

(1988) 03 AP CK 0059

In the Andhra Pradesh High Court

Case No : Company Petition No's. 2 and 3 of 1982

B.V.S.S. Mani

APPELLANT

Vs

Kowtha Business Syndicate Pvt. Ltd.
 B.V.S.S. Mani Vs
Beehive Engineering and Allied Industries (P.) Ltd.

RESPONDENT

Date of Decision : 03-03-1988

Acts Referred:

Companies Act, 1956 — Section 165, 165(1), 165(2), 166, 210

Citation : (1989) 65 CompCas 305

Hon'ble Judges : B.P. Jeevan Reddy, J

Bench : Single Bench

Advocate : K.G. Kannabhiran, for the Appellant; T. Raghavan, for the Respondent

Judgement

Jeevan Reddy, J.

1. C.P. No. 2 of 1982 is a petition filed u/s 433 of the Companies Act, 1956, by a shareholder to wind up the respondent-company, Kowtha Business Syndicate (KBS) P. Ltd., having its registered office at Kowtha Building, Buckinghampet, Vijayawada. C.P. No. 3 of 1982 is a similar petition filed by the same petitioner (shareholder) to wind up the respondent-company. Beehive Engineering and Allied Industries P. Ltd., having its registered office at 10, Padmarao Nagar, Secunderabad. The petitioner in both the petitions is B. V. S. S. Mani. Though it is not specified in the petitions, it is clear that winding up is sought of both the companies under clause (f) of section 433, i.e., on the ground that it is just and equitable that the company is wound up. In C.P. No. 3 of 1982, an additional ground is raised, viz., that the company has defaulted in delivering the statutory report to the Registrar and also in holding the statutory meeting, within the meaning of clause (b) of section 433. I will first state the facts and circumstances relevant to C.P. No. 2 of 1982.

2. Kowtha Business Syndicate P. Ltd. (hereinafter referred to as "the company") was incorporated in July, 1943, as a private limited company. At the times of its incorporation, it had five shareholders, namely, (1) Kowtha Suryanarayana Rao,

(2) C. V. Subba Rao, (3) C. Authikesavulu Chetty, (4) Swadharma Swarajya Ltd. (a trust registered in Madras), represented by its Honorary Secretary, C. V. Subba Rao, and (5) Indian Commerce and Industries Co. Ltd., represented by its director, Kowtha Mohanram Sastry. Its capital was Rs. 1,00,000 divided into 80 shares of 7 1/2% tax-free cumulative preference shares, and 20 ordinary shares, both of Rs. 1,000 each. At the time of incorporation, the person mentioned at Nos. 1 to 4 held one ordinary share each, while the fifth person, namely, India Commerce and Industries Co. Ltd., held for shares.

3. In course of time, C. V. Subba Rao went out of the picture and ceased to have any interest in this company. We are no longer concerned with him. Swadharma Swarajya-Sangha Ltd. is a trust constituted by three families of Kowtha Suryanarayana Rao, C. V. Subba Rao and C. Authikesavulu Chetty. Similarly, the Indian Commerce and Industries Ltd. was also a company promoted and controlled by the said three families. Since C. V. Subba Rao has gone out of these concerns, only two families continue, i.e., the families continue, i.e., the families of Kowtha Suryanarayana Rao C. Authikesavulu Chetty.

4. Mohanram Sastry is the son of Kowtha Suryanarayana Rao, while the petitioner, Mani is the son of Ramalingeshwarudu, who is the son-in-law of Kowtha Suryanarayana Rao. Mohanram Sastry's daughter is, in turn, marries to the petitioner, Mani. K. L. Manohar is the son of Mohanram Sastry. The interest of Kowtha Suryanarayana Rao in the said company as also in other companies came to be held by Kowtha Mohanram Sastry/K. L. Manohar, and the petitioner, Mani. C. Authikesavulu Chetty's family is represented by his son, C. Srinivasan. The petitioner, Mani, resides in Madras, while Mohanram Sastry and his son, Manohar, reside in Secunderabad.

5. Until 1981, the company had only two directors, namely, Mohanram Sastry (based at Hyderabad) and Mani (based at Madras). C. Srinivasan was not a director, but was acting as the business secretary of the company.

6. In course of time, differences arose between Mani, on the one hand and Kowtha Mohanram Sastry, his son, Manohar, and C. Srinivasan the other, which is evidenced by the correspondence placed before that court in these petitions. However, the spark that lit the fire between that two groups was the letter, exhibit A-1, dated April 15, 1980, written by C. Srinivasan and his son C. Ramesh Kumar, requisitioning an extra ordinary general body meeting of the company for the purpose of considering, and if thought fit, to pass a resolution appointing Sri K. L. Manohar as the director of the company . in the explanatory now appended to the said letter u/s 173 of the Companies Act, was stated that K. L. Manohar has been looking after the company interest and affairs at Secunderabad as a liaison officer, that he is also a member of the company holding 12 equity shares, that of the present two directors, one is residing at Madras and the other at Secunderabad, and that very often the board meeting have to be adjourned because both the directors are not able to arrive at the appointed place, which is causing prejudice to the affairs of the company. It was, therefore, thought

advisable for the smooth and efficient functioning of the company that one more director should be appointed to the board of the company. Now, it is significant to notice that Sri K. L. Manohar was not sought to be appointed as a director in the place of his father, Mohanram Sastry, but in addition to him. This was bound to upset the balance hitherto obtaining. If K. L. Manohar was also inducted as a director, the petitioner, Mani, would be in a minority of 2:1, whereas previously it was 1:2. In view of the existing difference, the petitioner naturally apprehended that this was a move to reduce his role and importance in the company and opposed the said move by his letter, exhibit A-2, dated May 3, 1980, addressed to the Company. He stated that the affairs of the company have been managed well with two directors, and that the proposed addition of one more director, K. L. Manohar, in addition to his father, who is already a director, is unjustified and uncalled for. Notwithstanding the opposition from the petitioner, Mani, the general body met on July 24, 1980, at Vijayawada and resolved to appoint Sri K. L. Manohar as the director at the company. Irked by the said resolution and the manner in which his letter, exhibit A-2, was brushed aside at the said meeting, Mani resigned from the directorship of the company under his letter dated April 25, 1981, exhibit A-4, thus leaving only two directors on the board, namely, Mohanram Sastry and his son, Manohar. The relations between the two groups continued to deteriorate, evidenced by queries raised by the petitioner and his son regarding the conduct of affairs of the company. An ordinary general body meeting of the company was held on September 29, 1981, at which Mohanram Sastry and Manohar were re-elected as directors. The present petition for winding up was filed on March 1, 1982.

7. As on the date of the filing of the petition, the shareholding of the three families in the company was as follows :

Mani and two members of his family held 26 ordinary and 5 preference shares;

Mohanram Sastry and his son, Manohar, held 20 ordinary shares and one preference share;

C. Srinivasan and his three sons held 34 ordinary and 8 preference shares.

8. In other words, out of nine shareholders, three were from Mani's family, two from Mohanram Sastry's family and four from Srinivasan's family.

9. The petitioner sought the winding up of the company on the following grounds : The company consists of members from three families who have joined together in view of their personal relationship and mutual confidence. The petitioner who was a director till April 25, 1981, was forced to resign on account of the oppressive conduct and absence of fair dealing on the part of the other director and C. Srinivasan, who were in charge of the day-to-day affairs of the company. These three families were also members of three other companies, namely, Beehive Engineering and Allied Industries P. Ltd. India Commerce and Industries Co. Ltd. and Swadharma Swarajya Sangha Ltd. The last one is a non-profit sharing company governed by section 25 of the Act. In all these

companies, differences have arisen and a point has been reached where no reconciliation is possible. The petitioner and his family, who are in a minority, are being kept out of the affairs of the company; the books are not maintained correctly; there is a wide discrepancy between the stock as revealed by the books and the grounds stocks. When the petitioner raised this question in a board meeting, he was overruled and no satisfactory explanation was given. Accounts were not being properly kept; there was duplication of bills, and even cancelled bills were found mentioned in the books, which fact was reported by the internal auditor chartered accountant. A sum of Rs. 30,000 has been paid to C. A. Chettiar Charitable Trust every year, which is unauthorised and uncalled for. The objection of the petitioner in this behalf has been overruled. At the annual general body meeting held on September 29, 1981, the petitioner raised several questions which too were overruled highhandedly. While the notice of the general body meeting said that shareholders may attend by proxy, proxies were not allowed at the meeting. Moreover, in July, 1980, a requisition was given for an extraordinary general body meeting and K. L. Manohar was inducted as a director in addition to his father, thus upsetting the even balance obtaining hitherto. The petitioner has been effectively prevented from participating in the affairs of the company. In these circumstances, there is no commercial profitability in its dealings; mutual confidence which is so necessary for running such companies is totally absent. No reconciliation is possible. There is a restriction on the transfer of shareholding; this company is in the nature of a partnership. In all circumstances therefore, it is just and equitable to wind it up.

10. Now, coming to C.P. No. 3 of 1982, which was also filed on the same day March 1, 1982, the averments are practically the same as in C.P. No. 2 of 1982. On the date of filing of this petition, the shareholding of the three families in this company (Beehive Engineering) was as follows :

Mani and his family (eight shareholders) held 629 shares;

Manohar and his family (four shareholders) held 528 shares,

of Rs. 100 each. This company was incorporated on April 14, 1961, promoted by six persons, namely, (1) Kowtha Suryanarayana Rao, (2) Mani (petitioner), (3) C. Authikesavulu Chetty (father of C. Srinivasan), (4) C. Srinivasan, (5) A. Krishnamurthy and (6) K. L. Manohar, son of Mohanram Sastry. Out of these, A. Krishnamurthy has gone out of the picture and we are no longer concerned with him. Kowtha Suryanarayana Rao is dead, with the result that there are again three families controlling the company, i.e., the petitioner's family, family of Mohanram Sastry/K. L. Manohar, and the family of C. Srinivasan (his father having died). The course of events set out in the petition are the same, including the resignation of the petitioner from this company, until 1980, the two directors were the petitioner, Mani and C. Srinivasan. At the general body meeting held on July 2, 1980, K. L. Manohar was co-opted as a director and Mani resigned as a director on April 25, 1981, as already stated. The additional grounds urged for which winding up this company is this : The company has ceased to be a viable

unit; it is owing a sum of about Rs. 21 lakhs to Bilweshwara Trust of which the petitioner's son and his wife are trustees. A suit on the original side of the Madras High Court, C.S. No. 208 of 1981, is pending in that behalf. The company is also not able to complete the works undertaken by it, rendering the company liable for penalties. Moreover, the company did not hold the annual general body meetings for the past four years, nor have the annual accounts been made up or finalised. On account of non-compliance with sections 166, 210 and 220 of the Act, all the directors were prosecuted by Registrar of Companies Convicted and sentenced to pay fine by the special judge for economics offences at Hyderabad. After the last annual general body meeting in 1978 for the year ending December 31, 1977, no further annual general body meeting has been held. The directors who retire have to seek re-election at such meeting. But since no such meeting has been held, it must be deemed that there are no directors; yet, K. L. Manohar and Srinivasan are acting as directors, which is unauthorised. This is a ground for winding-up u/s 433(b) of the Companies Act.

11. Both the petitions are opposed by the respondent companies. The several allegations made in the petitions have been denied. It is stated that Mani himself was a director until 1981 : that he was also in charge of the accounts of Beehive Engineering at Madras and was operating the bank account; that during the scrutiny of account for the year 1978, serious irregularities were found which he was asked to explain; he was requested to attend the board meeting and to explain the same, which he avoided. He never co-operated in finalisation of accounts. In fact, his resignation from Beehive was with a view to avoid rendering accounts for the period of his stewardship of the said company. The petitioner family has not been kept out of the affairs of either company; he himself has resigned. There is no deadlock in the working of either company the companies are working profitably; the principle of partnership cannot be applied to these companies; there are no grounds for winding-up-these companies. So far as the delay in the holding of the annual general body meeting and finalisation of accounts is concerned (Beehive), it is submitted that it was the result of the petitioner's own non-co-operative attitude. The annual general body meeting has been held on July 16, 1982, as per the law. The suit on the original side of the Madras High Court, C.S. No. 208 of 1981, is still pending. The debt is of a secured type. The company has not been subjected to any penalties.

12. Both the parties have merely adduced documentary evidence and have not chosen to lead any oral evidence. The case was adjourned on a number of occasions with a view to explore chances of settlement and compromise, but they failed. Finally, arguments were heard on February 25, 26, 1988.

13. A brief reference to the relevant documentary evidence relied upon before me by counsel for both parties would be in order at this stage. I have already referred to exhibits A-1 to A-6 in C.P. No. 2 of 1982. The other documents relied upon are the following :

Exhibit A-14 is a letter dated April 22, 1980, from Mani to C. Srinivasan. In this

letter, Mani complained that the purchase of capital equipment without a discussion in the board meeting, more particularly when the board is meeting once in two months, is inexplicable.

Exhibit A-17 is the minutes of the meeting of the board of direction of Kowtha held on September 7, 1980. This shows that Mani raised several objections and asked for several clarifications regarding the functioning of the company, which were overruled and the account for the year ending March 31, 1980, passed.

Exhibit A-20 is another letter from Mani to the respondent-company, its two directors (Mohanram Sastry and Manohar) and business secretary, C. Srinivasan, with respect to the discrepancy in the stock of scrap. It was pointed out that according to the books, out of the scrap on ground, only 30 or 31 metric tonnes of scrap belonged to the company, while the balance belonged to the other party; but, it is not made clear who the other party is. Donations to a charitable trust purchase of certain materials were also objected to.

Exhibit A-25 is the minutes of the general body meeting held on September 29, 1981, which shows that though the notes of the meeting mention that proxies will be allowed, proxies were actually not allowed at the meeting because of a specific provision in the articles of association prohibiting the same. It also shows that Mani wanted to ask some questions, which he was asked to put on a paper and submit. Questionnaire, submitted by Mani's son was refused to be answered on the grounds that he was not present at the meeting, and that he will be sent a communication in due course. Both Mohanram Sastry and Manohar were re-elected as directors.

Exhibit A-27 is a letter dated October 19, 1981, from Mani to the Registrar of Companies bringing to his notice several irregularities allegedly committed by the company. The Registrar was asked to take necessary action in the matter, in the interests of the shareholders and the company.

Exhibit A-28 is a lawyer's notice issued on behalf of Mani to the respondent company, asking for copies of the minutes of the annual general body meeting held on September 29, 1981.

Exhibit A-29 is another letter from Mani to the respondent company in response to the notice dated September 4, 1982, convening a general body meeting with regard to the functioning and affairs of the company. It may be noted that by this date (the letter is dated September 23, 1982), C.P. No. 2 of 1982 was already filed.

Exhibit A-37 is in a report of the surveyor dated September 4, 1980, which shows that in the premises of the company, a large quantity of scrap belonging to a third party was lying.

14. Coming to the additional ground urged in C.P. No. 3 of 1982, I may record that the ground relating to financial viability has not been persisted in, or argued by counsel for the petitioner. It has only been argued that not holding the annual

general body meeting and not approving the account in time are statutory violations, and that it also results in the directors ceasing to be as such and, therefore, not competent to manage the affairs of the company. I will, therefore, refer to the documentary evidence relevant to this question.

15. The accounts for the year 1977 (this company was adopting the calendar year as its accounting year) were approved in a meeting held in 1978. However, the accounts for the year 1978 were not approved on or before June 30, 1979, as required by law. Exhibit R-1 is a letter dated May 31, 1980, from Mani, is a directors, to Sri Srinivasan and Sri Manohar reminding Srinivasan and Manohar that finalisation of accounts is a statutory duty; he invited them to meet at the registered office of the company at Secunderabad on June 9, 1980, for finalizing the profit and lose accounts for the years 1978 and 1979 and for approving and signing the balance-sheet along with the necessary books. Exhibit R-2 show that because Mani did not attend the meeting on June 9, 1980, it had to be adjourned. Exhibit R-3 shows that the next meeting of the board fixed on June 16, 1980, had also to be adjourned because Mani could not attend. Exhibit R-4 is the records of the meeting of the board of directors held on July 5, 1980, at Vijayawada. Exhibit R-5 is a letter from the company (signed by a director) to Mani pointing out several irregularities in the payments made by him at the Madras end Exhibit R-6 is the resignation letter of Mani dated April 25, 1981. Exhibit R-7 is a lawyer's notice sent to the company on behalf of Mani denying his sole responsibility for managing the affairs at the Madras end and stating that Srinivasan was also fully associated with him in all the activities and that he was also in equal control and supervision of the Madras office. It was stated that there is nothing for Mani to explain with respect to the alleged irregularities pointed out in exhibit R-5. Exhibit R-8 is the company's reply (to Mani) to exhibit R-7. All these document show the growing difference between the parties both before and after Mani's resignation. Exhibit R-22 is a certificate from the chartered accountants of the company stating that the books of the company for the years 1979, 1980 and 1981 are subject to audit. Exhibit R-23 is a letter from Mani to Manohar, dated April 21, 1980, stating that board meeting have not been called for for the earlier two years and that it should be done at the earliest. Exhibit R-24 is Manohar's reply to exhibit R-23 disowning his responsibility for non-holding of the board meetings.

16. Now, I shall refer to the set of additional documents filed by the respondents through Company Application No. 208 of 1987 in July, 1987. Exhibit R-27 shows that at the general body meeting held on July 16, 1982, accounts for the year 1978 were approved. They were filed before the Registrar on September 6, 1982. Exhibits R-28, R-25 and R-30 show that the accounts for the years 1979, 1980 and 1981 were not ready by that date. Exhibits R- 31 shows that at the meeting of the general body on April 30, 1983, the accounts for the year 1979 were approved. Exhibit R-32 shows that at the general body meeting held on July 11, 1983, for the year 1982, accounts for that year were not ready by that date. Exhibit R-33 shows that accounts for the year 1980 were approved at the general

body meeting held on January 4, 1984. Exhibit R-34 shows that at the general body meeting held on July 30, 1984, for the year 1981, accounts were not ready by that date. Exhibit R-35 is a records of the meeting of the general body held on October 17, 1984, for the year 1981, and the accounts approved. Exhibit R-36 shows that at the same general body meeting held on October 17, 1984, the accounts for 1982 were also approved. Exhibit R-37 shows that at the general body meeting held on May 16, 1985, for the year 1983, the accounts were approved. Exhibit R-38 similarly shows that at the general body meeting held on September 4, 1985, for the year 1984, the accounts for the year 1984 were approved. (It may be recalled that this company has been maintaining its accounts calendar year-wise). It is thus clear that after the general body meeting held in 1979 for the year 1978 there was no general body meeting till July 16, 1982, i.e., until after the filing of the winding-up petition on March 1, 1982. The accounts for the years 1979 to 1982 were approved only much later. So are the accounts for the years 1983 and 1984 approved the prescribed date.

17. Clause (f) of section 433 empowers the court to wind up a company "if the court is of opinion that it is just and equitable that the company should be wound up." The main grounds of the petitioner is that both these companies and since one of the three families has totally lost its confidence in the others on account of the latter's acts of oppression, high-handedness and mismanagement, it is just and equitable that the company be wound up. On the other hand, the contention of the respondents is that the companies are not in the nature of partnerships; that the affairs of the companies are being managed well and that they are making profits every year, and that just because some of the shareholders are dissatisfied and/or out voted, the winding up of the company is not called for. It is urged that it is not enough for the minority shareholders to urge that they have lost confidence. They must show that their loss of confidences is for good and sufficient reasons and that it is justified by the acts of the majority shareholders. In this case, the petitioner has singularly failed to established the same. Indeed, the records shows that it is he who is at fault. The companies cannot be wound up at the mere caprice or wish of a minority shareholders, as the case may be.

18. The law on the subject has been elaborately dealt with by the Supreme court in Hind Overseas Private Limited Vs. Raghunath Prasad Jhunjhunwalla and Another, . The following principles are enunciated in the decision :

(i) It is not a proper principle to encourage hasty petitions for winding up without first attempting to sort out the dispute and controversy between the members in the domestic forum in conformity with the articles of association. When a company is sought to be wound up on the ground that it is "just and equitable", it must be shown that it is just and equitable not only to the person applying for winding up but also to the company and to all its shareholders. In such a case, the court shall have to keep in mind the position of the company as a whole and the interest of the shareholders and see that they do not suffer in a fight for

power that ensues between two groups.

(ii) Section 433(f) has to be read along with section 443(2) of the Act. The court will refuse to make an order of winding up on the grounds that it is just and equitable, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably to have the company wound up instead of pursuing that other remedy. Sections 397 and 398 of the Act are preventive provisions meant as a safeguard against oppression in management. Winding-up u/s 433(f) is in the nature of a last resort when other remedies are not efficacious enough to protect the general interests of the company.

(iii) Clause (f) in section 433 is not to be read ejusdem generis with the preceding five clauses. It is for the court to decide, on a consideration of all the circumstances of the case, whether it is just and equitable to wind up the company.

(iv) When more than one family and several friends and relations together form a company and there is no right as such agreed upon for active participation of members who are sought to be excluded from the management, the principle of dissolution of partnership cannot be liberally invoked. Besides, it is only when shareholding is more or less equal and there is a case of complete deadlock in the company on account of lack of probity in the management of the company and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, there may arise a case for winding up on the "just and equitable" ground. In a given case, the principle of dissolution of partnership may apply squarely if the apparent structure of the company is not the real structure, and on piercing the veil, it is found that in reality it is a partnership.

19. While laying down the above principles, the Supreme Court noticed several Indian and English cases, including the oft-cited cases *Yenidje Tobacco Co. Ltd.*, In re [1916] 2 Ch 426 (CA) and *Ebrahimi v. Westbourne Galleries Ltd.* [1973] AC 360 (HL). In the former case, it was held by the court of Appeal that if a private company could be fairly called a partnership in the guise of a private company, then the things which might be a ground for dissolution of a partnership will apply also in the case of a private company, and that in this connection, the deadlock is not material. In the latter case, the House of Lords, while reiterating that the words "just and equitable" do not admit of a precise definition, referred to some of the circumstances which may be relevant in holding that a private company is in the nature of a partnership. They were stated to be;

(i) whether it is an association formed or continued on the basis of a personal relationship involving mutual confidence; for example, whether a pre-existing partnership has been converted into a limited company.

(ii) whether there is an agreement or understanding that all or some of the shareholders shall participate in the conduct of the business and

(iii) Whether there is restriction upon transfer of the members's interest in the company, so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

20. At the same time, the Supreme Court warned that a blind adherence to the principle of the English cases is not desirable and that one must always have regard to the specific language and context of the Indian enactment.

21. Applying the principle of the above decisions, let me examine whether it is just and equitable to wind up any of the two companies u/s 433(f) of the Act. I think not. It should be remembered that in Kowtha, neither Mani nor Mohanram Sastry (much less K. L. Manohar) were the original promoters. They now represent the interest held by Kowtha Suryanarayana. While Mohanram Sastry is the son of Kowtha Suryanarayana Rao. Manohar is the son of Mohanram Sastry. Secondly, this is not a case where a pre-existing partnership was converted into a private limited company. In the circumstances, there can be none, nor is there any evidence on records to show that shareholders shall participate in the conduct of the business. Another circumstances is that differences between the shareholders or directors, as the case may be, have not affected the working of the companies. It is not denied that they are making profits and they continue to make profits. There is no deadlock in the management. The shareholding of the petitioner, even if the holding of his family members is also taken into account, is neither equal, nor more or less equal. In Kowtha, he hold 26 ordinary shares as against 54 ordinary shares held by the other two families. He holds five preference shares as against nine preference shares held by the other two families. His holding, in roughly on third. It is true that until 1981, "Kowtha" was being managed by only two directors, namely. Mani himself and Mohanram Sastry. Srinivasan family, though holding a major shareholding interest was not represented by a director on the board. If Srinivasan's family and Mohanram Sastry's family decided to have Manohar as a directors in addition to Mohanram Sastry, Mani could not reasonably object. His resignation from the directorship was evidently in a huff. It cannot also be said is the circumstances that he was forced to resign from the directorship. All that happened was that in Kowtha, they wanted to have one moon director namely, K. L. Manohar, in addition to Mohanram Sastry and Mani - it is immaterial whether it is for the reasons stated in the explanatory note or for some other reasons. Evidence, Mani felt that the unique position he enjoyed until then - being one of the two directors, he had a veto in every matter - would no longer obtain, and that he would become a minority of one against two on the board. But, as I have said earlier, there is nothing unusual in Srinivasan's family and Mohanram Sastry's family claiming two directorships since they together held 2/3rd shareholding interest. It, therefore, cannot be said that the resignation of Mani was a case of exclusion, nor can it be said that he was forced into that position. It must also be stated that the objections raised, queries sent by Mani, or his son, are not so serious or grave as warrant a finding of mismanagement on the part of the other direction or business secretary.

22. Coming to Beehive Engineering, it may again be seen that the shares holding of Mani's family is roughly 40% of the total shareholding. Of a total of 1,460 shares, Mani's family hold 629 shares. Out of 19 shareholders, 8 belong to Mani's family. Until 1980, there were two directions namely, Mani himself and Srinivasan. In 1980, Manohar's family held 303 shares is as the third director. After all, Manohar's family held 303 shares is this company. Indeed, it is not this co-option of Manohar that led to the rupture, hut it was the induction of Manohar as a director in Kowtha in addition to his father that evidently upset Mani and he forthwith resigned from both the boards. It appears clear that differences had arises between Mani on the one side, and Mohanram Sastry (who happened to be Mani's father-in-law besides being his maternal uncle) and Manohar on the other and because of these differences, Mani could not stomach, or reconcile to the prospect to Mohanram Sastry's family having two directors as against one held by him, in Kowtha. But, he failed to see that Mohanram Sastry and Manohar were being supported by Srinivasan's family who, indeed. were holding a major shareholding interest in Kowtha.

23. I am also of the opinion that a court will not order the winding up of a private company merely because a 1/3rd shareholder, or a group holding 1/3rd or even 40% shareholding just chooses to ask for it. The court must see whether their request is genuine and whether it is just and equitable for the company and for all its shareholders to wind it up. The court is not bound by every caprice or whim of a shareholder, or a shareholding group, even though he/they may be holding a one-third or 40% share. There must be material to show that the petitioner or the petitioner's group, as the case may be, has been oppressed or has been unjustly excluded from management of the affairs of the company. The very fact that it is left to the discretion of the court and the court has to be satisfied that it is just and equitable to wind up a company, means that the court is entitled to see the conduct of both, or all the groups, and see whether the demand for winding up is justified or not. It may also be seen that it is not as if the petitioner does not have other remedies open to him for redressing oppression or unreasonable exclusion, if any, complained of by him. The provisions of sections 397 and 398 are there, which he never chose to avail of. In any event, there is no evidence before me to hold that the petitioner has been oppressed or that he has been unreasonably excluded from the management of the affairs of the company. The unfortunate differences and animosities between two closely related families, it is evident, are reflected in this litigation. It is not really because the company is suffering or that there is any mismanagement that a winding up is asked for. It appears to be more on account of personal and temperamental differences.

24. Mr. Kannabhiran argued that, according to the articles of association, there is a restriction upon the transfer of shares. He refers to article 5 of the articles of association of Kowtha, which says that "no transfer of any share in the capital of the company shall be made or registered without the previous sanction of the directors who may, without assigning any reason whatsoever, decline to give

such sanction." (To the same effect is article III(2) of the article of association of Beehive). He submits in view of this provision in the article of association, the petitioner and his family is stuck with these two companies with a hostile management, and that he cannot take away his stake and go elsewhere. This is, no doubt, a circumstance in favour of the petitioner; but it has to be weighed against the other circumstances pointed out hereinbefore, which are against the petitioner. If, however, there is any proof, in future of any mismanagement on the part of others, resulting in prejudice to the affairs or business of the company, it may certainly be a ground for this court to act; but, in the absence of any such evidence or record before me, or in the absence of evidence of such conduct until now, the above fact alone cannot, and does not, warrant the winding up of the petitioner to vindicate his rights and protect his interests open to the petitioner to vindicate his rights and protect his interests.

25. For all the above reason, I hold that it is not just and equitable to direct the winding up of the two companies u/s 433(f) of the Act.

Now, coming to the additional grounds urged in C.P. No. 3 of 1982, i.e., non-holding of annual general body meeting and non-approval and submission of balance-sheet, I do not think that the said default warrant an order of winding up. Section 433 does not say that if default is made in holding the annual meeting or in approving or submitting the balance sheet, a winding up shall be ordered. I am not satisfied that in this case, clause (b) of section 433 is at all attracted. Clause (b) reads as follows.

"433. A company may be wound up by the court -

(b) if default is made in delivering the statutory report to the Registrar, or in holding the statutory meeting".

26. Statutory meeting or statutory reports are provided for by section 165 of the Act. Sub-sections (1) and (2) of section 165 read as follows :

"165. (1) Every company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month nor more than six months from the date of which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting"."

(2) The board of directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every members of the company :

Provided that if the statutory is forwarded later than is required above, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend and vote at the meeting".

27. It would be evident that the complaint in this case is not about the statutory meeting or statutory report referred to in sub-section (1) and sub-section (2) of

section 165. This company had commenced its business long prior to 1978. There can, be no question of holding a statutory meeting in 1978. For the same reason, forwarding of statutory report is equally out of place. The complaint, however, is a about the non-holding of the annual general body meeting as required by section 166, and not approving and submitting the annual accounts and balance sheet as required by sections 210 - 217. But clause (b) of section 433 refers to the statutory meeting and statutory report referred to in section 165 only. It is, therefore, evident that clause (b) of section 433 is not at all attracted in this case.

28. For the above reasons, both the petitions fail and are, accordingly dismissed, but, having regard to the close relationship between the parties all the circumstances of the case, I make no order as to costs.

29. Before parting with this case, I cannot but express my hope that the difference between the two families, or the two groups of families, will come to an end soon and that the efforts at settlement, which did not succeed during the pendency of these petitions, will bear fruit at least hereafter, for, that alone is in the interests of all concerned.