of the Memorandum is the main or primary object or that the other paragraphs must be read as ancillary to such main or primary object. It must be held that the Company is established as much for the object set out in paragraph 30 as for the objects set out in any one or more of paragraphs 1 to 6. All the objects are independent objects and the Company may carry out any one or move of such objects to the exclusion of the rest. There is thus no main or primary object or to put it differently, all the objects set out in the various paragraphs of Clause 3 of the Memorandum are main or primary objects. If, therefore, the Company leased the factory to Messrs. Commercial Sales Agency and such act of leasing is autaorized under paragraph 30 of Clause 3 of the Memorandum, I do not see how it can be contended that the main or dominant object of the Company failed.

It may be that by leasing the factory to Messrs. Commercial Sales Agency the Company ceased to carry on the business of manufacturing hydrogenated vegetable Oils, soaps and other allied products specified in paragraphs 1 to 3 of Clause 3 of the Memorandum--though this proposition is also not clear and free from doubt and I need not express any opinion on the same. That does not, however, mean that the main or dominant object for which the Company was formed became impossible. The object set out in paragraph 30 of Clause 3 of the Memorandum was as much a main or primary object as the object set out in any one or more of paragraphs 1 to 3 and merely because the Company switched on to the object specified in paragraph 30 from the object specified in any one or more of paragraphs 1 to 3, it does not mean that the main or primary object of the Company failed. There are various businesses specified in various paragraphs of Clause 3 of the Memorandum which are the objects for which the Company is established and it is for the shareholders to decide which out of several businesses authorized by the Memorandum, the Company should carry on. The shareholders may feel that the business specified in a particular paragraph of Clause 3 of the Memorandum is not worthwhile carrying on for the time being and they may decide to switch on to another business specified in some other paragraph

of Clause 3 of the Memorandum. This is all that has happened in the present case. The Company felt that having regard to adverse trade conditions and keen internal competition it was not profitable or advisable to continue to run the factory and to carry on business of manufacturing hydrogenated vegetable oils, soaps and other allied products and the Company accordingly decided to give a lease of the factory to Messrs. Commercial Sales Agency. The leasing of the factory to Messrs. Commercial Sales Agency was a business authorized under paragraph 30 of Clause 3 of the Memorandum and the Company thus substituted one form of business for another out of the various forms of businesses contemplated by the Memorandum. This being the position no question of impossibility or failure of the main or dominant object of the Company could possibly arise in the present case and the argument of the learned Advocate General that as a result of the leasing of the factory to Messrs. Commercial Sales Agency, the main or primary object of the Company failed and the substratum of the Company must, therefore, be deemed to be gone must be rejected.

19. Assuming I am wrong in not applying the main objects rule of construction and treating the objects specified in the various paragraphs of Clause 3 of the Memorandum as independent objects, even so, the contention of the learned Advocate General that the substratum of the Company is gone cannot succeed. The main or dominant object of the Company according to the learned Advocate General was to carry on the business specified in one or more of paragraphs 1 to 6 of Clause 3 of the Memorandum. The learned Advocate General urged that the Company stopped carrying-on the business of manufacturing vegetable oils, soaps and other allied products and gave a lease of the factory to Messrs, Commercial. Sales Agency which lease has continued for a period of over five years and in the submission of the learned Advocate General these facts clearly warranted the inference that the Company has abandoned its main or primary object of carrying-on the business specified in any one or more or paragraphs 1 to 6 of Clause 8 of the Memorandum, since the leasing of the factory to Messrs. Commercial Sales Agency is inconsistent with the Company being able to carry on any Such business. The learned Advocate General contended that since the Company has abandoned its main or primary object, the substratum of the Company must be deemed to be gone. I am afraid this contention of the learned Advocate General cannot be accepted as correct and for a very good reason. As I have already pointed out above, in order to make out a case for winding up on the ground that the substratum of the Company is gone, it is not enough for the petitioner to allege that the main or dominant object of the Company has been abandoned but the petitioner most go further and show that the main or dominant object of the Company has become impossible. The impossibility must be either physical or legal impossibility or it may even amount to reasonable probability of the Company not being able to carry out the main or dominant object. The abandonment of the main or dominant object is not sufficient to support a petition for winding up on the ground that the substratum of the Company is gone. The intention of the Board of Directors or the shareholders of the Company as regards the continuance or discontinuance of the business which constitutes the main or primary object is entirely irrelevant. In all substratum cases the question must always be not whether the Board of Directors or the share holders do not intend ever to carry out the main or dominant object but whether the main or dominant object has become impossible or there is no reasonable probability of the Company being able to carry out the main or dominant object. The question which I must, therefore, ask, myself is : Is (sic) the main or dominant object of the Company -- assuming there is one -- become impossible or can it be said that there is no reasonably probability of the Company being able to carry out such main or dominant object? This question must

obviously be answered in the negative for it cannot possibly be said that the main or dominant object of the Company has become impossible or that there is no reasonable probability of the company being able to carry out such main or dominant object. Even the argument of the learned Advocate General did not go so far. All that the learned Advocate General contended was that on the facts on record it is clear that the company has abandoned its main or primary object of carrying on the business specified in any one or more of paragraphs 1 to 6 of Clause 3 of the Memorandum. This contention, even if accepted, cannot, for the aforesaid reasons, justify the winding up of the Company on the ground that the substratum of the Company is gone; but in my opinion it cannot be accepted as correct. I do not agree with the learned Advocate General that any inference of abandonment of the main or primary object can be drawn from the facts on record. Of course when I refer to the main or primary object, I mean the object set out in any one or more of paragraphs 1 to 6 of Clause 3 of the Memorandum as contended by the learned Advocate General. The facts on record are eloquent and clearly show that the Company did not at any time abandon the business of manufacturing vegetable oils, soaps and other allied products which it was carrying on until 31st March, 1955 or any of the other businesses specified in paragraphs 1 to 6 of Clause 3 of the Memorandum. The Company started incurring losses from the year 1952 onwards and by the end of 1954, the carried forward loss of the Company was Rs. 5,17,624/-. During the first three months of the year 1955 also, the Company suffered a loss of Rs. 70,800/-and the Company, therefore, thought that it was not advisable to continue to run the factory and to carry on the business of manufacturing vegetable oils, soaps and other allied products but that it would be better to give a lease of the factory with a condition that the lessees should run the factory and carry on the same business so that the business would be preserved and the products of the factory would not go out of market and on the expiration of the lease, the Company, would be able to take over the business and run it, provided the conditions had improved and it was possible for the Company to run the factory and carry on the business. The Company had no other alternative. The Company could either continue to run the factory and go on incurring losses which would mean larger carried forward losses year by year or stop running the factory. If the Company stopped running the factory the factory would remain idle and the products of the Company would go out of market and this in its turn would make it extremely difficult for the Company to resume business when the circumstances improved. The best course, therefore, for the company was to give the factory on lease on condition that the lessee should run the factory and carry on the same business and to earn a certain definite amount by way of rent so that the Company could resume the business on termination of the lease without the business suffering any adverse effects. The Company, therefore, gave a lease of the factory to Messrs. Commercial Sales Agency. It is important to note that under the Indenture of Lease, Messrs. Commercial Sales Agency were under an obligation to run the factory and carry on the business of manufacturing hydrogenated vegetable oils, soaps and other allied products, being the same business which was carried on by the Company. Clause 2 (b) of the Indenture of Lease imposed an obligation on Messrs. Commercial Sales Agency to run the factory and to diligently carry on the business of manufacturing vegetable oils, soaps and other allied product and for that purpose to provide the necessary finance. Not only was such an obligation imposed on Messrs. Commercial Sales Agency by Clause 2 (b) but Messrs. Commercial Sales Agency were prohibited by Clause 2 (k) from carrying on in the factory any business other than that of manufacturing vegetable oils, soaps and other allied products. Clause 3 required the Company to make available to Messrs. Commercial Sales Agency all such quotas of coal, tin-plates, import licences and Income-tax Certificates

as might be necessary or required by Messrs, Commercial Sales Agency for efficient working of the factory. There was also an obligation on Messrs. Commercial Sales Agency to purchase all the stores, stocks and spare-parts belonging to the Company. These provisions in the Indenture of Lease clearly show that the object of the Company was that the factory should continue to run and the business of manufacturing vegetable oils, soaps and other allied products which was carried on in the factory should continue to exist so that on termination of the lease the Company could take over the factory and carry on the business without any break or interruption which might ruinously affect the business. Unless the intention of the Company was to resume the business on the termination of the lease there is no reason why any obligation should have been imposed on Messrs. Commercial Sales Agency to run the factory and to carry on the same business. The Company was leasing the factory and getting rent for it and it should have been a matter of little concern to the Company as to how the factory was used by Messrs. Commercial Sales Agency. It is obvious that the lease was given because of adverse circumstances and the intention of the Company was at no time to abandon the business of running the factory and manufacturing vegetable oils, soaps and other allied products. This becomes all the more apparent when one turns to the explanatory statement attached to the notice convening the 13th Annual General Meeting of the Company to be held on 7th June, 1958. The explanatory statement was in respect of the resolution for confirmation of the action of the Board of Directors in giving a lease of the factory to Messrs. Commercial Sales Agency for a minimum period of six months from 1st April, 1958 to 30th September, 1958 with an option or renewal for a period of one year from 1st October, 1938 to 30th September, 1959 and a further option of renewal for a period of one year from 1st October, 1959 to 30th September, 1960 and contained the following statement:

'..... Owing to carry over losses of the previous years and in view of the pending petition to wind up the Company, filed by some shareholders of the Company, it was not possible to raise any working funds and therefore it was neither practicable nor possible for the Company to run the factory. The Board of Directors there-fore thought it fit to give the factory on lease for a minimum period of 2 1/2 years and called for tenders by giving due publicity in various newspapers.'

The Company obviously needed working capital for running the factory and carrying on the business of manufacturing vegetable oils, soaps and other allied products and so long as there was a large carried forward loss and the present petition was pending, it was not possible for the Company to raise any funds and the Company, therefore, gave a lease of the factory to Messrs. Commercial Sales Agency for a further period of 2 1/2 years, the intention, however, being all throughout that the Company should run the factory and carry on the business as soon as circumstances permitted. There is one other circumstance which in my opinion is conclusive of the matter. Sometime in 1959 the Company obtained a licence for putting up a solvent extraction plant. The Company immediately applied to the Bombay State Financial Corporation for a loan of Rs. 7,00,000/-for construction and erection of the solvent extraction plant. The Bombay State Financial Corporation, however, turned down the application of the Company on the ground that disputes were pending in the High Court, the reference obviously being to the present petition. Now if the Company had no intention of carrying on any business specified in one or more of paragraphs 1 to 8 of clause 3 of the Memorandum -- which according to the learned Advocate General constitutes the main and dominant object of the Company -- there is no reason why the Company should have obtained a licence for the putting up of the solvent

extraction, plant or should have applied for a loan of Rs. 7,00,000/- from the Bombay State Financial Corporation1, This circumstance clearly shows that the intention of the Company was not to go on giving leases or the factory to Messrs. Commercial Sales Agency indefinitely and merely earning rent from such leases, but to carry on the business which in the submission of the learned Advocate General constitutes the main or primary object of the Company. The Company was merely waiting for the time when its financial position would improve and it would be in a position to run the factory. Even the reasons given by the shareholder B. B. Sanghvi at the general meeting of the shareholders of the Company held on 8th October, 1960 which ultimately resulted in reducing the period of the lease from five years to one year with an option of renewal for a further period of one year would support this inference which I am inclined to draw as regards the intention of the Company vis-a-vis the factory and the business of manufacture carried on in the factory. I am therefore of the opinion that the Company did not abandon the business of manufacturing vegetable oils, soaps and other allied products which it was carrying on till 31st March, 1955 or any of the other businesses specified in paragraphs 1 to G of Clause 3 of the Memorandum-The present contention of the learned Advocate General must, therefore, fail.

20. The last argument advanced by the term ed Advocate General was that there was no reasonable hope that the object of trading at a profit with a view to which the Company was form-ed could be attained and that the substratum of the Company must, therefore, be deemed to be gone. The learned Advocate General pointed out to me that the gross income of the Company was Rs. 1,00,000/- derived from rent of the factory recovered from Messrs, Commercial Sales Agency. Out of this gross income an average expenditure of Rs. 20,000/- would have to be met while the dividend on preference shares would come to about Rs. 30,000/- This would leave only a sum of about Rs. 50,000/- out of the gross income which would be hardly sufficient to provide for depreciation. If allowance for depreciation was made as it must be in conformity with the principles of accountancy, nothing would be left out of which any dividend could be declared for the ordinary shareholders. The learned Advocate General contended that the Company would thus continue to exist for the benefit of Messrs. Commercial Sales Agency and the holders of preference shares. I am afraid I cannot accept this contention. The rent of Rs. 1,00,000/- per year is not going to be a permanent feature of the Company. The present know in favour of Messrs. Commercial Sales Agency would end latest by 30th September 1962. I do not know what the position would be then, but I cannot proceed on the assumption that the Company would continue to give a lease of the factory to Messrs. Commercial Sales Agency at the rent of Rs. 1,00,000/-. As I have already pointed out above, it is more, likely that the Company will itself start running the factory and carrying on the business of manufacture of vegetable oils, soaps and other allied products, provided of course the financial position of the Company is such that the Company is in a position to do so. Again, apart from this consideration, the question whether the lease of the factory to Messrs. Commercial Sales Agency at the rent of Rupees 1,00,000/- per year is a desirable thing or not, is a question which relates to the internal management of the affairs of the Company. If the result of giving the lease to Messrs. Commercial Sales Agency is that no amount is left for declaration of dividend on ordinary shares, it is a matter for the shareholders and not for the Court. The lease of the factory to Messrs. Commercial Sales Agency may be a bad transaction for the Company to enter into from a business point of view, but as observed by Lord Greene, M. R., in 1946-1 All ER 435 (supra), 'that is the last sort of thing that this Court is concerned with in winding up cases'.- It is not for the Court to say whether the lease

should or should not have been entered into or whether the lease is a good transaction or a bad transaction from the point of view of the ordinary shareholders. That is a business matter for the shareholders to decide and they have so decided. I cannot be called upon by the learned Advocate General to make a compulsory winding up order on the ground that the lease is such a transaction that no dividend would possibly come to the ordinary shareholders. A consideration such as this can never be taken into account by the Court in deciding whether the Company should he wound up. But apart from this, there is a still more fundamental objection to this ground urged by the learned Advocate General. It is only when there is no reasonable hope that the object of trading at a profit with a view to which the Company is formed would he attained that it can he said that the substratum of the Company is gone. In the present case the Company is making a profit though it be small and not sufficient for declaration of dividend on ordinary shares. Can it he said that the object of trading at a profit is not attained in the present case? The Company is indubitably trading at a profit even under the lease given to Messrs. Commercial Sales Agency. On the expiration of the lease or at any rate in not too distant future, there is every reasonable hope that the Company will start running the factory and carrying on the business of manufacture and there is no material put On record on the bagis of which it can be said that there is no reasonable hope that the Company would be able to trade at a profit when it starts running the factory and carrying on the business of manufacture. To put it briefly, the Company is at present trading at a profit and there is every reasonable hope that the Company will continue to trade at a profit. This ground urged by the learned Advocate General must, therefore, fail.

21. In this view of the matter I must reach the conclusion that the substratum of the Company is not gone and that no ground had been made out why it is fust and equitable that the Company should be wound up. The result is that the petition will be dismissed. The petitioner will pay the costs of the Company and the shareholders opposing the petition. There will be two sets of costs, one for the Company and the other for the shareholders opposing the petition. There will be no order as to costs as regards the shareholders supporting the petition.