

A Company can always restart the business with the assets it possessed and prosecute the objects for which it was incorporated

[Case Brief] Mohan Lal & Anr. V/s. Grain Chamber Ltd., Muzaffarnagar & Ors.

<u>Case name:</u>	Mohan Lal & Anr. V/s. Grain Chamber Ltd., Muzaffarnagar & Ors.
<u>Case number:</u>	Civil Appeals Nos. 114 and 115 of 1965
<u>Court:</u>	Supreme Court of India
<u>Bench:</u>	Hon'ble Justice J. C. Shah, Hon'ble Justice S. M. Sikri
<u>Decided on:</u>	November 15, 1967
<u>Relevant Act/Sections:</u>	Indian Contract Act, 1872 - Section 56; Indian Companies Act, 1913, Section- 18, 86(F), 86(1), 91(B)

➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. The Grain Chamber Ltd., Muzaffarnagar, was a Company registered under the Indian Companies Act, 1913 formed for the purpose of carrying on business of an exchange in grains, cotton, sugar, gur, pulses and other commodities.
2. In the years **1949** and **1950** the Company was carrying on business principally in "futures" in gur. The transactions for sale and purchase of gur were in the units called 'Bijaks' of 100 maunds. On **March 14, 1949**, the Board of Directors of the Company passed a resolution, sanctioning transaction of business in "futures" in gur for Phagun Sudi 15, Samvat 2006 (March 4, 1950) settlement.

3. On **August 9, 1949**, Seth Mohan Lal and Company purchased one share of the Company and qualified for membership. They commenced dealing with the Company in "futures" in gur. By **December 1949** Seth Mohan Lal and Company (appellants) had entered into transactions with the Company for 1136 Bijaks of sale of gur for the Paush Sudi 15, 2006 delivery. The appellants claimed that they had entered into sale transactions in 2137 Bijaks in the benami names of five other members.
4. In **January 1950** there were large fluctuations in the prices of gur, and in order to stabilise the prices, the directors of the Company passed a resolution, declaring that the Company will not accept any settlement of transaction in excess of Rs. 17/8/- per maund. The sellers were required to deposit margin money between the prices prevailing on that date and the maximum rate fixed by the Company.
5. The appellants deposited in respect of their transactions Rs. 5,26,996/14/- as margin money. They claimed also to have deposited amounts totaling Rs. 7 lakhs odd in respect of their benami transactions.
6. Government of India issued a notification on **February 15, 1950**, amending the Sugar (Futures & Options) Prohibition order, 1949, and made it applicable to "future" and options in gur. By that Order entry into transactions in "futures" after the appointed day was prohibited. On the same day the Board of Directors of the Company resolved that the rates of gur which prevailed at the close of the market on **February 14, 1950**, viz., Rs. 17/6/- per maund be fixed for settlement of the contracts of Phagun delivery.

Procedural history-

1. On **February 22, 1950**, the appellants and their partner Mohan Lal filed a petition in the High Court of Judicature at Allahabad for an order winding up the Company. On **February 23, 1951**, another petition for the same.
2. It was held that the Company was not unable to pay its debts and that it was not just and equitable to wind up the Company on the grounds set out in the petition and therefore the petition was dismissed. This was confirmed by the High Court of Allahabad in its appellate jurisdiction.

➤ ISSUE BEFORE THE COURT:

1. Whether the decision by the High Court of Allahabad was correct in law?

➤ RATIO OF THE COURT

1. The Court held that there is no evidence that the directors were aware of the disqualification which would be incurred by entering into contracts of sale or purchase or supply of goods with the Company without the express sanction of the directors. By the subsequent discovery that they had incurred disqualification, because they had entered into contracts with the Company for sale or purchase or supply of goods, the resolution passed by them is not rendered invalid. It is unnecessary to decide whether Section 86 of the Indian Companies Act 1913 also grants protection to acts done by directors who are subsequently discovered to be disqualified.
2. The court further held that there was no repudiation of the contracts by the Company. The contracts, if they were to be settled by payment of differences, could be settled on the due date at the rates fixed: it was however open to the appellants to deliver goods under the contracts if they desired to do so.
3. The outstanding contracts were not at all affected by the Government Order. Fresh contracts were prohibited, but settlement of the outstanding contracts by payment of differences was not prohibited, nor was delivery of gur in pursuance of the contract and acceptance thereof at the due date by the Company prohibited. The difficulty arising by the Government orders in transporting the goods needed to meet the contract was not an impossibility contemplated by s. 56 of the contract Act leading to frustration of the contracts.
4. The Company was carrying on extensive business in "futures" in gur, but the Company was formed not with the object of carrying on business in "futures" in gur alone, but in several other commodities as well. The Company had immovable property and liquid assets of the total value of Rs. 2,54,000. There is no evidence that the Company was unable to pay its debts.
5. The object for which the Company was incorporated has not substantially failed, and it cannot be said that the Company could not carry on its business except at a loss, nor that its assets were insufficient to meet its liabilities. There were no creditors to whom debts were payable by the Company.
6. The business organisation of the Company cannot be said to have been destroyed, merely because the brokers who were acting as mediators in carrying out the business between the members had been discharged and their accounts settled. The services of the brokers could again be secured. The Company could always restart the business with the assets it possessed and prosecute the objects for which it was incorporated. The court cannot on that ground direct that the Company be wound up and therefore the Court agreed with the High Court to not wind up the Company.

7. The court observed that in the present case the object for which the Company was incorporated has not substantially failed, and it cannot be said that the Company could not carry on its 'business except at a loss, nor that its assets were insufficient to meet its liabilities.
8. It is true that because of this long drawn out litigation, the Company's business has come to a stand-still. But the court observed that they cannot on that ground direct that the Company be wound up. Primarily, the circumstances existing as at the date of the petition must be taken into consideration for determining whether a case is made out for holding that it is just and equitable that the Company should be wound up, and we agree with the High Court that no such case is made out.

➤ **DECISION HELD BY COURT:**

1. Therefore, the said appeal was dismissed by the court.