

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NOS. 33429-33434 OF 2010

Messer Holdings Ltd. ... Petitioner

Versus

Shyam Madanmohan Ruia & Others ... Respondents

WITH

SPECIAL LEAVE PETITION (CIVIL) NOS. 23088-23090 OF 2012

J U D G M E N T

Chelameswar, J.

1. Messer Griesham GmbH, a German Company (hereinafter referred to as “MGG”) entered into a Share Purchase and Cooperation Agreement (hereinafter referred to as AGREEMENT-1) with the shareholders of an Indian company called Goyal Gases Ltd. (hereinafter referred to as “GGL”) on 12.5.1995. By virtue of the said agreement, MGG purchased 30% of equity shares of GGL. Subsequently, MGG increased its shareholding in GGL to 49%. Clause 9 of the AGREEMENT-1 reads:

“ 9. NON-COMPETITION CLAUSE

GGL and all Goyal Group companies will cooperate in the Indian market with right to first refusal basis/with MGG and will not for the duration of this cooperation **support in any way directly or indirectly - the activities of MGG's competitors with regard to gas business.** MGG will give written information to GGL about every business opportunity it plans to take in the Indian market in regard to industrial gases and related business and GGL may decide if it wants to participate in it (right of first refusal). In case GGL does not within a period of two months after receiving MGG's notice declare in writing that it is willing and able to participate in the planned business, MGG is free to proceed with this business on its own. However, MGG will give due consideration to the interest of GGL being its group company. Such new business which MGG undertakes should be business of gas supply of few major dedicated customers only and not to general market supply.”

2. In a company known as BOMBAY OXYGEN CORPORATION LIMITED (hereinafter referred to as the 'BOCL') majority shares were collectively held by a group of persons known as RUIAS (we understand that they belong to one family). On 23.6.1997, MGG entered into another Share Purchase Agreement (hereinafter referred to as AGREEMENT -II) with RUIAS. By the said agreement MGG agreed (i) to purchase 45001 shares of BOCL from RUIAS, and (ii) also to acquire another 30000 shares of BOCL from the open market which would make MGG the majority shareholder of BOCL (creating a controlling interest). Clause 6.1 of AGREEMENT-II reads;

“6.1 Right of First Refusal:

With effect from the date this Agreement becomes effective, neither party shall sell any shares in the Company held or acquired by it without first, offering the Shares to the other party. The offer shall be in writing and shall set out in the price and other terms and conditions. If the offeree does not agree to purchase the Shares so offered the offerer shall be free to sell the Shares to any person (other than a competitor of the offeree), but at the same price and on the same terms as offered to the offeree. This right of first refusal does not apply to any sale of shares by the purchaser to a company of the Hoechst Group. In a company directly or indirectly controlled by or

under direct or indirect common control with the Hoechst Group. For the purposes of this definition “control” means ownership, directly or indirectly or more than 50 percent of the issued and outstanding voting stock or ownership interest of the Company.”

3. Pursuant to the AGREEMENT-II, MGG made a public announcement on 27.6.1997 disclosing its intention to acquire 30000 shares of BOCL from public as required under Chapter-III of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the ‘REGULATIONS 1997’) framed in exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “SEBI Act”)

4. GGL protested (in writing) against the attempt of MGG to independently acquire shares of BOCL saying that it would amount to breach of Clause 9 of the AGREEMENT-I. Some correspondence took place between both the Companies in this regard. Eventually, both the Companies entered into AGREEMENT-III on 8.11.1997 whereunder it was agreed that out of 75001 shares of BOCL to be acquired by MGG under AGREEMENT-II, 50000 shares will be acquired in the name of GGL and only 25001 will be acquired in the name of MGG.

5. RUIAS came to know of the AGREEMENT-III. By their letter dated 5.5.1998 they informed MGG that they were not agreeable for the proposal of MGG and GGL jointly purchasing the shares of the BOCL. In view of the said development, MGG informed GGL on 7.5.1998 that MGG was terminating AGREEMENT-III. Thereafter, MGG proceeded to acquire 75001 shares of the BOCL on its own and paid an amount of Rs.13.5 crores to the RUIAS towards the value of 45001 shares.

SUIT-I IN THE HIGH COURT OF DELHI by GGL etc.

6. On 26.8.1998, GGL filed a Civil Suit No.1810/98 (hereinafter referred to as "SUIT-I") in the High Court of Delhi against MGG for the enforcement of Clause 9.1 of AGREEMENT-I and for other reliefs:

- (a) Cancel the letter of offer dated 6.8.1998 made by the defendant for 20% equity shares of Bombay Oxygen Corporation Ltd. and/or
- (b) Cancel the share purchase agreement dated 23.6.1997 whereby the defendant has sought to purchase 30%+1 equity shares of Bombay Oxygen Corporation Ltd. and/or
- (c) A decree of permanent injunction restraining the defendant from taking any steps in pursuance of the letter of offer dated 6.8.1998 for 20% equity shares of Bombay Oxygen Corporation Ltd. and the share purchase agreement dated 23.6.1997 for purchase of 30%+1 equity shares of Bombay Oxygen Corporation Ltd. in violation of the non-competition clause of the agreement dated 12.5.1995 and/or
- (d) A decree of permanent injunction restraining the defendant from acquiring any shares in Bombay Oxygen Corporation Ltd. on its own and without the participation of plaintiff.

On 14.9.1998, GGL filed two applications seeking certain interim orders. I.A. No.7248 of 1998 in the SUIT-I invoking Order 39 Rule 1&2 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) and OMP No. 205 of 1998 invoking Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as “A&C Act”). Interestingly the relief sought in both the applications is substantially the same i.e., interim order restraining the MGG from acquiring the shares of BOCL on its own. The learned trial Judge dismissed both the applications by two separate orders dated 22.9.1998. GGL carried the matter in intra court appeals.

7. By the appellate order dated 23.10.1998, a Division Bench of the Delhi High Court restrained¹ MGG from acquiring the shares of the BOCL.

8. Aggrieved by the same, MGG moved this Court in Civil Appeal Nos. 728 and 729 of 1999. This Court by an interim order dated 18.12.1998 ordered as follows:-

“Meanwhile, it will be open to the Petitioner – M/s.. Griesheim GMBH to make payment for purchasing 10,000 (*sic* 30,000) shares from the public and also to take delivery of these shares but they shall not take further steps for the purpose of getting their names registered as shareholders in respect of these shares.

¹ For the aforesaid reasons, we allow both the appeals and restrain Messer from taking any steps to acquire shares of BOCL in pursuance of Share Purchase Agreement dated 23rd June, 1997, **till the decision of the arbitration proceedings and the suit**. In the facts and circumstances of the case parties are left to bear their own costs. [FAO (OS) No.251 of 1998 and FAO (OS) No.250 of 1998]

Respondent No. 1 Goyal MG Gases Ltd is directed to nominate its Arbitrator within a period of two weeks from today and take appropriate steps to pay the full fees and it shall also file its claims statement within one week thereafter.”

9. By a final order dated 8.2.1999, the said appeals were disposed:-

“Earlier by our order dated 18.12.98, we had permitted the appellant to make payment to the shareholders. The payment having been made now custody of those shares is with the appellant. Bombay oxygen wants to borrow money from a bank and the appellant wants to be a guarantor on the strength of those shares and for that reason it wants an order of this court permitting it to do so.

We are told that two Arbitrators have already been appointed and the third Arbitrator will be appointed within a short time. After considering the rival submissions, we think it proper to pass the following order:

It will be open to Messer Griesheim Gmbh/the appellant to part with those shares and keep them in custody of the concerned bank for the purpose of entering into such a financial arrangement. It is, however, made clear that so far as the question of registration and ownership of shares is concerned that will have to be decided by the Arbitrators. It will be open to the parties to approach the Arbitrators for obtaining interim relief in that behalf.

Since the erstwhile owners of the shares have been paid their dues, they have ceased to be owners of those shares and the beneficial interest in them now vests in Messer Griesheim Gmbh or in Messer Griesheim Gmbh and Goyal HG gases Limited jointly if the Arbitrators so decide. We direct that all the disputes between the parties including the right to represent on the board of Bombay Oxygen will now have to be decided by the Arbitrators. If any necessity arises to approach this court, it will be open to the parties to do so. Till any order to the contrary is passed by the Arbitrators, our order dated 22.1.99 will continue to operate.

The appeals are disposed of accordingly.”

10. The petitioner (hereinafter referred to as ‘MHL’) in SLP(C) Nos.33429-33434 of 2010 on hand is a company incorporated in British Virgin Islands on 20.01.2000 by MGG and another company known as Morgan Trade and Commerce which is a 100% owned subsidiary of GGL. The authorised share capital of MHL is 10,000,000 DM (currency of Federal Republic of Germany) divided into

10,000,000 shares. It has two Directors, one representing MGG and the other Morgan Trade and Commerce. Interesting feature of MHL is that the shares of this company are bearer shares. It is an admitted case of all the parties that the law of British Virgin Islands permits it.

11. MGG and GGL entered into a settlement² of their dispute (evidenced by two documents dated 17.02.2000 and 13.3.2000) pursuant to which MGG filed two applications (I.A.s 17 & 18 of 2000) in Civil Appeals No.728-729 of 1999, which had already been disposed of on 8.2.1999, praying that:

- “(a) permit the said 75001 shares to be transferred and registered in the name of Messer Holdings Ltd. and permit complete rights attached to these shares to be enjoyed by Messer Holdings Ltd. pending registration of transfer of shares and permit nominees to be appointed as Directors on the Board of Bombay Oxygen Corporation Ltd. in accordance with law;
- (b) direct that period from 23rd October, 1998 to date of order passed in this application will be excluded in computing the period prescribed under Section 108(1A) of the Companies Act, 1956 for the validity of the transfer deeds.
- (c) Pass such further order/orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

² It is stated in the IAs No.17-18 of 2000 regarding the settlement as follows:-

Para 7. The original dispute between the appellant and the respondent No.1 was regarding the acquisition of shares in Bombay Oxygen Corporation Ltd. and the control thereof. The appellant and the respondents have since settled their dispute. Under the settlement, the parties have agreed that the 75001 shares (of Bombay Oxygen Corporation Ltd.) purchased at a price of Rs.22.5 crores shall now be registered in the name of a new company Messer Holdings Ltd., referred to herein below.

Para 8. Pursuant to the settlement the appellant and the respondent No.1 (through its subsidiary) have incorporated a joint venture company outside India being Messer Holdings Ltd. In fact, this compromise was contemplated by the parties during the hearing of the above civil appeals but could not be materialized before the disposal of the civil appeals. It is in the name of Messer Holdings Ltd. that the parties propose to register the 75001 shares.

However, when the said I.As were taken up by this Court on 20th April, 2000, this Court ordered:

“Learned counsel for the applicant and respondent Nos.1 and 2 state that dispute which was sought to be referred to the Arbitrator has been settled between them. In view of this they want to move appropriate application to withdraw from the arbitration proceedings. They seek time for the purpose. List the matter on 5.5.2000.”

The only inference we can draw is that the prayers in I.As 17 & 18 of 2000 were not pressed³.

12. Interestingly, after seeking this Court’s permission to withdraw from the arbitration proceedings initiated earlier, MGG and GGL filed a joint application before the arbitral tribunal on 9.8.2000 requesting the arbitral tribunal to pass a consent award. On such an application, the ICC Arbitral Tribunal passed a consent award on 21.9.2000, the operative portion of which reads as follows:

“NOW THEREFORE the tribunal hereby makes the following award by consent of the parties in terms of the Joint Application set out in Annexure “I” hereto, which shall form part of this Award:

³ The whole process is strange. GGL simultaneously pursued the remedies (Suit-I and an arbitration proceeding) for the resolution of the dispute with MGG when the parties to the suit settled their dispute by mutual agreement, there is no need to approach this Court by filing interlocutory applications in appeals which had already been disposed off. More particularly, when those appeals arose out of interlocutory proceedings (i) in a pending suit, and (ii) a proceeding under Section 9 of the A & C Act, 1996 which empowers the “civil court” to pass appropriate orders as an interim measure for protecting the interests of parties to a dispute which the parties had agreed to get resolved by an arbitration. If really the dispute between the parties is settled, nothing prevented the plaintiff (GGL) from either withdrawing the suit or praying for a decree in terms of the settlement between the parties, or in the alternative, praying the arbitrators to pass an award in terms of the settlement between the parties, because under the A&C Act, 1996 an award is as efficacious as a decree of a civil court. But the parties i.e, MGG and GGL desired “to withdraw from arbitration proceedings”.

1(a) The 75001 shares of Bombay Oxygen Corporation Limited (BOCL) purchased by the Respondent at a price of Rs.22.5 crores shall be held and registered in the name of Messer Holdings Ltd. (MHL); however, for technical and procedural reasons the shares will first be registered in the name of the respondent and immediately thereafter the said shares will be registered in the name of MHL as mentioned in para 2 of the Joint Application. Complete rights attached to the 75001 shares of BOCL qua the BOCL as well as transferos (transfer – *sic*) of the shares to the Respondent (even pending registration in the name of the Respondent and/or in the name of MHL) will be henceforth exercised by the Respondent through MHL who will act for and on behalf of the Respondent. MHL will be authorised by Messer Griesheim GmbH (MCG) to delegate all or any of its powers mentioned above, including the rights but not limited to attending general meetings of share holders of BOCL and to vote therein and deciding and appointing nominees to be appointed as directors on the board of BOCL.”

13. Pursuant to the consent award, sometime in the month of May 2000 MGG handed over the shares certificate of 75001 shares of BOCL to MHL alongwith duly filled transfer forms⁴ and a power of attorney.

We are given to understand that the SUIT-I is eventually withdrawn by GGL. It is necessary to mention here that by that time RUIAS had already filed (on 28.4.1999) a suit inter alia against both MGG and GGL in the High Court of Bombay.

SUIT- II IN THE HIGH COURT OF BOMBAY BY RUIAS ETC.

⁴ As required under the law as it was on that date

14. On 28.4.1999, RUIAS filed a Suit No.2499/1999 before Bombay High Court (hereinafter referred to as SUII-II) in substance seeking enforcement of clause 6.1 of the AGREEMENT-II.

“(a)1(i) that it be declared that the negative covenant contained in Clause 6.1 of the agreement dated 23rd June 1997 being Ex. ‘B’ hereto is binding on the Defendants;

(a)1(ii)(b) that the Defendants by themselves their agents and servants be restrained by a perpetual order and injunction of this Hon’ble Court from

- (i) committing breach of clause 6.1 of the Agreement dated 23rd June, 1997 being Ex. ‘B’ hereto;
- (ii) transferring or selling or alienating the legal and/or beneficial interest in the shares of Defendant No. 2 including those mentioned in Ex. ‘A’ hereto without first offering the same to the Plaintiffs in terms of Clause 6.1 of the Share Purchase Agreement dated 23rd June 1997, being Ex. ‘B’ hereto.
- (iii) obtaining any award, decree order from any forum or court in violation of clause 6.1 of the Share Purchase Agreement dated 23rd June 1997 being Ex. ‘B’ hereto.
- (iv) making any claim before the Arbitrators or any court which if granted will amount to a breach or violation of the provisions of Clause 6.1 of the said Share Purchase Agreement dated 23rd June 1997, being Ex. ‘B’ hereto;
- (v) procuring any breach of the provisions of clause 6.1 of the said Share Purchase Agreement dated 23rd June, 1997 being Ex. ‘B’ hereto;”

In the said Suit, RUIAS filed an application (Notice of Motion No.1804 of 1999) praying that MGG and GGL be restrained from committing breach of Clause 6.1 of AGREEMENT-II. By an interim order dated 6.5.1999, MGG and GGL were enjoined from committing breach of Clause 6.1 of AGREEMENT-II. MGG filed an affidavit in the said application undertaking that it would not breach Clause 6.1 of AGREEMENT-II. By an order dated 29.2.2000, Bombay High Court disposed of the said application recording the undertaking filed by

MGG with a further direction that MGG and GGL “not to implement or enforce any award made by the arbitrators without obtaining the leave of” Bombay High Court:-

“The parties have agreed that for disposing of this motion in the following terms, no reasons are necessary to be recorded.

1. Defendant No.1 stated that defendant No.1 is willing to and shall abide by clause 6.1 of the agreement dated 23rd June 1997. Statement accepted. In view of the statement made by defendant No.1, the following interim order is passed against defendant No.1.

Interim Order in terms of prayer (a)(i).⁵

2. Defendant No.1 and 3 shall not act pursuant to implement or enforce any award made by the arbitrators without first obtaining the leave of the court and the court will consider the agreement between the plaintiffs and defendant No.1.

3. The aforesaid order is made without prejudice to the rights, claims and contentions of the parties.

4. The Notice of Motion is accordingly disposed off. It is clarified that the parties are at liberty to adopt appropriate proceedings to enforce their respective rights.

5. Parties to not (note - *sic*) on a copy of this order duly authenticated by the associate of the Court.”

15. By a letter dated 31st May 2000, RUIAS intimated MGG and reiterated on 1st June 2000, that AGREEMENT-II was terminated. Because according to RUIAS establishment of MHL and the transfer of 75001 shares of BOCL to MHL tantamounted to breach of clause 6.1 of AGREEMENT-II.

16. After obtaining the consent award on 21.9.2000, MGG filed an application (Notice of Motion No.2933/2000) before the Bombay High

⁵ Prayer (a) - That pending the hearing and final disposal of the suit defendant Nos.1, 3 and 4 be restrained by an order of injunction of this Hon'ble Court from:

(i) committing breach of clause 6.1 of the agreement dated 23rd June, 1997 being Ex.”B” to the plaintiff.

Court in SUIT-II seeking leave of the Court to implement and enforce the consent award.

SUIT- III IN THE HIGH COURT OF BOMBAY

17. On 5.2.2001, RUIAS filed second Suit bearing No.509 of 2001 (hereinafter referred to as "SUIT- III") before the Bombay High Court praying:

- "a) for a declaration that the Share Purchase Agreement dated 23rd June 1997 is liable to be rescinded;
- b) for an order of this Hon'ble Court directing the said Share Purchase Agreement dated 23rd June 1997 be rescinded;
- c) that in the alternative to prayers (a) and (b) above, for a declaration that the Share Purchase Agreement dated 23rd June 1997 was voidable and has been validly avoided by the Plaintiffs;
- d) that in the alternative to prayers (a), (b) and (c) above, for a declaration that the Share Purchase Agreement dated 23rd June 1997 was terminable by the Plaintiffs and has been validly terminated by the Plaintiffs.
- e) that in the alternative to prayers (a), (b), (c) and (d) above, for a mandatory order and direction by this Hon'ble Court directing the 1st Defendant to offer the said 75,001 shares to the Plaintiffs in accordance with the procedure prescribed in Clause 6.1 of the Share Purchase Agreement dated 23rd June 1997.
- f) for a declaration that the acquisition of the said 30,000 shares pursuant to the Public offer is illegal, unlawful, null and void and of no legal effect whatsoever;
- g) for a declaration that the said Agreement dated 17th February 2000 and the said Consent Award dated 21st September 2000 are not binding on the Plaintiffs and/or Defendant No.2 and/or that the same are illegal, null and void.
- h) for a permanent injunction restraining the defendant No.1,3 and 4 from
 - (i) acting in pursuance of the Share Purchase Agreement dated 23rd June 1997;
 - (ii) exercising any rights in respect of the said 75,001 shares (in particular voting rights in connection therewith) and/or from receiving any dividends, rights in respect of the same;
 - (iii) exercising any rights including its beneficial ownership in, to, upon or in respect of the said 75,001 shares.

i) that the Defendants be restrained by permanent order and injunction of this Hon'ble Court from transferring and/or registering and/or taking any steps to transfer and/or register the said 75,001 shares in the name of any person or persons, firm or body corporate including 1st and/or 3rd and/or 4th Defendants without the consent of the Plaintiffs;

j) that the 1st defendant be ordered and decreed to deliver/return to the respective plaintiffs the said 45,001 shares together with all accretions thereto from 23rd June 1997 on such terms as this Hon'ble Court directs;

k) for the purpose aforesaid the 1st defendant be ordered and decreed to do and perform all acts, deeds, matters and things and to execute all documents, deeds and writings in furtherance thereof.

18. In the said suit, RUIAS filed an application (Notice of Motion No. 392 of 2001) in substance seeking an injunction against MGG and GGL along with MHL either from transferring the 75001 shares of BOCL in favour of MHL or from exercising rights as beneficial owners of the said shares. In the said suit, MHL filed an application (Notice of Motion No.534 of 2002) on 21.2.2002 seeking appointment of an administrator and receiver for the administration of the assets of BOCL on the ground that RUIAS are causing substantial damage to the assets of BOCL.

19. SUIT-II was amended from time to time on three occasions pursuant to the orders of the Bombay High Court dated 22.02.2000, 04.10.2002 and 08.06.2011.

The prayer in SUIT-II after such Amendments;

“Rider-I(a)

(a) (i) For a declaration that the acquisition of the said 30,000 shares pursuant to the public offer is illegal, null and void ab-initio and of no legal effect whatsoever.

(ii) For a permanent order and injunction restraining the defendants from exercising any rights in respect of the said 30,000 shares including and in particular voting rights.

(b) (i) for a declaration that the said agreement dated 23rd June, 1997 (Exhibit –B hereto) stands validly terminated and/or avoided.

Rider-N Prayer (b)(ii)(a)

“(b)(ii)(a) that it be declared that Defendant Nos. 3 to 5 have no right, title or interest of any nature whatsoever in respect of the 75001 shares of Defendant No. 2”

Rider – O prayer (b)(ii)(b):

“(b)(ii)(b), that in the alternative to prayer (b)(ii) this Hon’ble Court be pleased to order and direct the Defendant Nos. 1 and 3 to 5 to deliver to the respective Plaintiffs 45001 shares of Defendant No. 2 as also to return to the respective members of the public the 35000 shares;

(ii) that the 1st defendant Nos. 1, 3, 4 and 5 be ordered and decreed to deliver/return to the respective plaintiffs the said ~~45,001~~ 75,001 shares together with all accretions thereto from 23rd June, 1997 on such terms as this Hon’ble Court directs.

(iii) for the purpose aforesaid the 1st defendant Nos. 1, 3, 4 and 5 be ordered and decreed to do and perform all acts, deeds, matters and things and to execute all documents, deeds and writings in furtherance thereof.

Rider-P prayer (b)(iii)(a)

“(b)(iii)(a), that in the event of the Defendant Nos. 1 and 3 to 5 failing to deliver to the Plaintiffs the said 75001 shares of Defendant No. 2 the same be cancelled and Defendant No. 2 be ordered and directed to issue duplicate shares in the name of the Plaintiffs”

(iv) for a permanent order and injunction restraining the defendants from transferring and/or registering and/or taking any steps to transfer and/or register the said 75,001 shares in the name of any person or persons, firm or body corporate including the 1st and/or 3rd and/or 4th defendants without the consent of the plaintiffs.

(v) for a permanent order and injunction restraining defendant nos. 1, 3 and/or 4 and 5 from exercising any rights, including as beneficial owner, in, to, upon, or in respect of the said 75,001 shares.

a(1)(i) In the alternative and in the event of prayer (b) not being granted that it be declared that the negative covenant contained in Clause 6.1 of the agreement dated 23rd June 1977 being Ex. ‘B’ hereto is binding on the Defendants;

(a)1(ii)(b) that the Defendants by themselves their agents and servants be restrained by a perpetual order and injunction of this Hon'ble Court from.

(i) committing breach of clause 6.1 of the Agreement dated 23rd June, 1977 being Exh. 'B' hereto;

(ii) transferring or selling or alienating the legal and/or beneficial interest in the shares of Defendant No. 2 including those mentioned in Ex. 'A' hereto without first offering the same to the Plaintiffs in terms of Clause 6.1 of the Share Purchase Agreement dated 23rd June 1997, being Exh. 'B' hereto.

(iii) obtaining any award, decree order from any forum or court in violation of clause 6.1 of the Share Purchase Agreement dated 23rd June, 1997 being Ex. 'B' hereto.

(iv) making any claim before the Arbitrators or any court which if granted will amount to a breach or violation of the provisions of Clause 6.1. of the said Share Purchase Agreement dated 23rd June 1997, being Ex. 'B' hereto;

(v) procuring any breach of the provisions of clause 6.1 of the said share Purchase Agreement dated 23rd June, 1977 being Ex. 'B' hereto;"

Rider-C

(b1)(a) In the alternative and in the event of prayer (b) not being granted and In the event of it being held that the said agreement is void defendant Nos. 1, 4 and 5 be ordered and decreed to deliver/return to the respective Plaintiffs the said 45001 shares together with all accretions thereto from 23rd June 1977 on such terms of this Hon'ble Court may direct.

(b) For the purpose aforesaid defendant Nos. 1, 4 and 5 be ordered and decreed to do and perform all acts, deeds, matters and things and to execute all documents, deeds and writings in furtherance thereof."

20. It appears that on 5.12.2002, RUIAS and MGG entered into a settlement (evidenced by an agreement in writing) of the disputes between them by allegedly rescinding the AGREEMENT-II. According to MHL, the terms of settlement were not made known to either MHL or GGL for a long time. The information regarding the agreement dated 5.12.2002 initially came to the knowledge of MHL (allegedly) from the website of Security Exchange Commission of United States.

The relevant portion of the settlement reads as under:-

“6. In the circumstances, “MGG” and the “Ruias” have agreed to fully and finally settle all their disputes and differences by rescinding the “Ruia Agreement” on the terms and conditions set forth in this Agreement. However, “MGG” is not in a position to return to the “Ruias” the share certificates and other relevant documents for the 45,001 shares of “BOCL” (which is the subject matter of the “Ruia Agreement”) as they are not in “MGG’s possession. “MGG” has no knowledge of the current whereabouts of the said share certificates and other documents pertaining to the 45,001 shares and is not in a position to secure return/delivery of the same.

7. As “MGG” is no longer interested in acquiring any shares in “BOCL”, as a further part of the settlement, it is hereby agreed that “MGG” hereby sell/reverts/transfers/divests in favour of the “Ruias” all its right, title and interest in the remaining 30,000 shares in “BOCL” which “MGG” had acquired from the public, but which has also not been registered in the name of “MGG” in the records of “BOCL”. However, “MGG” has no knowledge of the current whereabouts of the share certificates and other documents / pertaining to the 30,000 shares and is not in a position to secure return/delivery of the same.

8. In consideration for the foregoing, “Ruias” agree to pay “MGG” a sum of US \$ 154,642 in respect of the 75,001 shares of “BOCL”, without any other or further obligation whatsoever on the part of “MGG” to the “Ruias” except as provided in this Agreement. The “Ruias” shall also not have any further obligation to “MGG” except as provided in this Agreement.

***** ***** ***** *****

10. The parties agree that “MGG” do hereby fully and irrevocably revert/sell, transfer and assign all its beneficial right, title and interest in or in relation to the said 75001 shares in favour of “Ruias” and shall, at the cost and expense of “Ruias”, execute and continue to execute such instruments, documents, authorities etc., as may be necessary or expedient in connection therewith and shall refrain from doing anything inconsistent with the foregoing or the rights reverted/assigned/transferred as above on and from the date of execution hereof. To this end and purpose, an irrevocable Power of Attorney duly executed as per draft enclosed herewith as Annexure I shall be put in escrow with Ms. Lira Goswami, Advocate. Ms. Lira Goswami shall hand over the Power of Attorney to the “Ruias” in accordance with written escrow instructions agreed to by “Ruias” and MGG”.

11(a) The parties confirm and acknowledge that as the foregoing 45,001 shares of “BOCL” have not been registered in the name of “MGG” in the records of “BOCL”, the said shares continue to be registered in the names of the “Ruias”. Consequently, the rescission of the “Ruia Agreement” does not involve any transfer from “MGG” to the “Ruias” in the books of “BOCL” as the “Ruias” continue to be the registered shareholders. Nevertheless, if any permission, approval or notification is required under Indian law for implementing this Agreement, including without limitation, the permission of the “RBI” for making the payment of US \$ 154,642, the “Ruias” shall be solely responsible and liable for obtaining all such necessary approvals or permissions or for making the necessary filings/notifications, at the sole cost and expense of the “Ruias”.

(b) Similarly, the parties confirm and acknowledge that the foregoing 30,000 shares of "BOCL" have also not been registered in the name of "MGG" and continue to be in the name of the Indian public shareholders. Consequently, "Ruias" will be solely responsible for doing all acts, deeds and things that may be necessary for effecting the transfer of these shares from the currently registered shareholders to the "Ruias" at the sole cost and expense of the "Ruias".

15. On execution of this Agreement, "Ruias" agree:

(a) not to prosecute the following proceedings pending in the Bombay High Court and in Supreme Court of India against "MGG" or its affiliates or its directors, officers or employees (excluding "MHL" and Goyal MG Gases Ltd. but including directors nominated by "MGG" on the Board of "MHL" and/or Goyal MG Gases Ltd.):

(i) Civil Suit No. 2499 of 1999 titled Shyam Madan Mohan Ruia & Ors. Vs. Messer Griesheim GmbH & Ors.

(ii) Civil Suit No. 509 of 2001 titled Shyam Madan Mohan Ruia & Ors. Vs. Messer Griesheim GmbH & Ors."

In spite of the said agreement, (the existence of which is not in dispute now). RUIAS not only continued with SUITS II and III, but also amended the Suit-II on 08.06.2011.

21. On 4.2.2008, BOCL executed a Development Agreement in favour of another company known as HDIL granting development rights in respect of three pieces of immovable properties admeasuring 15317.77 sq. mtrs., 3513.70 sq. mtrs. and 47762.20 sq. mtrs. of land situated at Kurla Taluk of Maharashtra allegedly owned by BOCL.

22. The next day BOCL informed the Bombay Stock Exchange about the above-mentioned development agreement. On 26.3.2008, HDIL mortgaged the above-mentioned property in favour of the Union Bank of India for securing a term loan of 230 crores.

23. On 8.4.2008 MHL filed a Notice of Motion No. 1418 of 2008 in Appeal No. 855 of 2003⁶ seeking an injunction against the parties to the above-mentioned Development Agreement along with various other reliefs (the details of which are not necessary for the present).

24. By an order dated 30th April, 2008, a Division Bench of the Bombay High Court while adjourning the hearing of the said Notice of Motion recorded the undertakings on behalf of the HDIL that it will not claim any equity whatsoever in the event of MHL's success in the above-mentioned Notice of Motion and demolish the construction, if any, made during the pendency of the proceeding by the HDIL. It was also stated by them that the property which was the subject matter of the Development Agreement had already been mortgaged in favour of the Union Bank of India, however, undertook not to create any 3rd party rights in the said property.

25. Aggrieved by the said order, MHL filed SLP No. 12734 of 2008 in this Court on 8.5.2008. By an Order dated 16.5.2008, this Court, while issuing notice on the said SLP granted an order of *status quo* regarding the nature, title, etc. of the property in dispute. By an Order dated 23.6.2008, the said SLP was disposed of directing that the status quo order granted earlier on 16.5.2008 shall continue during

⁶ Appeal No. 855 of 2003 on the file of the Bombay High Court was filed by MHL aggrieved by an order dismissing N.M. no .534 of 2002 in Suit-II filed by MHL seeking the appointment of an administrator to BOCL and Receiver for the assets of the said Company.

the pendency of the Notice of Motions and appeals before the High Court of Bombay.

SUIT-IV

26. On 23.4.2008, MHL filed Suit No.2410 of 2008 (hereinafter SUIT-IV) against BOCL, RUIAS, HDIL etc. seeking various reliefs including a declaration of ownership of 75001 shares of BOCL etc.

- “q) That this Hon’ble Court be pleased to declare that the Plaintiff is the beneficial owner of the suit shares being 75001 shares in the 1st Defendant company, more particularly described in the schedule annexed as Exhibit A hereto and is entitled to legal ownership thereof;
- r) That the Defendant Nos.1 to 10 be directed by a mandatory order and injunction of this Hon’ble Court to carry out all acts, deeds and things and extend all cooperation necessary to secure registration of the suit shares aggregating to 75001 shares in the 1st Defendant Company, more particularly described in Exhibit A hereto in the name of the Plaintiff;
- s) That this Hon’ble Court be pleased to declare that the purported reversion/transfer of the suit shares being 75001 shares in the 1st Defendant Company, more particularly described in the schedule annexed as Exhibit A hereto by Defendant No.10 to Defendant nos.2 to 9 under the purported Agreement dated 5th December, 2002 is illegal, null and void and of no legal effect;
- t) That this Hon’ble Court may be pleased to direct Defendant Nos.2 to 9 and 10 to deliver up the that the said Agreement dated 05.12.2002 at Ex: CC for cancellation and this Hon’ble Court be pleased to cancel the same;
- u) That this Hon’ble Court be pleased to issue an Order and injunction restraining Defendant Nos.2 to 10 from exercising any rights whatsoever in respect of the 75001 suit shares (more particularly described in the schedule annexed as Exhibit A hereto) as also from representing to the public at large that they are owners of the suit shares or have any beneficial interest therein;
- v) That this Hon’ble Court be pleased to declare that the purported Development Agreement dated 4.2.2008 (Exhibit MM hereto) and both the powers of attorney dated 05.02.2008 (Exhibit NN & OO thereto) and any other documents or acts in pursuance thereof are illegal, null and void and of no legal effect;

- w) That this Hon'ble Court be pleased to direct the Defendants Nos.1 to 10 and 12 to deliver up the Development Agreement dated 04.02.2008 (Exhibit MM hereto) along with the powers of attorney dated 05.02.2008 (Exhibit NN & OO hereto) are illegal, null and void and of no legal effect; for cancellation and this Hon'ble Court be pleased to cancel the same;
- x) That this Hon'ble Court be pleased to declare that the purported mortgage Deed dated 23.3.2008 at Exhibit XX hereto said to have been created by Defendant No.12 in favour of Defendant No.13 is illegal, null and void and of no legal effect;
- y) That this Hon'ble Court be pleased to direct Defendant Nos.1 to 10, 12 and 13 to deliver up the said deed of mortgage dated 23.3.2008 at Exhibit XX hereto or cancellation and this Hon'ble Court be pleased to cancel the same;
- z) That this Hon'ble Court be pleased to Order and decree Defendant nos.2 to 10 to jointly and severally pay to the Plaintiff, damages/compensation in the sum of Rs.500 crores as per the Particulars of Claim annexed herewith as Exhibit ZZ along with interest thereon at the rate of 18% per annum from the date of the suit till payment and/or realisation;”

We understand that none of the defendants have filed their written statements and no issues are framed so far.

27. It is in the background of the above-mentioned litigation these SLPs are to be examined.

SLP(C) Nos. 33429-33434 of 2010 is filed by MHL with prayers:

- “a) Grant special leave to appeal under Article 136 of the Constitution of India against the impugned Final Judgment and Order dated 1.9.2010 passed by the Hon'ble High Court of Judicature at Bombay in Appeal No. 855 of 2003 in Notice of Motion No. 534 of 2002 in Suit No. 509 of 2001 with Notice of Motion No. 1308 of 2005, Notice of Motion No. 3956 of 2005, Notice of Motion No. 4118 of 2007, Notice of Motion No. 1973 of 2008, Notice of Motion No. 1418 of 2008; and
- a) Pass such other order or orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.”

SLP(C) Nos.23088-23090 of 2012 is filed by GGL with prayers:

- “a) grant Special Leave to Appeal against the impugned order dated 01.09.2010 passed by the Hon’ble High Court of Bombay in Appeal Nos. 840 of 2003, 841 of 2003 and 857 of 2003, whereby the Hon’ble High Court was pleased to dismiss the appeals filed by the Petitioner Company and uphold the order dated 26.03.2003 passed by the Ld. Single Judge in Notice of Motion Nos. 3230 of 2000, 1231 of 2003 in Suit No. 2499 of 1999 and 392 of 2001 in Suit No. 509 of 2001; and
- b) pass such other and further orders as this Hon’ble Court may deem just and proper in the facts and circumstances of the present case.”

Both the sets of SLPs are filed aggrieved by the common order of a Division Bench of Bombay High Court dated 01.09.2010 in Civil Appeals No. 855/2003, 840/2003, 841/2003 and 857/2003.

28. Civil Appeal 855/2003 was filed by MHL and the other three appeals were filed by GGL. All the four appeals alongwith the various Notice of Motions were dismissed with costs⁷.

29. The subject matter of appeal No.855/203 is the order of the Single Judge in Notice of Motion 534/2002 in SUIT-III. In the said Appeal, five Notice of Motions were filed. They are 1308/2005, 3956/2005, 4118/2007, 1973/2008 and 1418/2008 seeking various reliefs.

30. The subject matter of appeals no.840, 841 and 857 of 2003 is order dated 26.03.2003 of the Single Judge in Notice of Motion

⁷ All the four Appeals being Appeal Nos.855/2003, 840/2003, 841/2003 and Appeal No.857/2003 are dismissed with costs.

Notice of Motion Nos. 1308/2005, 3956/2005, 4118/2007, 1973/2008, 1418/2008, 29/2006, 3112/2003, 3113/2002 and Notice of Motion No.3115/2003 in the respective Appeals are also disposed of with the above observations.

Nos.3230/2000 & 1231/2003 in SUIT-II and Notice of Motion No.392/2001 in Suit III. Both the abovementioned Suits were filed by RUIAS.

31. SUIT-I is admittedly withdrawn, therefore, any order passed during the pendency of the said suit by any court (including this Court) in any proceeding arising out of the said suit automatically lapses with the withdrawal of the suit. A logical consequence flowing from such lapsing of the orders is that any act or omission of any party to the said suit, either in pursuance of or in obedience to such interlocutory orders would be without any legal efficacy.

32. SUITS II and III filed by the RUIAS are pending as of today. The substance⁸ of SUIT-II is that RUIAS do not want MGG to transfer any of the shares of BOCL acquired by MGG pursuant to AGREEMENT-II in favour of either GGL or MHL or any other person without first offering them to RUIAS. Such a transfer in the opinion of RUIAS would be in violation of Clause 6.1 of the AGREEMENT-II.

Coming to SUIT-III, RUIAS want to wriggle out of the AGREEMENT-II and therefore, the various alternative prayers! in substance seeking to nullify the acquisition of 75001 shares by MGG

⁸ RUIAS amended the said suits from time to time we find it a little difficult to understand the legality and the purpose of the SUIT-II and its amendment subsequent to the filing of the SUIT-III We do not wish to examine those questions as such enquiry would be purposeless at this stage in view of the subsequent developments.

under AGREEMENT-II⁹. They also rely upon the events subsequent to 23.06.1997 - transactions between GGL and MGG etc. and seek various prayers which are already noticed¹⁰. Having filed SUIT-III, RUIAS once again amended the SUIT-II enlarging the scope of the Suit. Whether such amendments are legally tenable or not is a question to be examined from the point of view of the principles governing the law on the question of joinder of causes of action etc. Apart from that the continuance of the SUIT-II and SUIT-III simultaneously raises too many questions regarding their maintainability.

However, in our view, such questions need not be examined because RUIAS and MGG entered into an agreement dated 05.12.2002 the gist of which is noticed earlier at para 20 (supra). By the said agreement, RUIAS also agreed not to prosecute SUITS-II and III insofar as the suits pertain to “MGG or its affiliates....” etc.

“(a) not to prosecute the following proceedings pending in the Bombay High Court and in Supreme Court of India against “MGG” or its affiliates or its directors, officers or employees (excluding “MHL” and Goyal MG Gases Ltd. but including directors nominated by “MGG” on the Board of “MHL” and/or Goyal MG Gases Ltd.);

- (i) Civil Suit No.2499 of 1999 titled Shyam Madan Mohan Ruia & Ors. v. Messer Griesheim GmbH & Ors.
- (ii) Civil Suit No.509 of 2001 titled Shyam Madan Mohan Ruia & Ors. v. Messer Griesheim GmbH & Ors.”

⁹ Prayers (a) to (f) of Suit-III (See para 17 supra)

¹⁰ Prayer (g) to (k) of Suit III (See para 17 supra)

As a matter of fact, during the course of hearing of these SLPs also, both RUIAS and MGG supported the case of each other in opposing these SLPs filed by MHL and GGL.

33. As a consequence of the settlement dated 5.12.2002, RUIAS claim title in 75001 shares of BOCL through MGG. We have already noticed, the said 75001 shares were initially acquired by MGG from RUIAS and the public under AGREEMENT-II. But, so far the names of RUIAS are not entered in the registers of BOCL as the holders of the share because of the various interim orders mentioned earlier.

34. However, GGL and MHL dispute the title of MGG to the said 75001 shares. According to GGL and MHL, by the settlement dated 5.12.2002 MGG had itself lost its title over the said shares as it had already transferred its title in the said shares in favour of MHL pursuant to the consent award dated 21.9.2000.

35. The existence of title in MGG in the said 75001 shares cannot be disputed by either GGL or MHL, at least, till the date of the consent award, i.e. 21.9.2000 because GGL and MHL's claim for title over the said shares flows from MGG's prior title and the subsequent alleged transfer pursuant to the consent award. In such a case, because of MGG's purported transfer of the title in the 75001 shares to RUIAS

under the settlement dated 5.12.2002, RUIAS should normally be entitled to have their names entered into the records of BOCL as holders of the said shares by following appropriate procedure. If either GGL or MHL is objecting to the right of MGG to effect the said transfer in favour of RUIAS, they must establish a superior title (to MGG) in the said shares. It goes without saying that it can be done only in some legal action initiated by either GGL or MHL or both jointly. But they cannot seek a declaration of their title in the SUITS-II and III filed by the RUIAS. In a bid to establish their title MHL filed SUIT-IV¹¹. The right of MHL, if any, will have to be decided in the said Suit. Until the said suit is decided, we do not see any ground in law on which either GGL or MHL can object to the transfer of the shares in favour of RUIAS pursuant to the settlement dated 5.12.2002.

36. What exactly is the procedure which RUIAS are required to follow to effectuate the transfer of shares pursuant to the settlement dated 5.12.2002 is for RUIAS to explore. Because during the long pendency of the instant litigation there is a considerable change in the law regarding the procedure governing the transfer of shares in companies by virtue of amendments in the Companies Act, 1956 and the advent of the Depositories Act, 1996 etc. We make this observation because the 75001 shares acquired by MGG pursuant to AGREEMENT-II could

¹¹ See prayer (q) in SUIT IV (extracted at para 26 supra)

not be registered in the name of MGG¹² because of the various interim orders passed by various courts at different stages in SUITS-I, II and III. SUI-I was withdrawn by the plaintiff (GGL). In view of the subsequent settlement dated 5.12.2002 between MGG and RUIAS, no dispute survives between MGG and RUIAS. Therefore, SUITS-II and III are required to be dismissed as without any cause of action insofar as MGG and its officers etc., neither MHL nor GGL can compel RUIAS to prosecute those suits.

37. Then we are left with the questions of continuance of SUITS II and III against the other defendants (GG1 & MHL etc.) and the prayers regarding the physical custody of the shares¹³. As already noticed from the settlement dated 5.12.2002, MGG and RUIAS are uncertain about the whereabouts and custody of 75001 shares! of BOCL which were initially acquired by MGG¹⁴. RUIAS having entered into settlement dated 5.12.2002 knowing fully well that MGG was not going to give custody of the above-mentioned 75001 shares, purported to purchase the said shares and agreed not to prosecute the SUITS-II and III against MGG. In such a case, continuing the suits either

¹² See para 7 and 11(a) of the settlement dated 5.12.2002 extracted at para 20 supra

¹³ There is no whisper in the complaints of either Suit II or III, of MGG having had obtained the custody of the share certificates either from RUIAS (of 45001 shares) or from the public (of 30000 shares).

¹⁴ See paras 6 and 7 of the settlement dated 5.12.2002 extracted at para 20 supra.

against GGL or MHL or its agents etc. only for the custody of the shares, in our opinion, is without any cause of action on the part of the RUIAS. The prayers in SUIT-II and III in this regard are:

(ii) that the 1st defendant Nos. 1, 3, 4 and 5 be ordered and decreed to deliver/return to the respective plaintiffs the said ~~45,001~~ 75,001 shares together with all accretions thereto from 23rd June, 1997 on such terms as this Hon'ble Court directs.

- SUIT- II

j) that the 1st defendant be ordered and decreed to deliver/return to the respective plaintiffs the said 45,001 shares together with all accretions thereto from 23rd June 1997 on such terms as this Hon'ble Court directs.

- SUIT-III

i.e. for a declaration in favour of RUIAS that they are entitled to the recovery of 75001 shares jointly against MGG, GGL and MHL etc. RUIAS having agreed not to prosecute the suits against MGG cannot continue the suits against other defendants in the suits whose claim (if any) rests on the right and title of MGG.

The continuance of the SUITS-II and III, in our opinion, is, therefore, wholly without any cause of action and an abuse of the judicial process.¹⁵ They are, therefore, required to be dismissed and

¹⁵ See K.K. Modi v. K.N. Modi & Others, (1998) 3 SCC 573

Para 42- "Under Order 6 Rule 16, the court may, at any stage of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on the *Code of Civil Procedure*, (15th Edn., Vol. II, p. 1179, note 7) has stated that power under clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of the court on the basis of what is stated in the plaint."

Para 43- "The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (p. 344) explains the phrase "abuse of the process of the court" thus:

accordingly dismissed. Consequently, all the interim orders passed by the various Courts (including this Court) earlier in proceedings arising out of the said two suits lapse. We also declare that all interim orders passed by any Court in any proceeding arising out of SUIT-I also lapsed in view of the withdrawal of the suit by GGL.

Therefore, these SLPs filed by MHL and GGL purportedly aggrieved by the impugned orders passed in the various applications filed in the two suits filed by RUIAS become infructuous. Therefore, the said SLPs arising therefrom are dismissed.

38. The consequent factual position would be:

- (i) the legal rights acquired (whatever they are) by MGG in 45001 shares of BOCL purchased from RUIAS pursuant to AGREEMENT-II should revert back to RUIAS unless it is found that the purported transfer of

“This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.”

Para 44- “One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reargitation may or may not be barred as res judicata. But if the same issue is sought to be reargitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.”

45001 shares by MGG pursuant to the consent award dated 21.09.2000 in favour of MHL created any right or interest in favour of MHL. Such a claim of MHL can only be examined in SUIT-IV filed by MHL.

- (ii)** Another 30000 shares were acquired by MGG from the public pursuant to AGREEMENT-II MGG purported to transfer them by virtue of the settlement dated 05.12.2002 in favour of RUIAS. If either GGL or MHL has any claim over those shares, such a claim must be made and established by them in accordance with law, but not in the suits filed by RUIAS. In order to establish such a claim, MHL already filed SUIT-IV to which both GGL and MGG are parties apart from Goyals and others.

39. However, in the absence of any legally established title as on today to the abovementioned shares in any party other than MGG¹⁶, whether RUIAS would be entitled pursuant to the settlement dated 05.12.2002 to have their names entered into the registers of the BOCL as holders

¹⁶ Even MGG's claim was that they had only a beneficial interest in the said shares, as the shares were never registered in the name of MGG.

of the said shares is a matter for RUIAS to explore¹⁷. However, such an entitlement if any should be subject to the result of the SUIT-IV.

40. We make it clear that we are not deciding by this order, the existence or otherwise of any right or its enforceability in the 75001 shares of BOCL in favour of either MHL or GGL. It is open to them to establish their right in SUIT-IV. The defendants in the SUIT-IV are at liberty to raise every defence available in law and fact to them.

41. A great deal of effort was made both by RUIAS and MGG to convince the court that in view of the protracted litigation between the parties this court should examine all the questions of rights, title and interest in these shares between the various parties as if this were the court of first instance trying these various suits.

42. The examination of various questions raised by the petitioners in these SLPs, in our opinion, is wholly uncalled for in the abovementioned factual background.

43. The net effect of all the litigation is this. For the last 18 years, the litigation is going on. Considerable judicial time of this country is spent on this litigation. The conduct of none of the parties to this litigation is wholesome. The instant SLPs arise out of various

¹⁷ There is no prayer in the Suits II and III seeking the declaration of title of RUIAS based on the settlement dated 05.12.2002 - for that matter, there is no whisper about the said settlement!

interlocutory proceedings. Arguments were advanced on either side for a period of about 18 working days as if this Court were a Court of Original Jurisdiction trying the various above-mentioned suits. The fact remains that in none of the suits even issues have been framed so far. The learned counsel appearing for the parties very vehemently urged that there should be a finality to the litigation and therefore this Court should examine every question of fact and law thrown up by the enormous litigation. We believe that it is only the parties who are to be blamed for the state of affairs. This case, in our view, is a classic example of the abuse of the judicial process by unscrupulous litigants with money power, all in the name of legal rights by resorting to half-truths, misleading representations and suppression of facts. Each and every party is guilty of one or the other of the above-mentioned misconducts. It can be demonstrated (by a more elaborate explanation but we believe the facts narrated so far would be sufficient to indicate) but we do not wish to waste any more time in these matters.

44. This case should also serve as proof of the abuse of the discretionary Jurisdiction of this Court under Article 136 by the rich and powerful in the name of a 'fight for justice' at each and every interlocutory step of a suit. Enormous amount of judicial time of this

Court and two High Courts was spent on this litigation. Most of it is avoidable and could have been well spent on more deserving cases.

This Court in **Ramrameshwari Devi & Others v. Nirmala Devi & Others**, (2011) 8 SCC 249 observed at para 54;

“54. While imposing costs we have to take into consideration pragmatic realities and be realistic as to what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter-affidavit, miscellaneous charges towards typing, photocopying, court fee, etc.”

45. We therefore, deem it appropriate to impose exemplary costs quantified at Rs.25,00,000.00 (Rupees Twenty Five Lakhs only) to be paid by each of the three parties i.e. GGL, MGG and RUIAS. The said amount is to be paid to National Legal Services Authority as compensation for the loss of judicial time of this country and the same may be utilized by the National Legal Services Authority to fund poor litigants to pursue their claims before this Court in deserving cases.

.....**J.**
(J. Chelameswar)

.....**J.**
(Abhay Manohar Sapre)

New Delhi;
April 19, 2016