

(1999) 10 CAL CK 0026

In the Calcutta High Court

Case No : Company Petition No's. 72 and 135 of 1990

Bajarang Prasad Jalan and Another

APPELLANT

Vs

Raigarh Jute and Textile Mills Ltd. and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Companies Act, 1956 — Section 397, 398

Citation : (2001) 104 CompCas 555

Hon'ble Judges : S.B. Sinha, Acting C.J.; M.H.S. Ansari, J

Bench : Division Bench

Advocate : Sudipto Sarkar, for the Appellant;

Judgement

M.H.S. Ansari, J.—The instant petition is filed under Sections 397 and 398 of the Companies Act, 1956.

2. The dispute leading to the filing of the instant petition is essentially amongst the two brothers of a family. More precisely between the groups of two brothers. As a matter of fact several petitions of the same nature have been preferred and have since been adjudicated by this court and it is stated that appeals in relation thereto are now pending adjudication before the apex court. Reference shall be made to those proceedings and the orders passed therein as they have a material bearing on some of the vital issues arising for consideration in the instant applications. When the present application was taken up by a learned single judge for hearing, it was noticed that a Division Bench of this High Court was seized of those other applications in its appellate jurisdiction and, therefore, the instant application was also directed to be placed before that Bench for being heard and disposed of analogously. However, it appears that while the other appeals were disposed of, the instant application was neither mentioned nor taken up for hearing. That is how the instant application has come up before this Division Bench.

3. The brief facts leading to the filing of the instant application as also the

disputes between the groups of two brothers, need to be stated.

4. One Mohanlal Jalan (MLJ), the father of Tolaram Jalan (TRJ), M. P. Jalan (respondent No. 9) (MPJ) and B. P. Jalan (petitioner No. 1) (BPJ), Smt. Sabitri Devi Khaitan, Smt. Sita Devi Rangta and Smt. Damayanti Pitti, was a senior partner of a very famous partnership firm carrying on business in the name and style of M/s. Soorajmull NagarmuU. In 1963 disputes and differences arose between the partners of M/s. Soorajmull Nagarmull and one of the partners instituted a suit in this Hon"ble court to resolve such disputes. By an order passed .by this Calcutta High Court each of the partners of Soorajmull Nagarmull were allowed to run, manage and control the companies belonging" to the firm which were in their respective control and management. Accordingly MLJ came to be in possession, management and control of several companies which were being looked after by him including, inter alia, Raigarh Jute Mills Ltd. (now known as Raigarh Jute and Textile Mills Limited), Raigarh Trading Co. Limited and others.

5. Subsequent thereto, it appears MLJ along with his sons TRJ, MPJ and BPJ floated various other companies and also acquired management and control of other companies. BPJ and MPJ with their families resided with MLJ at premises No. 12, Dover Park, Calcutta-19, having a common mess and being joined in worship. In 1982, MLJ died intestate leaving behind him three sons and three daughters referred to above.

6. Subsequent to the death of MLJ, his three sons, TRJ, MPJ and BPJ came to be in control of 32 companies whose names have been set out in paragraph 7 of the judgment of the Division Bench judgment reported in Bajrang Prasad Jalan and Others Vs. Mahabir Prasad Jalan and Others, , Akshay Nidhi Ltd.

7. In 1986, disputes and differences arose between TRJ on the one hand and MPJ and BPJ on the other and subsequent to negotiations and discussions between the brothers a partition was said to have been effected of the family business carried on in the name of the companies referred to above between TRJ on the one hand and BPJ and MPJ on the other. TRJ was allotted 11 companies out of the aforesaid 32 companies. All the other companies that were being managed by the three brothers came to be allotted jointly to MPJ and BPJ and became the family and domestic concerns of MPJ and BPJ and their respective family members. They continued to be in the control and management of MPJ and BPJ in equal shares and in accordance with the partnership principles and in reality became partnerships in equal shares between MPJ and BPJ and their respective family members in the guise of limited liability companies. The said partition of the family business and separation of TRJ was effected on the basis that TRJ was entitled to one-third value of the said business and MPJ and BRJ jointly were entitled to two-thirds of the family business. During the course of settlement between- the three brothers, their three sisters relinquished their right, title and interest in all the said business and various properties in favour of the" brothers and executed all necessary documents in this regard to give effect to and implement such settlement. The shareholding pattern in the companies allotted

to TRJ and those allotted to MPJ and BPJ were jointly rearranged by effecting transfer inter se. All these documents are on record and have been referred to in the aforesaid Division Bench judgment in Bajrang Prasad Jalan and Others Vs. Mahabir Prasad Jalan and Others, , Akshay Nidhi Ltd. (see paras. 6-12).

8. Subsequent thereto MPJ and BPJ together acquired and floated several other companies as noted in paragraph 10 of Bajrang Prasad Jalan and Others Vs. Mahabir Prasad Jalan and Others, , Akshay Nidhi Ltd. judgment.

9. The aforesaid facts are undisputed and have also been noted in the other two judgments of the Division Bench of this court relating to Sandeep Investments Co. Ltd., In re (C. P. No. 439 of 1989) and Bajrang Prasad Jalan v. Debonair Agencies Ltd. [1999] 2 Comp LJ 72 ; [2000] 102 Comp Gas 81 (Cal).

10. The present petition is filed under Sections 397, 398, 402, 403 and 406 of the Companies Act, 1956, and relates to Raigarh Jute and Textile Limited (hereinafter referred to as "the company") and its affairs. The company is under the joint ownership, management and control of BPJ and MPJ. BPJ and his group had filed other proceedings with regard to the other family companies namely (i) Sandeep Investments Limited (respondent No. 7), (ii) Akshay Nidhi (respondent No. 8) and (iii) Debonair Agencies Limited, appeals in respect thereof are presently pending before the Hon''ble Supreme Court as special leave has been granted to appeal from the orders passed by the Division Bench of this Hon''ble court. Appeals had been preferred both by BPJ group as well as MPJ group against the judgment of Division Bench in Bajrang Prasad Jalan and Others Vs. Mahabir Prasad Jalan and Others, , of this High Court.

11. The board of directors of the aforesaid companies has either equal representation from amongst the family members of BPJ and MPJ or by nominees of both BPJ and MPJ along with or without representation through members of the Jalan family.

12. According to the petitioner (BPJ) in 1989 disputes and differences arose between him and MPJ and their respective family members with regard to management, control and conduct of the business of the various companies and BPJ demanded partition of the joint properties.

13. A suit No. 849 of 1989 was instituted by BPJ and his son Sandeep Kumar Jalan (SKJ) on the original side of this court. Allegations were made that MPJ and his son Hemant Kumar Jalan, respondent No. 10 herein on a public holiday with the assistance of employees of the family companies broke open locks and surreptitiously removed books, records and documents. In the suit interim orders were obtained for making inventory of the books, records and documents. During the course of such inventory it is alleged that the petitioner discovered the fabrication of books, records and documents of the companies by MPJ and HKJ. Thereupon proceedings were filed under Sections 397 and 398 of the Companies Act, 1956 by BPJ and his group. The three other applications which were filed by the petitioner's group relate to Sandeep Investments Ltd., In re (C. P. No. 439 of

1989); Akshay Nidhi Ltd. ; Mahabir Prasad Jalan and Others Vs. Bajrang Prasad Jalan and Others, and appeals in relation thereto are all pending before the Hon"ble Supreme Court.

14. After the filing of the said proceedings under the Companies Act, the said suit being Suit No. 849 of 1989 was dismissed as not maintainable by a judgment and order dated June 17, 1991. An appeal was preferred by BPJ against the said judgment and by an order dated August 20, 1991, passed by the appeal court, it was clarified that the pendency of the appeal shall not be treated as a bar for prosecuting the applications before the learned company judge.

15. The instant application as already noticed, is filed alleging oppression and mismanagement in respect of Raigarh Jute and Textile Mills Ltd. and others (referred to as the said company) being the target company.

16. Respondent No. 2, Raigarh Trading Company Ltd. (for short "RTC") has 99.16 per cent, shareholding of the total paid-up capital in the company and can, therefore, be appropriately referred to as the holding" company.

17. The company has three subsidiaries viz., Swagat Properties Ltd. (respondent No. 3), Amritsar Estate Ltd. (respondent No. 4) and Varanasi Hotels and Estates Ltd. (respondent No. 5.)

18. It is stated that the company at present does not carry on any business, which has been stopped since 1989. At present it only holds the property being No. 36, Chowringhee Road, Calcutta. The jute mills and the woollen units, it is alleged, have been clandestinely sold by the MPJ group.

19. According to the petitioner MPJ and his group have, inter alia, brought about a material change in the ownership of the holding company of RTC. Such alteration, it is alleged, in the shareholding of RTC amounts to a change in control of the company (within the meaning of Section 397 of the Act).

20. Some of the transfer of shares of RTC were the subject-matter of the earlier applications and in those proceedings such transfers had been set aside. They are :

(a) Transfer of 1250 shares by Marut (respondent No. 6) in RTC in favour of Aditya Kanoria. The shares held by Marut constituted about 10 per cent, of the paid-up capital of RTC. The said transfer was declared to be mala fide in Company Petition No. 439 of 1989. The Division Bench in appeal against the said order of the learned single judge held that the board meeting of Marut dated October 16, 1989, was non est. The share transfers effected pursuant to that meeting were held to be non est. For the said reasons and conclusions arrived at by the Division Bench, it must be held that the transfer of 1250 shares by Marut in RTC is non est and is accordingly set aside.

(b) Transfer of 1150 shares held by Sandeep in RTC to SGS (respondent No. 12). The said share transfer has been set aside by the same judgment of the Division

Bench in Appeal No. 485 of 1994, and accordingly, it has to be held that the share transfer of 1150 shares held by Sandeep in RTC to SGS (respondent No. 12) is non est and is accordingly set aside.

(c) Transfer of "1250 shares held by Akshay in RTC in favour of SGS (respondent No. 12).

21. The Division Bench in Bajrang Prasad Jalan and Others Vs. Mahabir Prasad Jalan and Others, , held :

"So far as the transfer of 1250 equity shares held by Akshay Nidhi Ltd. in Raigarh Trading Ltd. is concerned this court is of the opinion that the same does not appear to have been made in the normal course of business."

22. For the said reasons and conclusion arrived at by the Division Bench, the transfer of the said shares is non est and is hereby set aside.

23. We have now to consider the validity of the transfer of 100 per cent, shares of the subsidiary of the company viz., Varanasi Hotel and Estates Ltd. (respondent No. 5). The petitioners have stated that they came to know of such transfer from the affidavit filed by the company in the interlocutory proceedings in Suit No. 849 of 1989. The said subsidiary, it is stated owns a flat in the first floor of 56D, Block "D", New Alipore, Calcutta-53. The transfer was made to take over control of such flat.

24. On account of lack of knowledge of the petitioner, it is stated, that the alleged divestments of shareholding is for the purpose of taking control of the said valuable asset of the company and the same cannot be permitted without the valid authority and resolutions of the company in that behalf.

25. In the affidavit-in-opposition filed by MPJ (page 123, Vol.-R-1-i of the proper book), it has been denied that there have been any such divestments.

26. In that view of the matter, no order is required to be passed except that, if any, such transfer of shares of Varanasi Hotel and Estates Ltd. (respondent No. 5) have been made to any persons or body whomsoever, the same shall be non est and null and void.

27. The next allegation of oppression and mismanagement is with respect to wrongful sale of jute mill of the company by MPJ group to Mohan Jute (respondent No. 14).

28. It is alleged that pursuant to a purported agreement which is an annexure to the instant application MPJ and HKJ have sought to handover possession of the jute unit belonging to the company to respondent No. 14.

29. According to the petitioner in the board meeting held on June 28, 1989, BPJ was present but no resolution had been passed for the holding of extraordinary general meeting (EGM) of the company nor was any decision taken to dispose of the assets of the company.

30. According to the respondents, the board meeting was held on June 28, 1989, whereby the board of directors decided that efforts should be made to sell or lease or otherwise dispose of the assets of the three manufacturing units of the company (one jute unit and two woollen units) so as to enable the company to settle its dues owing to various creditors including its bankers.

31. Allegedly, a decision was taken to convene an extraordinary general meeting of the shareholders of the company and according to the respondent the extraordinary general meeting was held on August 16, 1989, and resolution was filed with the Registrar of Companies, West Bengal in Form No. 23 on November 27, 1989.

32. The further ground on which the said sale has been challenged by the petitioner is that the same was in violation of the order of injunction passed by this court in (Punjab National Bank v. Raigarh Jute and Textile Mills Ltd. Suit No. 240 of 1987, dated December 21, 1987). There was an order of injunction restraining the company from dealing with, disposing of or otherwise alienating any part of the assets mentioned in the schedule. This order is dated December 21, 1987. It is further, alleged that the consideration of Rs. 85 lakhs is gross undervaluation.

33. Respondent No. 14 states that it paid Rs. 25 lakhs by way of part payment on the date of agreement i.e., September 11, 1989, out of a total consideration of Rs. 85 lakhs. The balance could not be paid on account of the litigation and the same has been kept separately and earmarked for the present transaction. Respondent No. 14 has further, stated that in the absence of final conveyance in terms of the agreement for sale it has not been able to utilise the property in order to run the business and as a consequence whereof respondent No. 14 has suffered huge loss and damage, the company is lying closed for the last five months for shortage of funds. Respondent No. 14 has submitted that in the event the injunction is vacated and it is urged that the same should be vacated, respondent No. 14 is to pay the balance sum and have the conveyance executed in its favour.

34. In our view it may not be necessary to consider the various allegations and counter allegations on this aspect of the matter. Suffice it to state that the purported sale was in violation of the order passed by this court in Suit No. 240 of 1987, and in our view, therefore, the same could not have been made except with the leave of court, even if the sale, as it is contended by respondent No. 1 was to liquidate the outstanding with the plaintiff-bank and that negotiations in that behalf were held between the company and the plaintiff-bank to work out the modalities.

35. In the circumstances, we hold that if leave is applied for by the company-defendants in Suit No. 240 of 1987, the sale will abide by the result of the order that may be passed by the learned trial judge.

36. The next allegation with regard to oppression and/or mismanagement is with

respect to sub-tenancy right of the company under Bhanu Traders Pvt. Ltd. (Bhanu) which in turn was a tenant of MPJ. This issue was also raised but not considered by the Division Bench in Bajrang Prasad Jalan and Others Vs. Mahabir Prasad Jalan and Others, , Akshay (Nidhi Ltd.) matter on the ground that the same was the subject matter of this company petition. According to the petitioner the sub-tenancy rights were surrendered without the consent or approval of the board of the company and to facilitate MPJ to obtain vacant possession of 12, Dover Park for construction of a building. It is alleged that on account of breach of an agreement between MPJ and Dover Park Building Pvt. Ltd. (Dover Park) a suit for specific performance filed by Dover Park was pending on the file of this court, wherein an interim order was passed on March 16, 1990, restraining the defendants therein from dealing with, disposing of, transferring or encumbering the said property.

37. In view of the fact that a civil suit is filed with respect to the said rights of the parties therein and certain orders have been passed by the said court, in our opinion, it is not proper to consider whether there has been any antedating of transactions with a view to by-pass the interim order dated March 16, 1990. The dispute is pending before the court and, therefore, we refrain from giving any positive findings on this aspect of the matter as that would prejudicially affect the parties in the pending suit.

38. Keeping in view that the petitioner has not assailed the alleged transaction between MPJ and Dover Park, it is not necessary for us to consider whether the surrender of sub-tenancy would constitute an act of either mismanagement or oppression.

39. Mr. Sen, learned senior counsel for the contesting respondent submitted that in proceedings under Sections 397 and 398 of the Companies Act, the target company being respondent No. 1 herein the affairs of Raigarh Trading Company Ltd. which is the holding company and which had been registered, admittedly, in the State of M. P. cannot be gone into. A question of jurisdiction of this court has thus been raised on the ground that the High Court at M. P. alone would have the jurisdiction to consider such matters with reference to the Raigarh Trading Co. Ltd. whereat its registered office is situate and which is outside the jurisdiction of this High Court.

40. It was further submitted that to look into the affairs of or for passing any order in connection with or in relation to Raigarh Trading Co. Ltd., the petitioner must establish his locus standi. u/s 399 of the Act, an application under Sections 397 and 398 of the Act can be made by not less than one-tenth of the total number of members of a company or not less than 100 members whichever is less or by any member or members holding not less than one-tenth of the issued share capital of the company.

41. Mr. Sen submitted that in the instant case Raigarh Trading Co. Ltd. has an issued share capital of Rs. 12,50,000. The petitioners jointly hold 1125 shares of

Rs. 100 each aggregating to Rs, 1,12,500 which is less than one-tenth of the issued share capital of Raigarh Trading Co. Ltd.

42. Raigarh Trading has 43 shareholders, in other words, to qualify for the purpose of making an application under Sections 397 and 398 of the Act, five shareholders were required to be the petitioners. In the instant case, there are only two petitioners.

43. Mr. Sen submitted that the English Companies Act does not have a provision similar to Section 399 of the Act nor is there any provision prescribing the jurisdiction of the court wherein petitions under Sections 397 and 398 of the Companies Act have to be filed based upon territorial jurisdiction of the court where the registered office of the company is situated.

44. For that reason, it was also submitted that *Brenfield Squash Racquets Club Ltd., In re* [1996] 2 BCLC 184, wherein the English court went into the affairs of the holding company who was the majority shareholder was inapplicable as the court did not have to consider the question of its own jurisdiction.

45. In the instant case, the application of respondent No. 2 (Raigarh Trading Co.) for dismissal of the instant application as against respondent No. 2 (RTC) was allowed by the learned single judge in part by rejecting some of the reliefs claimed by the petitioner against RTC. Being aggrieved, against the said judgment, the petitioner preferred an appeal being C. A. No. 207 of 1990, which was disposed of by an order dated September 24, 1992, by a Division Bench of this court and therein, it was observed as under :

"It, therefore, appears that in a proceeding under Sections 397 and 398, the court has got wide powers including the power directing investigation not only into the affairs of the company against whom the proceedings has been initiated but also the other entity, be it a subsidiary or a holding company."

46. Mr. Sen, however, referred to the observations of the Division Bench judgment which are to the following effect :

"Whether the appellants could press for the reliefs claimed against respondent No. 2 in the context of averments made in the petition are in our view not strict questions of law not being dependent on facts and in deciding such question as preliminary issue, the court cannot dispose of the same without thorough investigation into the facts as pleaded in the petition."

47. In the light of the above, it was submitted by Mr. Sen that the question had been left open for being decided when the matter is finally heard.

48. We are of the considered view that the observation of the Division Bench to the effect that in proceeding under Sections 397 and 398 the power of the court includes the power directing investigation not only into the affairs of the company against whom proceeding has been initiated but also other entity, be it a subsidiary or a holding company would conclude the matter as to the

jurisdiction of this court. Being a judgment of a co-ordinate jurisdiction of this High Court and the observations having been made in relation to this very proceeding, we are not inclined to take any other or different view of the matter.

49. Besides, as noticed supra, the very matter involved in this application has been the subject-matter of consideration by this court, reference to which has been made supra and certain orders have been passed therein.

50. No doubt, as contended by Mr. Sen those orders are the subject-matter of appeals pending before the Supreme Court. Nevertheless the conclusions arrived at in these proceedings are binding on us and effect would have to be given to the same. The further fact to be noticed is that the parties hereto have considered these companies as their family properties and as the facts disclose the same have been managed and administered by the family members of the two brothers and/or their groups. The objection, therefore, as to the jurisdiction of this court in relation to the holding company, respondent No. 2 (RTC) is concerned, the same is rejected.

51. In the circumstances, we hold that the petitioners have made out a case as regards oppression by the MPJ group and against the interest of the petitioners.

52. The question as to the nature of reliefs to be granted in the instant case apart from the transfer of shares which as noticed above has been set aside and declared non est therefore, now needs to be considered.

53. Mr. Sen on this aspect of the matter submitted that it is well settled and the preponderance of judicial opinion is that majority shareholders in the company should never be ousted from the management and should be given the first option to buy out the shareholding of the minority. It was submitted that the view of Lord Denning J. in his judgment in *Scottish Cooperative Wholesale Society Ltd. v. Meyer* [1959] 29 Comp Cas 1 (HL) wherein it was stated that to do justice to the injured shareholders is to order the oppressor to buy their shares at a fair price. Once the oppressor has bought the shares, the company can survive and it can continue to operate.

54. Mr. Sen has referred to various unreported judgments of this court which followed the said principle including the judgments in the matters between this group of parties wherein the majority shareholders were directed to purchase the shares of the minority shareholders. With respect to valuation of the shares directions have been issued with reference to two dates (1) as on the date of application and (2) at the date of the passing of the order.

55. Apart from the above Mr. Sen submitted that there are very many reasons why the equity should tilt in favour of MPJ and HKJ in the matter as to which of the two groups should be given the first option to buy the other group out. They are, it was submitted, as under :

56. Raigarh Jute, under the management of M. P. Jalan (respondent No. 9} herein, settled a suit filed against it Punjab National Bank being Suit No. 240 of

1987 for Rs. 1.95 crores though the decree claimed in the suit was much more.

57. State Bank of Travancore was a tenant of a portion of premises of 36, Chowringhee Road, Calcutta at a monthly rent of Rs. 2 per sq. ft. Raigarh Jute, under the management of M. P. Jalan (respondent No. 9) herein, could enhance such rent to Rs. 30 per sq. ft. with all outgoings in the account of the said bank.

58. Raigarh Jute, under the management of M. P. Jalan, respondent No. 9 herein, has recovered possession of various properties by successfully pursuing litigations. Particulars of such properties are as follows :

(i) One flat at No. 3, Russel Street, Calcutta from Mr. R. P. Bhalotia.

(ii) A shop room and a garage at No. 3, Russel Street, Calcutta from Miss. D. Ennis.

(iii) One flat at No. 3, Russel Street from Mr. V. Connolly.

59. A pending matter of demand of Central excise for Rs. 48,498.56 plus interest and penalty issued on May 10, 1974, was settled by payment of Rs. 24,250 under the Kar Vivad Samadhan Scheme 1998, and the bank guarantee furnished by Raigarh Jute for Rs. 48,000 is expected to be released soon.

60. A similar pending demand of Central excise for Rs. 1,35,096 plus interest and penalty was issued on December 8, 1978, and the same was also got settled under the Kar Vivad Samadhan Scheme, 1998, upon payment of Rs. 67,548.

61. Whereas, according to the company, the conduct of the petitioner which should disentitle the petitioner to the relief to buy out the majority are that:

62. As on the date of filing of the instant petition a suit was filed by the company against Mehrotras for recovery of possession of the said company's property at Amritsar. Even a criminal case filed by the company against one of the Mehrotras for keeping wrongful possession of one motor car of the company was also pending. The petitioners have joined hands with the wrongdoer and are acting against the interest of the company and cannot be entrusted with the management of the company.

63. In respect of premises No. 14, Dover Park, Calcutta, in the occupation of tenant, B. P. Jalan caused the same to surrender its tenancy rights and thereafter at considerable costs of the company BPJ as lessee renovated the same and upon the renovation being stopped by C. M. C. a penalty of Rs. 1,23,520 had to be paid and which sum was paid by the company, though the same has been shown in the records as payment made on account of "Municipal Taxes".

64. Mr. Sudipto Sarkar, the learned advocate for the petitioner, on the other hand, contended that the various acts and actions of the MPJ group have been held to be oppressive and against the interest of the petitioners and against the interest of the company. It was, further contended that in the three earlier proceedings reference to which has been made supra, the oppression and

mismanagement was held established.

65. In Sandeep Investments Ltd., In re (C. P. No. 439 of 1989), Division Bench of this court had directed a board meeting to be held to ascertain as to who the majority shareholders of Sandeep are and directed sale of shares by the minority to the majority or vice versa. A special officer was appointed to call the first meeting of each of the board for ascertaining as to who is the majority and then to consider a resolution to the effect whether the majority group should be allowed to purchase all the shares belonging to the minority group or vice versa.

66. In Mahabir Prasad Jalan and Others Vs. Bajrang Prasad Jalan and Others, which has no business other than the right to receive compensation in respect of Oriental Gas Co. Ltd. BPJ and his group which were a minority group had been directed to sell out the shares to MPJ and his group.

67. In Bajrang Prasad Jalan and Others Vs. Mahabir Prasad Jalan and Others, , a Division Bench of which one of us (S. B. Sinha J.) was a member, held as follows (pages 178 and 179) :

"There cannot further be any doubt whatsoever that in all circumstances the minority or the oppressed has to sell or relinquish its shareholding as the main consideration is what would be for the benefit of the company.

The only property of all these companies is an immovable property situate at 36, Chowringhee Road. It does not have any other business nor does it run any industry and, thus, the question as to who manages the company takes a back seat. It is in this situation the question has to be considered as to whether a direction to sell shares by minority shareholders to the majority shareholders would serve the purpose. The best course in the facts and circumstances of this case might have been that a partition be effected amongst the two groups but that is not possible keeping in view the fact that one of the matters viz., Sandeep Investments Ltd., In re (C. P. No. 439 of 1989), is pending before the Supreme Court of India. The said decision arises out of a judgment passed by a learned single judge of this court directing sale of the shares by the BPJ group to the MPJ group. The said decision has been upheld by a Division Bench of this court with slight modification by appointing of Hon"ble Mr. Justice K. M. Ganguly, a retired judge, as a special officer to hold a meeting of the respondents therein for the purpose of finding out as to which group has the majority share . . .

Furthermore, proceedings u/s 397/398 of the Companies Act provide for break down a machinery and in view of the fact that the applicants herein did not make an attempt whatsoever to take part in the management of the companies for all these years and further in view of the fact that the accounts maintained by the respondents herein have not been questioned ; in our opinion, proper exercise of the jurisdiction would be to direct the appellants to sell their shares in favour of the respondents. However, the value of such share may be fixed as on the date of passing of the judgment keeping in view the fact that the property in question is an immovable property and during the course of the pendency of the

proceeding's, the value might have gone up. Such valuation may be made by one of the chartered engineers nominated by the Registrar, Original Side of this court."

68. Mr. Sarkar, learned counsel for the petitioner submitted that the petitioners' group should be granted the option to purchase the shares of the oppressor group. It was further submitted and for the established wrongful acts of the oppressor, the oppressed cannot be penalised to the extent that he does not get any one of the family companies.

69. We have given our due consideration to the rival contentions. The allegations in the instant case as have been established pertain to transfer of shares with a view to tilt the balance and give controlling interest to MPJ and his group.

70. There are no allegations against MPJ and his group with regard to the defalcation of funds nor the accounts maintained by the company are being questioned in this proceeding. The just directions in the instant case, in our view, would be that the majority shareholders be permitted to buy out the minority shareholders. This was also the view of the various Division Benches of this court in the disputes between the same group of family members and we see no ground to take a different view in the instant matter.

71. It cannot be disputed that the two groups of the family members cannot function and it would not be in the interest of the management and affairs of the company to wind up the same and therefore, we hereby appoint M/s. Price Waterhouse, Chartered Accountants, as special officer to make valuation of the shares of the company i.e., Raigarh Jute (respondent No. 1) holding company Raigarh Trading (respondent No. 2) and the three subsidiary companies respondents Nos. 3 to 5 herein and such valuation shall be as on the date of presentation of this petition. BPJ and his group shall within 30 days of intimation of the said valuation, sell their shares to MPJ and his group, payment therefore being made within one week from the date of the transfer applications duly submitted in that behalf by BPJ and his group.

72. The remuneration of the special officer shall be the usual charges for such services and the same shall be paid by the respondents (MPJ group) upon presentation of their bill. The special officer shall submit their valuation report within three months from date of communication of a copy of the order. Their reports of valuation shall be communicated within one week thereafter to the learned advocates on record for the petitioners and the respondents.

73. Accordingly, the application is disposed of in terms as above.

S. B. Sinha, Actg. C.J.

74. I agree.

75. The Court.--Prayer for stay of operation of the order is considered and refused.

76. Mr. Banerjee makes an oral prayer for leave to grant of certificate of fitness to file appeal before the Hon''ble Supreme Court of India in terms of article 134A of the Constitution of India. Keeping in view the fact that similar such matters are pending before the Hon''ble Supreme Court of India, such leave is granted.

77. Xerox certified copy may be supplied on priority basis.