

(1976) 01 PAT CK 0024

In the Patna High Court

Case No : Company Act Case No. 3 of 1951

D.C. Mehta, Official Liquidator of Gaya Sugar Mills Ltd. (In Liquidation)

APPELLANT

Vs

Jogeshwar Prasad and Others

RESPONDENT

Date of Decision : 16-01-1976

Acts Referred:

Companies Act, 1913 — Section 195, 235

Citation : (1976) 46 CompCas 671

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : Sudhir Chandra Ghosh, Rameshwar Prasad, No. II and Girjapati Sanyal, for the Appellant; R.K. Verma, S.B. Sanyal, Surendra Prasad Sinha, Bishwanath Agrawal, Tarakant Jha and Sachidanand Jha, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Agrawal, J.—This proceeding has been started on an application of the official liquidator of the Gaya Sugar Mills Ltd. (In liquidation) (hereinafter referred to as the " Company ") under Sections 235 and 195 of the Indian Companies Act, 1913. Originally the proceeding was started against 23 persons, who were or had been the directors of the company during the relevant period. Out of those 23 persons, original opposite parties Nos. 1 (Lala Gurusaran Lal), 2 (Shah Mustafa Ahmad), 7 (Vishnu Prasad), 8 (Arjun Prasad), 21 (Banarsi Prasad) and 23 (Munshi Ram Sengala) have since died. By order dated September 5, 1963, the names of the following original opposite parties:

1. Harihar Prasad Lohani (Opposite party No. 3--since also dead),
2. Lakshmi Narain Bhada (O.P. No. 5),
3. Chattu Ram Bhadani (O.P. No. 6),
4. Gokul Chand Bangur (O.P. No. 9),

5. B.P. Khaitan (O.P. No. 14),
6. M.L. Pyne (O.P. No. 18),
7. N.K. Bajoria (O.P. No. 19),
8. Sanwal Ram Bhalotia (O.P. No. 20),
9. Banarsi Prasad Jhunhunwala (O.P. No. 21--since also dead), and
10. Damodar Prasad (O.P. No. 22).

were expunged on the statement of Mr. S.N. Dutta, then appearing on behalf of the official liquidator, as he did not "think that he can make out a case against them". On behalf of Lakshmipat Singhanian (original opposite party No. 10), who was then represented by Mr. Sidharth Shankar Ray, and Birdhi Chand Bhalotia (original opposite party No. 13), it was contended that their names should also be expunged as there was no prima facie case against them in the petition in question. The stand of these opposite parties was opposed on behalf of the official liquidator. The then learned company judge (Sahai J.) heard learned counsel for the parties on that matter and by his order dated September 13, 1963, came to a conclusion that no prima facie case for action u/s 235 was made out against those two opposite parties and, accordingly, released them from the inquiry in question. Letters Patent Appeal No. 59 of 1963 was filed by the official liquidator, but the same was dismissed on a short question of its maintainability, however, with an observation that "if, in course of the proceeding, some other facts came to light, which have a bearing on the conduct of the persons against whom proceeding was dropped at the preliminary stage, the company judge will undoubtedly have jurisdiction to reconsider his order" (vide [1969] 39 Comp Cas 635 (Pat)).

2. Now, the proceeding is, therefore, prima facie confined against five persons only, namely, (1) Jogeshwar Prasad (original opposite party No. 4), (2) Sohan Lal* Jajodia (original opposite party No. 11), (3) C.C. Pyne (original opposite party No. 15), (4) O.N. Jajodia (original opposite party No. 16) and (5) C.N. Rajgarhia (original opposite party No. 17).

3. Now, coming to the relevant facts: This company was originally incorporated as a private limited company in the name and style of "The Ramchand Ram Shah Mustafa Ahmad Sugar Mills Ltd." and in the year 1934 was converted into a public limited company with an authorised capital of rupees seven lakhs, the first three subscribers being Ramchand Ram, Shah Mustafa Ahmad and Lala Gurusaran Lal, all of Gaya. The capital was raised from time to time to rupees one crore by 1946, which was partly subscribed, and for the balance, debentures of the value of Rs. 25 lakhs were issued. The company had raised its capital, in view of certain schemes for expansion of its business, particularly the establishment of a sugar mill at Warsaliganj, a place 50 miles away from Gaya, which eventually did not materialise, for the reasons which I would enumerate hereinafter, and the company found itself in serious and stringent financial

difficulties, which resulted in its winding up, and a winding up order was made by this court on the 14th of November, 1951, and one Shri D.C. Mehta was appointed as the official liquidator by an order of this court dated the 1st of February, 1952.

4. Before the winding up application was made to this court, the affairs of the company were investigated into by Shri B. Gupta, chartered accountant, u/s 138 of the old Companies Act, who submitted a report to the State Government on the 11th of February, 1952. When Mr. Mehta took over charge of this company as the official liquidator, he also investigated into its affairs with the help of the firms of certain chartered accountants and other accountants appointed by this court from time to time and came to the conclusion that the opposite parties had illegally made use of for their own purpose and/or transacted with the assets of the company and/or misapplied and retained the funds of the company, causing it heavy losses, and thus became liable and/or accountable to the company and were guilty of misfeasance, malfeasance, non-feasance and/or breach of trust, conversion and fraud in relation to the company and, consequently, liable to the company.

5. The principal allegations made by the official liquidator against "the various directors of the company are as follows :

1. Ryam Sugar Company Ltd. & Hindusthan Coal Co. Ltd,

The capital raised under the permission of the Examiner of Capital Issues of the Government of India, in view of Rule 94A of the Defence of India Rules, 1944, and later on released by the Government on the representation of the company that the money was immediately required for payment of the price of the machineries to be installed in the factory at Warsaliganj, Was illegally diverted in purchasing 21,100 shares of Ryam Sugar Company Ltd. for a total amount of Rs. 14,77,000, although the face value of the shares was Rs. 10 only per share, between March and May 1946, and 1,200 shares for Rs. 12,000 of Hindusthan Coal Company Limited, in which Lala Gurusaran Lal and Arjun Prasad Bhadani (original opposite parties Nos. 1 and 8 respectively) were interested. On account of these investments, documents concerning the purchase of the machineries for the Warsaliganj factory from Messrs. Mirrless Watson Company Ltd. of Glasgow could not be honoured and the machineries were returned back to the manufacturers, resulting in the failure of the Warsaliganj scheme and forfeiture of a sum of Rs. 8 lakhs by them.

The company suffered huge loss later on in selling the aforesaid shares of Ryam Sugar Company Limited at Rs. 11,39,400 only and the assets of the Warsaliganj factory.

2. Bhadani Brothers Limited

The company suffered a loss of Rs. 8,37,715-3-3 on account of the advances made to Bhadani Brothers Limited which was a private limited company of the

family members of Lala Gurusaran Lal.

3. J.R. Commercial Corporation

The company suffered losses of Rs. 5,50,000 and Rs. 7,41,000 on account of the advances made to J. R. Commercial Corporation and other private limited companies, the shareholders being again the members of the joint Hindu family of Lala Gurusaran Lal and Arjun Prasad Bhadani.

4. Arjun Prasad Krishna Prasad

The company suffered a loss of a sum of Rs. 8,754-4-6 by advancing loans to this firm of the two sons of Lala Gurusaran Lal from time to time.

5. Loss suffered in the crushing season 1949-50

The company suffered a loss of rupees five lakhs in the crushing season 1949-50 on account of misconduct and misfeasance.

6. Committee of directors

The committee of directors, which was formed to control the management and other affairs of the company and assumed management of the affairs, handled large sums of money but did not render full account for a sum of Rs. 3,99,680 to the auditors, being the realisations of the sale proceeds of Warsaliganj factory.

7. Cash and bank balance

The directors are also liable for not accounting for a sum of Rs. 4,38,779-13-9 being the cash and bank balance as on the 1st of December, 1951,

Counter-affidavits have been filed on behalf of Jogeshwar Prasad (original opposite party No. 4), Sohan Lal Jajodia (original opposite party No. 11) and Onkar Nath Jajodia (original opposite party No. 16). I shall refer to the defence and the stand taken by the concerned opposite parties in brief a little later.

6. The following issues were framed in this case:

1. Whether all the opposite parties or any one of them is liable for the act of misfeasance or misconduct in making the purchase, pledge or sale of the shares of M/s. Ryam Sugar Company Limited for the value of Rs. 15,09,000 and thereby liable to repay or restore the same or any part thereof ?

2. Whether the loss suffered by Messrs. Gaya Sugar Mills Limited for a sum of Rs. 11,72,232 in their deal with Messrs. Mirrless Watson Company Limited was on account of any act of misfeasance or misconduct on the part of any one of the opposite parties ? If so, is any one of them liable to the official liquidator to repay or restore the said loss or any part thereof ?

3. Did the company, Gaya Sugar Mills Limited, suffer a loss of rupees five lakhs for the crushing season 1949-50 on account of any act of misfeasance or misconduct on the part of any one of the opposite parties ? If so, is any one of

them liable to the official liquidator to repay or restore the said loss or any part thereof ?

4. Whether the purchase of shares of Messrs. Hindusthan Coal Company Limited of Rs. 12,000 by the then directors of Messrs. Gaya Sugar Mills Limited was an act of misfeasance or misconduct on the part of any of the opposite parties or the directors responsible for the said purchase ? If so, whether they or any one of them can be directed to repay or restore the said loss to the official liquidator.

5. Did the company, Gaya Sugar Mills Limited, suffer a loss of Rs. 10,45,084 in the Warsaliganj scheme of the company ? If so, whether any of the opposite parties is liable for the said loss to the company and thereby bound to repay or restore the said loss or any part thereof ?

6. Whether the company, Messrs. Gaya Sugar Mills Limited, suffered a loss of Rs. 8,37,715-3-3 given to Messrs. Bhadani Brothers Limited and a loss of Rs. 5,50,000 and Rs. 7,41,000 on account of loans given to J. R. Commercial Corporation Ltd. ? If so, whether the opposite parties or any one of them is liable to repay or restore the said loss or any part thereof to the official liquidator ?

7. Whether any of the opposite parties are guilty of misconduct for his failure to account for the cash balance of Messrs. Gaya Sugar Mills Limited of Rs. 4,40,465 and thereby liable to repay or restore the same or any part thereof to the official liquidator ?

8. Whether Sohanlal Jajodia (opposite party No. 11) and Onkar Nath Jajodia (opposite party No. 16), in particular, or any other of the opposite parties, in general, are guilty of any act of misfeasance or misconduct for their failure to account for the sum of Rs. 3,99,680 being the realisation of the sale proceeds of the Warsaliganj Factory ? If so, whether any one of them can be compelled to repay or restore the said loss or any part thereof to the official liquidator ?

9. Is the official liquidator entitled to a declaration with respect to opposite parties Nos. 1 to 23 or any one of them as to whether they are liable either jointly or severally for the sum of Rs. 67,68,724 or any part thereof for any loss or damage caused to the company, Messrs. Gaya Sugar Mills Limited ?

7. Before dealing with the case of the respective opposite parties and considering the issues framed in this case, it is necessary to know the background of these events. The company as a going concern was earning reasonable profits in its business and its managing director, Lala Guru-saran Lal, and his family occupied a very respectable position in the business circle. Lala Gurusaran Lal was considered to be a clever businessman and had high connections in business and political circles. He was conferred the title of C. I. E. by the British Government. He was also, during the relevant years, the Trade Adviser to the Government of Bihar. According to the evidence of Onkar Nath Jajodia " he was held in great esteem in Bihar and the rest of India. He was president of various chambers of commerce, trade associations and President of the Federation of Indian Chamber

of Commerce and Industries in 1946". In the year 1944, the company decided to set up a modern sugar factory at Warsaliganj, and as already stated earlier, raised its capital up to rupees one crore by issue of shares and floating debentures (vide exhibit 13/v). The company then entered into various contracts with a company, namely, Messrs. Mirrless Watson Company Limited of Glasgow, having its registered office in London, for purchase of various machineries and electrical equipments, etc., for setting up the Warsaliganj factory. According to the stipulations, the manufacturers were to commence the supplies from January, 1946, and to complete the same within a period of twelve months from the date of the agreement so as to enable the new factory to catch the 1946-47 crushing season commencing from November, 1947. The other relevant terms and conditions of the contract would appear from the copy of the plaint of Suit No. 1531A of 1951 filed by the company against the manufacturers for damages in the Calcutta High Court which is an annexure to the present application filed by the liquidator in this case on the 5th of April, 1961. The total value of the machineries ordered for from Messrs. Mirrless Watson Company Ltd. in the Indian currency was of above rupees fifty lakhs. The company had made payments from time to time, including the initial advance, to the manufacturer's of a sum of Rs. 27,22,163-1-0 against which goods of the value of Rs. 20,80,832-5-0 were received by the company by June, 1947, leaving a balance of Rs. 6,41,780-12-0 in the hands of the manufacturers.

8. I may also refer to the directors' report for the year ending 30th September, 1945 (exhibit 1/c). From this report it appears that the company had earned a gross profit of Rs. 1,99,300-3-10. This report was signed by Lala Gurusaran Lal, Lakshmi Narain Bhadani, Vishnu Prasad Bhadani, Jogeshwar Prasad and Harihar Prasad Lohani. In this year the company had paid dividends to the shareholders. I may also quote paragraph 4 of this report which reads as follows :

" As already reported last year you are aware of the previous development regarding the plant on order for the new sugar factory at Warsali-ganj with Messrs. Mirrless Watson Co. Ltd. We have pleasure to communicate to you that Lala Gurusaran Lal, the managing director, who had to go to the United Kingdom for attending the meeting of the International Chamber of Commerce took into his hand the order with the help of Mr. J. Prasad, M.Sc., the general manager, who was authorised by us to proceed to the United Kingdom specially for the purpose and finally complete orders for a 2,000 tons Double Carbonatation Sugar Factory incorporating the latest development in the industry was placed at a total cost of ₹3,75,431 equivalent to Rs. 50,14,452-4-4 f.o.b. including the power plant. Great efforts had to be made for minimising the time of delivery and ultimately the entire plant was guaranteed to be delivered in time so as to catch the next season 1946-47."

9. In the report of the directors for the succeeding year, namely, year ending the 30th September, 1946 (exhibit 1/c), the directors had reported as follows :

" So far as the erection of our new factory is concerned the plant could not be

manufactured by Messrs. Mirrless Watson Co. Ltd., Glasgow, due to various difficulties in the United Kingdom. Our vehement protests and approaches to the various departments of the British Government as well as Government of India could prove of no avail. However, we feel gratified to say that we have received more than 80% of the machinery by now and the construction of the factory including foundation, for all the machinery have been completed. About 25% of the machinery have already been installed and it is expected that the erection of the remaining machinery would be completed by December. So far as 20% of the machinery is concerned, they are mostly motors and electrical equipments. These were also to be shipped in September but by the time the report was drawn no information of their being shipped had been received but it is expected they would be shipped in a short time. Everything going alright we expect to catch the 1947/48 season about the middle of January next."

10. It will appear from the statements made by the liquidator in the plaint of Suit No. 1531A of 1951 aforesaid that the manufacturers started writing letters to the company almost immediately after the contract that there might be delay in the delivery of the plants and machineries on account of the second world war. The company, however, lodged serious protests to the delay and pointed out that if the shipping schedule was not adhered to, the company would be put to very serious loss. It may be mentioned that according to the terms of the contract, the company was bound to pay the increased cost if there was a general increase in the cost of labour or steel in Great Britain.

11. Lala Gurusaran Lal who happened to visit the United Kingdom in the year 1946 as a delegate of the International Chamber of Commerce had met Mr. Stafford Cripps, the then President, Board of Trade, England. On the 25th of June, 1946, he wrote a personal letter to Sir Cripps impressing upon him to exert his good offices to get the machineries supplied very early (exhibit A/1-2). It has been stated in this letter that on the assurance of the British manufacturers, the company had arranged for cultivation of a very large quantity of sugarcane which had already grown up, and if the cane was not taken up by the company, either it would be dried up in the field itself or burnt, causing heavy loss to the shareholders. Gurusaran Lal also turned every stone and wrote letters to the High Commissioner for India in England and other authorities to save this eventuality. But as misfortune would have it, the supplies of the plants and machineries could not be completed although, as it would appear from directors' report (exhibit 1), the manufacturers supplied the plants and machineries to the extent of 80% till the end of 1947, as already stated above, and the Warsaliganj factory could not be completely set up according to the programme. In the meantime, the cost of labour and materials started going up and the company had to pay and meet additional costs locally as well as pay higher price for the machineries shipped after the delay by the manufacturers.

12. In this connection I may also refer to some of the relevant statements made in the affidavit-in-opposition filed on behalf of Arjun Prasad (original opposite

party No. 8), who, as already stated above, is since dead ;

"20. That some time in March, 1946, the managing director of the company received a letter from the High Commissioner for India in U.K. enclosing therewith a programme for delivery of the said machineries by Messrs. Mirrless Watson & Co. Ltd., Glasgow. On receipt of the said letter, the managing director instructed the solicitor to apply for release of the share capital and the matter was placed before the board of directors of the company, for their direction and approval in the meeting held on July 8, 1946, and the same was duly approved by them. As I was a director at that time I have got copies of the minutes of some of the meetings of the board of directors which I attended..... "

13. In paragraph 29, it was further stated on behalf of Arjun Prasad as follows:

"The said Mirrless Watson & Co., however, could not deliver the said goods within that stipulated time and deferred the date of delivery on some pretext or another. During this period the said Mirrless Watson & Co. Ltd. had all along assured the company that the delivery would be effected by the promised date but as noted hereinbefore the said assurances and promises were never fulfilled. Even with regard to deliveries that were effected by them the same were in different lots and each consignment of machineries shipped did not constitute complete units by themselves. In or about 1947-48, the said Mirrless Watson & Co. Ltd. had shipped several consignments and the said machineries also were not complete units by themselves and had demanded an increased price for the said goods than that contemplated in the terms of agreement. Due to the said increase in the price the company would have had to pay nearly 15 lakhs to 20 lakhs of rupees more for the purchase of the said machineries. Moreover, on the basis of the original delivery programme the company had started the building construction, cane developments and other preliminaries for erecting and starting the new project and had incurred considerable expenses thereon. Due to such unexpected delay in the completion of the delivery of the said machineries the construction work was also delayed involving considerable unforeseen expenditure on the part of the company and further finance was required to complete the project. "

14. In paragraphs 30 and 31, it was further stated :

" 30. The prices of building materials, e.g., iron, steel, cement, etc., and the labour charges also went up considerably in the year 1947-48 with the result the company was required to provide much more extra capital than what it had estimated in the year 1945-46. Thus, in or about the middle of 1946, it was found that the said new project could not be completed with the funds at the disposal of the company which the company had raised by increasing the share capital and issue of debentures. It was found that a further sum of about Rs. 40 lakhs was necessary to complete the scheme and the company in the altered circumstances of the money market and the share market prevailing in India during the relevant years did not find it feasible and possible to arrange for the

extra finance required.

31. When it was found that the Warsaliganj scheme could not be completed for want of the aforesaid extra finance, it was thought prudent not to block any further money by taking delivery of the machineries which had arrived and the same were accordingly not paid off. "

15. In the meantime the company which had got the necessary money released from the Examiner of Capital Issues in April, 1946, in right earnest, found the money surplus and, instead of keeping it idle, thought it prudent to invest it somewhere and ultimately decided to purchase 21,100 shares of Ryam Sugar Company Ltd., another prosperous sugar company, which was considered an action in keeping with the scheme and articles of the company of having another sugar factory. By purchase of these shares, it was perhaps thought that the company would acquire a controlling power in this sugar company and earn good dividends.

16. In his affidavit-in-reply to the petition of Harihar Prasad Lohani and others by the liquidator dated January 4, 1957, he has stated that 21,100 Ryam Sugar Company shares were purchased by the company between the 1st March to 27th April, 1946, and the Hindusthan Coal Company Ltd. shares on the 16th of December, 1944. In this affidavit the liquidator had contended that Harihar Prasad Lohani, Lakshmi Narain Bhadani and Vishnu Prasad Bhadani (original opposite parties Nos. 3, 5 and 7, respectively), who were directors during the relevant period, were liable for the loss caused to the company on these amounts as they had taken part in those transactions. Admittedly, except opposite party Jogeshwar Prasad, none of the remaining opposite parties were directors of the company during the above period. In this connection I may also refer to some of the statements made by Arjun Prasad in his affidavit-in-opposition already referred to earlier, which are as follows :

" 21.....I deny that the said 21,100 shares of Ryam Sugar Co. Ltd. were purchased wrongfully, or illegally, or for any personal gain or benefit as alleged, or that the company's moneys up to Rs. 14,77,000 needed for purchase of machineries which were on their way from England were ever applied as alleged or at all.

22. With further reference to the said paragraph, I say that under the articles of association of the said company, it was permitted to purchase shares of other companies for purposes of investment. The Ryam Sugar Co. Ltd. was a very prosperous company and by the purchase of 21,100 shares of the said company, the company was going to acquire the controlling interest of the said company. The market value of the shares of Ryam Sugar Co. Ltd., on the date of purchase of the said shares stood at approximately Rs. 60 per share though the face value of the shares were Rs. 10 per share. This only shows the prosperous nature of the company. The market value of shares which stood at Rs. 60 per share could only be availed of by purchasers who were purchasing shares in small lots but for

purchasers who were going to acquire a controlling interest in the company itself, a premium had naturally to be paid, and accordingly the minimum that the company had to pay for acquiring these shares was Rs. 70 per share.....

28.I deny that there was any illegal transaction as alleged or any misapplication or use of the assets of the company as alleged or due to the illegal transactions, or misapplication of the company's funds, the machineries could not be taken delivery of as alleged. I deny that the said Mirrless Watson & Co. Ltd., forfeited the amount of Rs. 8 lakhs or had any right to forfeit any amount that were lying with them in favour of the company, and I say that if any forfeiture had been made by the said Mirrless Watson & Co. Ltd., the same was unwarranted, illegal and not binding. As a matter of fact, due to wrongful conduct on the part of the said Mirrless Watson & Co. Ltd., the company (Gaya) has suffered damages and a suit has been filed in the High Court at Calcutta, being Suit No. 1531A of 1951 for the breach of contract on the part of the said Mirrless Watson & Co. Ltd..... "

17. In the reports of the directors for the years ending 30th of September, 1946 and 1947 (exhibits 1 and 1/a, respectively), the following statements were respectively made with respect to the shares of Ryam Sugar Co. Ltd.

"Regarding the Ryam Sugar Co. Ltd. share scrips, they will be produced for inspection by the auditors at the next audit. The shares of the Ryam Sugar Co. Ltd. were acquired in or about July, '46. The dividend on the above shares for the period ending 30th June, '45, had been declared before the shares were purchased. The dividend of Ryam Sugar Co. Ltd. for the year ending 30th June, '46, were declared and received after the accounting period of our company and will be taken into account in the balance-sheet for the year ending 30th September, '47.

A total sum of Rs. 14,77,000 continues to appear under the head " Investments " in the balance-sheet for the cost of 21,100 ordinary shares at Rs. 70 per share (face and paid up value being Rs. 10 per share) of Ryam Sugar Company Limited. We have now been shown share scrips for 36,200 shares in the said company in the names of various persons who, we are given to understand, are the nominees of the company. The acquisition of shares in the names of nominees has been approved by the board of directors of the company. We understand that share scrips for 6,000 ordinary shares of Ryam Sugar Company Limited have also been pledged as security for a loan of Rs. 50,000 obtained by the company in the current year. The company thus owns 42,200 shares in Ryam Sugar Company Limited against 21,100 shares shown, as aforesaid, in the balance-sheet. We are given to understand that the balance of 21,100 shares represents bonus shares issued by Ryam Sugar Company Limited after 30th September, 1947."

18. From the balance-sheet as on 30th of September, 1946, and on the 30th of September, 1947, as appearing from these reports, it appears that the company

had sufficient cash and bank balances. In the first year, they had Rs. 9,43,336-10-0 in the current account with Mahalaxmi Bank Limited, Calcutta, and about Rs. 5,000 in cash credit account with the Central Bank of India Ltd., Gaya, Rs. 5 lakhs and odd with Messrs. Bhadani Brothers Ltd. and Rs. 13,641-2-3 as cash in hand as per cash book. In the subsequent year, Rs. 5,81,728-14-6 with Mahalaxmi Bank Ltd., Calcutta, Rs. 2,038-2-7 with Central Bank of India Ltd., Gaya, Rs. 9,461-8-3 as cash in hand as per cash book, which was all reduced to Rs. 10,661-14-7 on the 30th September, 1948, as is evident from the reports of the directors for the year ending 30th September, 1948 (exhibit 1/b).

19. It is evident, therefore, that Lala Gurusaran Lal and his family members were taking sincere and active part in the management of the company in question and there was no reason to suspect their bona fides by the new incumbents. It may be mentioned that Sohan Lal Jajodia had paid Rs. 5 lakhs towards the call money on the 18th of September, 1946, for his preference shares held in the company and a further sum of Rs. 44,250 on the 30th of September, 1946 (vide Ledger of 1946, exhibit 8/1). These opposite parties, therefore, could repose absolute confidence in the honesty and integrity of the managing director as he was found taking keen and devoted interest in the affairs of the company and it was for this reason that Sohan Lal Jajodia got attracted to invest a sum of about Rs. 6 lakhs almost at a time in this company. It does not appear to me, therefore, that the decision taken for purchasing the majority shares of Ryam Sugar Company, thereby acquiring a controlling power in the affairs of that company as also the sole selling agency of that company, can be said to be an act of bad faith, particularly when the said company was considered to be a highly prosperous company, so much so that the Central Bank of India paid the entire sum of Rs. 14,08,785-6-0 being the value of the shares purchased from Ryam Sugar Co. Ltd. for 21,000 shares, as it appears from the ledger of the Central Bank of India Ltd. for the year 1946 (exhibit 8/1). It seems to me that the company's trading capital gradually became blocked up in the Warsaliganj scheme in setting up the factory and purchasing machineries from Messrs. Mirrless Watson Company Ltd. in the years 1946 and 1947, without any return, and as it appears from the statement made in the affidavit-in-opposition filed on behalf of Arjun Prasad, it became impossible for the company to complete the Warsaliganj factory as it could not raise additional amount of about Rs. 40 lakhs needed for the completion of the said plant, which became beyond the means and capacity of the company and the persons running the same. In that situation, it became inevitable, on account of the circumstances beyond the control of the company, that the company lost its substratum and it became impossible for it to sail successfully out of the storm which shattered all the ambitions of the promoters of the Warsaliganj scheme. In my opinion, therefore, it cannot be held, on the facts of this case, that any of the directors is guilty of misfeasance, malfeasance, non-feasance or the like in purchasing the Ryam Sugar Company shares, and thereby diverting the company's money to other

directions. I have already referred to the balance-sheet of the company for the years ending 30th of September, 1946 and 1947, to show that although 80% of the machineries for the Warsaliganj factory had arrived, it remained all unproductive, as according to the affidavit of Arjun Prasad, the manufacturers never supplied any completed unit and, therefore, the entire investment remained unproductive and further that the company had still sufficient cash balance with it on the 30th of September, 1946, to the extent of Rs. 14,71,000 and odd.

20. Apart from the fact that none of the opposite parties, except Jogesh-war Prasad, was in the picture when the shares of Ryam Sugar Company were purchased, for which, in any view of the matter, they cannot be held guilty of any of the claims of the liquidator, as already indicated earlier, this transaction cannot be said to be an irregular or improper transaction according to the circumstances prevailing in the year 1946. I do not find any merit in the further contention made by Mr. S.C. Ghose on behalf of the liquidator that these directors, although had come late, that is, after the shares of Ryam Sugar Company had already been purchased by the company, owed a duty to prevent the company from making payments of the shares, which event took place after their coming in and assuming charge as directors of the company. This contention has no substance for the main reason already discussed above and also for the reason that the directors who had just joined might not have been sufficiently possessed of all the circumstances and earlier developments in the company specially when, according to the liquidator's own case, the affairs of the company were under the complete control of late Gurusaran Lal, the managing director, and his family members in whom they reposed full confidence. If the company had already entered into the transaction for the purchase of Ryam Sugar Company's shares, it might not have been thought reasonable and proper by the incoming directors, namely, the present opposite parties Nos. 2 to 5 to stop payment of the price of the shares. The action called for by these opposite parties, according to the contention of the learned counsel for the liquidator, would not have been reasonable and proper and might have landed the company in further troubles and earned bad reputation. I may also refer to a further fact in this connection. As already said earlier, the company had instituted Suit No. 1531A of 1951 in April, 1951, on the original side of the Calcutta High Court against Messrs. Mirrless Watson Company Ltd. for recovery of a sum of Rs. 11,41,780-12-0 on the ground of breach of contract in performing the contract on their part in time. Earlier to that, Messrs. Mirrless Watson Company Ltd. had also instituted a similar Suit No. 2963 of 1950 in July, 1950, in the same court against the company for a decree for Rs. 9,72,232-9-1 as damages suffered on account of the return of the shipment and the loss suffered in re-sale of the materials. The suit by the company was instituted under the signature of Arjun Prasad. The liquidator, however, made an application u/s 234 read with Rules 121 and 122 on March 14, 1961, stating all these facts and annexing copies of the two complaints for according sanction for compromise of both the aforesaid suits on the term that

each party would withdraw the suit instituted by it and neither party would have any claim against the other in respect of the contract entered into, and the then learned company Judge (Sahai J.) by his order dated August 4, 1961 (Item No. 1) approved the compromise and permitted the official liquidator to enter into the compromise on the terms indicated above. It was, therefore, contended with some force by the learned counsel appearing on behalf of the opposite parties that the liquidator cannot be heard to contend that he has got any claim against the opposite parties or any of the erstwhile directors for the loss suffered by the company in the deal with Mirrless Watson Company Ltd. because if he thought that the manufacturers were at fault, he should have fought out the litigation and may have recovered the damages from them.

21. Now, I may briefly refer to the evidence adduced on behalf of the petitioner. He has examined in all twelve witnesses. Ram Anugrah Narayan (P.W. 1) is a formal witness. He was working as a daftari in the company and has only proved certain documents. He, however, admitted in his cross-examination that the affairs of the company were being looked after mostly by Gurusaran Lal, Masoof Raza and Jogeshwar Prasad and that at the time of handing over the charge of the company to the official liquidator, an inventory of all documents of the company was prepared.

22. Manmath Nath Gupta (P.W. 2) was a receipt and despatch clerk in the company and is almost a formal witness. He has stated that Jogeshwar Prasad was looking after the affairs of the company at Guraru till 1948-49.

23. To the same effect is the one-sentence evidence of S.N. Sen (P.W. 3), a Junior Accounts Assistant of the company.

24. Madan Lal (P.W. 4) had worked for 5-6 months only as a cashier in 1947-48 and has stated that Jogeshwar Prasad was one of the highest officers of the company at Guraru under whose orders things were done.

25. G.G. Dubey (P.W. 5) was the purchase officer of Messrs. Bhadani Brothers Ltd. from 1944 to 1954 who also acted as such of all the concerns under the management of the aforesaid company, including Gaya Sugar Mills. He speaks only with respect to the forfeiture of a sum of Rs. 8 lakhs by Messrs. Mirrless Watson Company in the year 1948. His services were later transferred for some months to the office of the committee of directors of Gaya Sugar Mills. He speaks mostly with respect to the pledge of Ryam Sugar Company shares and the dispute that arose with respect to its sale by Nandkishore Bajoria and Mahadeo Lal Jhunjhunwala which went up to the Supreme Court, with which I am not very much concerned in this case.

26. S.P. Tayal (P.W. 6) is the Registrar of Companies. He is also practically a formal witness.

27. Ram Ekbal Singh (P.W. 7) is a Technical Assistant in the office of the Registrar of Companies, and is not a witness on the merits of the case.

28. M.L. Nigam (P.W. 8) is an Assistant of Messrs. S. Vaish & Company, Chartered Accountants, appointed by this court and has proved certain reports and documents of his company.

29. M.P. Sarkar (P.W. 9) is an Assistant of Messrs. Singhi & Company, Chartered Accountants. He is also a formal witness and has proved certain reports of his company.

30. D.M. Dass (P.W. 10) is a Technical Assistant in the office of the official liquidator and has stated that no list showing the details of the documents prepared at the time of receipt of the same from the custody of the company was available in his office.

31. K.N. Shukla(P.W. 11) is the Agent of the Central Bank of India, Gaya, and has proved registers and letters evidencing transactions of the Central Bank with the company and is a formal witness.

32. A.N. Bandhopadhyaya (P.W. 12) is the present official liquidator and in a most formal and casual manner in his four-sentence evidence has simply stated that all the acts of misfeasance and the amount claimed against different directors by the ex-liquidator were being pursued by him after his discharge.

33. Apart from the oral evidence, the company has also produced various account books and reports and other letters, reference to some of which will be made hereinafter according to their relevancy. Suffice it may be to state that the oral evidence is most perfunctory and does not prove anything. So far as entries in the ledger are concerned, the auditors who were appointed by this court from time to time, namely, Messrs. Chatterjee & Co., Messrs. Singhi & Co., and Vaish. & Co. had made long comments and have reported various omissions and non-co-operation on the part of the liquidator in furnishing all the relevant materials to them to come to any concluded conclusion so much so that they could not prepare the balance-sheet or find out the relevant vouchers to complete their auditing in proper manner. The petitioner has not established from any reliable material that the company suffered any loss on account of pledge of these shares later on by Gurusaran Lal. All the allegations, if at all, in this regard are only directed against Gurusaran Lal himself that by pledging this property of the company, he raised money for his personal advantage. The evidence is too scanty and it is not necessary to discuss it as the shareholders had approved earlier that these shares would continue to be held by the company in the names of their nominees. The present opposite parties cannot, therefore, be held liable in any way for those actions of Gurusaran Lal either.

34. It is difficult to follow the claim of a sum of Rs. 15,09,000 on account of this Ryam Sugar Company affairs, as according to the case of the petitioner and the evidence on the record, the company suffered a loss of about three lakhs only on the resale of the shares (vide discussion made in paragraphs 33 and 35 of the judgment.)

35. Issues Nos. 1, 2, 4 and 5 must, therefore, be decided against the petitioner.

36. Now, I propose to deal with the case of each of the opposite parties separately. I would first take up the case of Jogeshwar Prasad. He has examined himself as O.W. 1. He was holding an M.Sc. degree and was acting as the chief chemist as well as the general manager of the company. As the chief chemist he was in-charge of the quality control of the company and its production. He has stated that he was occupied primarily in the factory and day to day management of the company and had no hand in the policy matters of the company. He was not holding the qualifying shares of the company to be appointed as a director, but was appointed as such, as the managing director nominated him on account of his technical qualifications under the enabling article 97 of the articles of association of the company. He remained a director from February, 1940, to 24th June, 1948, i.e., all material time, and as already stated above, he was the cousin of the wife of Gurusaran Lal (vide evidence of P.W. 5). Although in this case there is no evidence, it is apparent from the winding up order of Shearer J. that later on there was strained relationship between Gurusaran Lal and this opposite party and he was contesting Gurusaran Lal in Section 144 of the Code of Criminal Procedure and other criminal proceedings.

37. I have already said that the purchase of Ryam Sugar Company shares could not be held to be an act of misfeasance or breach of trust. It is not possible to hold that this opposite party was responsible for purchase of 1,200 shares of Hindustan Coal Co. or had any manner of control so far as the other decisions of the company for giving loans to Bhadani Brothers Ltd., J. R. Commercial Corporation and the consequent loss in the sale of shares or the Warsaliganj scheme.

38. It is well-settled that if in any proceeding against a director for negligence or breach of trust, it appears to the court hearing the case that the director has acted honestly and reasonably or ought fairly to be excused for the negligence or the breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper and it is open to the court either to require or not to require any officer to repay any sum to the company (See Palmer's Company Precedents, Seventeenth edition, Part II, Chapter 44, page 504, under the heading " Power of Court to grant relief in certain cases ").

39. I shall deal with in some greater detail the other claims of the official liquidator already enumerated above to show that none of them is maintainable.

40. I shall now deal with the case of Sohan Lal Jajodia and Onkar Nath Jajodia (original opposite parties Nos. 11 and 16) in some greater detail. I shall first deal with the case of Sohan Lal Jajodia (opposite party No. 11) who is represented by Mr. R.K. Verma.

41. The case of the official liquidator is that Sohan Lal Jajodia was appointed a director of the company on the 6th of May, 1946, and remained an active director of the company from this date to 2nd June, 1951, the relevant period

during which the company suffered the above losses; whereas according to the case of this opposite party, he was appointed a director for the first time on the 26th of May, 1946. The case of this opposite party regarding the date of his appointment as a director seems to be correct and is fully supported by various materials, including Register of Directors (exhibit 6), etc. This date is very much, relevant as the company had already placed orders for purchasing various plants and machineries for the establishment of its ambitious new sugar plant at Warsaliganj from Messrs. Mirrless Watson Company Limited of the United Kingdom in September, 1945, with a definite understanding that the manufacturers would supply the ordered machineries and plants during the ensuing current season, which has already been discussed earlier. The special case of this opposite party is that he was living at Calcutta and he could certainly trust and repose confidence in the managing director who was its founder and enjoyed a high reputation at that time and, therefore, he cannot be held responsible for any of the acts or the losses that the company ultimately suffered. The affairs of advancing loans to Messrs. Bhadani Brothers or J. R. Commercial Corporation had all started before he joined as a director, over which he had no control, nor he was in any way concerned with those firms, which, as already indicated earlier, exclusively belonged to the family members of Gurusaran Lal and this opposite party could not have derived any benefit on account of the loans being advanced to those firms or in purchase of shares of Hindustan Coal Company Ltd. His case is that the moment he became aware of the malpractices being practised by Lala Gurusaran Lal and his group, he at once got a committee of directors appointed to control the management and affairs of the company and ultimately he fell out with them so much so that he had to institute a suit in the Calcutta High Court. On these statements he has tried to make out a case that he is not liable for any of the claims of the official liquidator nor responsible for any loss said to be suffered by the company.

42. The principal attack of the official liquidator against this as also some of the other opposite parties, who are surviving to face this inquiry, is almost general in nature, as would appear from the issues framed in this case, except a few allegations which are specific against some of them.

43. Before I propose to consider those allegations against the respective opposite parties concerned, I would better discuss briefly the legal aspect of the matter and then examine as to whether the prayer of the official liquidator is fit to be granted, either in whole or in part, against any of the present opposite parties.

44. It has since been well-settled that the allegations of the nature as in the present case, namely, misfeasance, non-feasance, malfeasance, mis application or breach of the trust, etc., are serious in nature which must be specific and the application must contain a detailed narration of the specific acts of commission and omission on the part of each of the delinquent officer of the company, quantifying the loss to the company arising out of such acts or omission; the burden of proof surely and necessarily wholly rests on the official liquidator

himself. I have already taken a similar view, following two decisions of the Supreme Court in *Official Liquidator, Supreme Bank Ltd. Vs. P.A. Tendolkar (Dead) by Lrs. and Others*, and *The Official Liquidator Vs. Raghawa Desikachar and Others*, and the case of *Navrashttra Publishing Company Ltd. v. Ashok Kumar* [1976] 46 Comp Cas 572 (Pat) disposed of on the 4th January, 1975.

45. In this very case, Sahai J. in his order dated September 13, 1963, while releasing two of the original opposite parties, namely, Lakshmipat Singhania and Birdhi Chand Bhalotia (original opposite parties Nos. 10 and 13, respectively), already referred to above; relying upon a number of English decisions, held that a director of a company cannot be made liable for decisions taken by a co-director at meetings which he did not attend, unless it can be shown that he took an active part in giving effect to the decisions (vide *In re City Equitable Fire Insurance Company Ltd.* [1925] 1 Ch D 407 at pages 428 and 429).

46. It is the admitted case of the petitioner that the purchase of Ryam Sugar Company Limited shares was made between March and May, 1946, whereas Sohan Lal Jajodia became a director of the company on the 26th of May, 1946, along with Lakshmipat Singhania. While considering the case of Lakshmipat Singhania, Sahai J. held that it was difficult to "conclude that he knew anything about the purchase being in contravention of conditions" imposed by the Examiner of Capital Issues and the Government of India. Mr. Verma, appearing for Sohan Lal Jajodia, therefore, contended seriously, relying upon the aforesaid authority of Sahai J. that the case of the official liquidator against this opposite party stood on no better footing. Once the company had already decided to purchase the shares of Ryam Sugar Co. Ltd., this opposite party cannot be held in any way responsible, simply because the payments might have been made for purchasing the shares of Ryam Sugar Co. later and to his knowledge. This contention was also advanced against Lakshmipat Singhania before Sahai, J., to hold him responsible on that account, but as said earlier, he was released by the order dated September 13, 1963, repelling this contention.

47. In this connection my attention has been rightly drawn also to the general entry made in respect of the transaction in question, quoted in the body of the misfeasance application itself. An entry dated the 30th June, 1946, shows that the Central Bank of India Ltd. had with the company a cash credit account and had debited the company's account for the sum of Rs. 14,39,000 on account of "being value of shares purchased from Ryam Sugar Company Ltd." On the basis of this entry, it has been contended on behalf of the opposite party that the money spent in paying the price of Ryam Sugar Company shares was not out of the money released by the Examiner of Capital Issues, but was taken from the cash credit loan facilities from the Central Bank of India Ltd. It is no doubt true that by sale of the shares of Ryam Sugar Company, later on, the company did suffer a loss of about Rupees three lakhs, but in my view, if no fault can be found with respect to the original purchase of shares, particularly when the decision had already been taken when the present opposite parties Nos. 2 to 5 had not

even become directors of the company, simply because the company had to suffer a loss on the sale of the shares in question in the share market, which is so fluctuating, in the absence of any specific case or materials on the record to establish any act of fraud or collusion on the part of any of the opposite parties Nos. 2 to 5, it cannot be held that any one of the directors is guilty of misfeasance, malfeasance or breach of trust.

48. Mr. S.N. Dutta, who was appearing for the company in the winding up case, had stated before the then company judge (Mr. Justice Shearer) that " this was an ordinary investment of money which at the time was not needed as there was unforeseen delay on the part of the manufacturers in supplying the machineries ordered for Warsaliganj and that the transaction resulted in a profit and not in a loss ". The state of affairs were better known to the company and, therefore, this statement made on behalf of the company is very much relevant. By this observation, however, I do not mean to lay down that it is not open to the official liquidator to challenge the transaction itself and prove that the stand of the company then taken before this court was unwarranted and misleading. But as already stated above, no material has been brought on the record to take a contrary view.

49. The official liquidator has stated in the misfeasance petition itself that by purchase of the shares of Ryam Sugar Company Ltd., Gurusaran Lal and his nominees became major shareholders and were in a position to control the affairs of that company. Consequently, their firm, Jitanram Ramchandram, acquired the sole selling agency of the products of Ryam Sugar, thereby earning considerable profit through their firm for themselves at a loss to the company. It is apparent, therefore, that even on the face of the allegations made in the petition under consideration, no case is made out even on merits against any one of the present opposite parties directly. The directors having the complete controlling authority and responsible for, all these deals have since died and no step was taken for substitution of their heirs and legal representatives. It may be relevant to refer to the statements in paragraph 53 of the misfeasance application at this stage which are as follows :

" Lala Gurusaran Lal was the managing director of the company and he and his son were virtually in control of the assets and affairs of the company. For some time Sohanlal Jajodia, Onkarnath Jajodia, Nandkishore Bajoria, Sawalram Bhalotia, M.L. Pyne and Bhagwati Pd. Khaitan were also in control of the assets and affairs of the company. The other, directors acted in conspiracy and/or in collusion and/or at the instance of the said Lala Gurusaran Lal, Sohanlal Jajodia, Onkar Nath Jajodia, Nandkishore Bajoria, Sawalram Bhalotia, M.L. Pyne and Bhagwati Pd. Khaitan in the matters mentioned above."

50. Coming to the circumstances in which the shares in question were sold, it is stated in the petition that the shares were made over to Nand kishore Bajoria (original opposite party No. 19) and Mahadeolal Jhunhunwala and were sold for Rs. 11,39,400 and the official liquidator has, ultimately succeeded in getting

payment of the said amount (vide *Gaya Sugar Mills Ltd. Vs. Nand Kishore Bajoria and Another*,). ;

51. Coming to the purchase of 1,200 shares of Messrs. Hindustan Coal; Company Ltd., which involved the company in the investment of a sum of Rs. 12,000 only and were purchased on the 16th December, 1944, the only allegation is that it was an act of bad faith on the part of Lala Gurusaran Lal and Ar jun Prasad Bhadani who were interested in this company. It has been contended on behalf of the petitioner that this was a bad investment and the shares of this company had no market. It has been mentioned in the petition itself that Gurusaran Lal and his son, Arjun Prasad, had absolute control of the books and the affairs of the company. It has already been sufficiently stated about the interest and the role played by the family of Gurusaran Lal in this company. If things should have gone according to the scheme and the plan would have fructified, there would have been no occasion for investing the money which became surplus on account of the delay in supply of the machineries shipped from the United Kingdom and purchasing the shares of Ryam Sugar Company, nor there would have been rise in the price and the occasion for Mirrless Watson Company, the manufacturers, to forfeit the money. All these successive events are practically inter-related and form part of one chain and followed as necessary corollaries leading to a major catastrophe which the company could not face and lost its substratum.

52. Now let me consider the specific issues framed against Sohanlal Jajodia, namely, issue No. 8, which is as to whether he is guilty of failure to account for the sum of Rs. 3,99,680, being the realisation of the sale proceeds of the Warsaliganj factory. The relevant allegations have been made in paragraph 42 of the misfeasance petition. It is said that when large scale misappropriation and misapplication of the company's funds and other acts of gross mismanagement and irregularities on the part of Gurusaran Lal and his son, Arjun Prasad, were detected in relation to the company's affairs, the directors of the company at a meeting held on the 7th October, 1948, appointed a committee of directors to control the management and other affairs of the company, consisting of Sohanlal Jajodia and Bhagwati Prasad Khaitan, which is said to have practically assumed the complete management of the affairs of the company, and in that course, handled large sums of the company's funds, but have not rendered full account of the same, nor did it explain the various queries relating to the company's funds required by the company's auditors. The earlier part of the allegation that the directors of the company, on being apprised of the wrongful acts of Gurusaran Lal and his son, Arjun Prasad, got a committee of directors appointed, goes in favour of the opposite parties that they were not parties or privies to all those acts of the alleged mismanagement, misappropriation and misapplication of the company's funds or assets of Gurusaran Lal and his family members. By definite and telling statements, all those acts are directly attributed to Gurusaran Lal, his son, Arjun Prasad, and his associates alone, however, implicating the other opposite parties and seeking relief against them for all those acts on the ground of the general responsibility as directors. I have already in brief discussed

the general liability and responsibility of a director earlier and would again advert to this aspect of the petitioner's case a little later.

53. The only allegation against the members of this committee is that Sohanlal Jajodia did not render a full account of the company's funds handled as a member of it. Reference has also been made in the misfeasance application in support of this allegation to the report submitted by Messrs. Singhi & Co., the auditors appointed by this court, the relevant portion of which has been quoted in paragraph 45 of the application. It will be useful to quote this statement as well :

" In the report submitted by Messrs. Singhi & Co., auditors appointed by this court, it is said that " All payments made through committee of directors were adjusted in the journal of Guraru by debiting Calcutta office suspense account and crediting Bank of Baroda Ltd. account. No books of account or statement of accounts with supporting documents were available from Calcutta offices for these entries. Total amounting Rs. 3,99,560-9-0 ". "

54. From the above statement of the auditors, it is manifest that all payments made through the committee of directors were already adjusted in the journal of the company's head office at Guraru. The auditors, however, did not accept those adjustment entries in the absence of the supporting documents, the total of which amounted to Rs. 3,99,560-9-0. Messrs. Singhi & Co. were appointed auditors by this court to audit the accounts for the years ending 30th of September, 1949, 1950 and 1951. After keeping the books and papers for a long time, they submitted a report for the period ending 30th September, 1949, pointing out various defects in the books and papers of the company and stating that they were unable to submit an audit report with balance-sheet and profit and loss account. This report, therefore, is not conclusive on which a court of law can fasten liability and make an order to repay any sum. The official liquidator in this court has also signally failed to establish his case with materials on which a judgment can be rested. This court ultimately called for the papers from Messrs. Singhi & Co. and on the 4th January, 1955, appointed Messrs. S. Vaish & Co. as auditors for all the aforesaid three periods. Their report is exhibit I(c). Messrs. Vaish & Co. also could not come to any definite conclusion in the absence of the relevant documents which the company failed to supply them. It would be relevant to quote here paragraph 12 of the said report of the said auditors which is as follows :

" 12. With respect to the maintenance of the books of account the following observations by Lala Gurusaran Lal, the managing director of the company and Shri Arjun Prasad, another director, made in their affidavit dated May 29, 1952, filed in the High Court along with the " statement of affairs" of the company u/s 177A of the Indian Companies Act are relevant.

"(i) The books of account being in arrears due to disputes between the directors and also due to the negligence and default of the accountant in charge of the

said books who purposefully kept the books in arrears with ulterior motives the exact position of the personal accounts under the following heads, that is, sundry creditors, traders account, advance account, suspense account, deposit account and molasses and sugar dealers account could not be ascertained correctly, and the figures shown in the statement are derived from the reminders received from the parties as well as from the reference book of the chief accountant and the statements of accounts submitted by the parties.

(ii) The bank balance was found unreconciled in the books of account and hence the same was ascertained by reference to the bank and from the records in possession of the bank.

Amount of bearer cheque No. NGM 22578 dated October 29, 1950, on Central Bank of India Ltd., encashed by Shri A.K. Banerjee, Chief Accountant, on October 31, 1950, is not accounted for in the cash book.

(iii) Stores accounts particularly relating to consumption of stores are in arrears. We have taken actual stores and valued the same at market rate and have not been able to reconcile with the books. Hence there is likely to be difference between actual stock and the book balance.

(iv) The committee of directors did not submit their complete accounts, but if proper accounting is done we believe certain monies may be found due.

(v) The books are full of mistakes, e.g., even revenue accounts were debited to capital accounts and vice versa.

(vi) Copy of accounts rendered by the debenture trustees does not disclose the complete account of the assets handed over to them ".

55. In paragraph 9 of the report, they have made the following comments:

" The company was brought into liquidation on November 14, 1951, under orders of the Patna High Court. Shri D.C. Mehta was appointed the official liquidator on February 1, 1952, and he took over the record and other charge from the officers of the company in April and May, 1952, as per an inventory running into 339 pages alleged to have been prepared on spot."

56. It was, therefore, rightly contended on behalf of the opposite party by Mr. Rama Kant Verma that the official liquidator has suppressed the relevant papers from the auditors appointed by this court from time to time as also from this court to prove conclusively the charge levelled against this opposite party. I would refer in this connection to the evidence of G.G. Dubey (P. W. 5), examined on behalf of the official liquidator, who is the only witness connected with the committee of directors and for only four months during the relevant period. Except a very general statement that " the aforesaid two directors, who were members of the committee of directors, were heavily indebted to the Gaya Sugar Mills ", he does not give any specific materials on which any charge could be established against the members of the committee directors.

57. It is, therefore, not possible to hold that the official liquidator is entitled to a direction that this opposite party is in any way guilty of any act of misfeasance, misconduct or liable to account for the amount in question, being the realisation of the sale proceeds of the Warsaliganj factory. Accordingly, he cannot be directed to repay or restore the same or any part thereof.

58. Now I proceed to take up the case of Onkar Nath Jajodia (original opposite party No. 16). He became a director of the company for the first time on December 13, 1948, as a member of the committee of directors when it was reconstituted and remained so till November 14, 1951, when the winding up order was made by this court. Apparently, therefore, he cannot be held liable even remotely for any of the acts of the directors prior to that date. The only major event that happened after his coming in as a director was perhaps the sale of the assets of the Warsaliganj factory. He has been made responsible for two specific charges in the petition, namely, (i) failure to account for the cash balance of the company of the sum of Rs. 4,40,465 said to be available when the company went into liquidation (issue No. 7), and (2) failure to account for the sum of Rs. 3,99,680, being the sale proceeds of the Warsaliganj factory (issue No. 8), along with Sohanlal Jajodia. In his show cause he has said that in spite of the appointment of the committee of directors, Gurusaran Lal continued to act as the chief executive officer of the board of directors which was concerned with only those matters which were referred to them. In his evidence on commission, he has further said that this committee of directors ceased to function in October, 1949, and all the papers, supporting vouchers, statement of accounts and the books were kept in the office of Gurusaran Lal and the committee had handed over all the papers also. There is no reliable material on the record to contradict him.

59. So far as the second charge of the failure to account for the sale proceeds of the Warsaliganj factory is concerned (issue No. 8), for the reasons already discussed, while considering the case of Sohanlal Jajodia, this opposite party must also be exonerated of this charge as no additional or other material or evidence has been produced on the record by the official liquidator to prove him liable either.

60. Coming to the question of the failure of this opposite party to account for the cash balance, his case in his show cause is that even at the time when he had become the director of the company, the earlier system was followed by the company and the actual management was being conducted by Lala Gurusaran Lal. There was regular staff of the company, including managers, accountants and other officers entrusted with the actual working of the said company, Gurusaran Lal being the Chief Executive Officer. The board of directors was concerned only with discussing matters which were referred to it, and not any other matter, and this opposite party committed no act of bad faith in that regard and discharged his duties bona fide and to the best of his ability. So far as the cash balance is concerned, the case of the liquidator as made out in paragraph

41 of the petition is that on taking delivery of possession of the assets of the company, he got only a sum of Rs. 1,685-6-9, whereas according to the accounts made up by the accountants, appointed by this court from time to time, reveal that the balance on the 1st of December, 1951, was Rs. 4,40,465-4-6, for which all the directors, including this opposite party, are liable. This opposite party in his counter-affidavit has denied his liability and has stated that he had never any occasion to deal with the accounts of the company and all the books of accounts were under the control and charge of Gurusaran Lal and his staff. In his evidence this opposite party has stated that Gurusaran Lal was in charge of the cash and the affairs of the Warsaliganj factory as well, and that the affairs of the Warsaliganj factory, which was under construction, were not looked after by the committee of directors. He was subjected to lengthy cross-examination, but save and except denials, I do not find any statement on which the case of the liquidator can be made out in respect of either of the two charges against this opposite party.

61. Similar is the statement of Sohan Lal Jajodia in his evidence that the committee of directors was not conducting the sales of the machineries, etc., of the Warsaliganj factory and making the sale proceeds to Calcutta and that actually the affairs were looked after by Gurusaran Lal, the managing director, and that the committee of directors never dealt with the monetary affairs.

62. No material has been brought on the record on behalf of the liquidator to the contrary to establish his case on which a finding could be recorded that this opposite party, as a member of the committee of directors, had received the sale proceeds of the Warsaliganj factory and had not accounted for the same. Issue Nos. 7 and 8 must, therefore, be decided in favour of this opposite party also.

63. Now, I take up for consideration issues Nos. 3 and 6.

64. Issue No. 3 relates to the losses of Rs. 5 lakhs said to, be suffered for the crushing season 1949-50 and for this each of the opposite parties has been charged. No allegation whatsoever has been made out in the whole of the application in this connection. All that can be said on behalf of the petitioner is about some observations made by Shearer J. in his winding up order which has been quoted in paragraph 23 of the petition, the relevant extract of which is as follows :

".....and the new board of directors carried on the business during the crushing season of 1949-50. As was to be expected, it was carried on at a loss, the extent of the loss being, it is said, in the vicinity of Rs. 5 lakhs. On the 1st of September, 1950, an application was made to the Government of Bihar u/s 138 of the Companies Act by more than 10 per cent, of the shareholders, and, in due course, an inspector was appointed to investigate the affairs of the company. Shortly after this application was made, on the 7th October, 1950, the Government of India made an order under the Essential Supplies (Temporary Powers) Act, and on the 1st of December, 1950, the District Magistrate, who had

been appointed the authorised controller, put Gurusaran Lal in charge of the Guraru Factory. It is, I think, very unfortunate that this was done. The business was carried on throughout another crushing season, but again at a very considerable loss....."

65. No evidence has been led on behalf of the petitioner, either oral or documentary, to establish the claim under this issue, much less to establish that the alleged loss was suffered by the company on account of any act of misfeasance, malfeasance or non-feasance on the part of any one of the directors.

66. Mr. R.K. Varma has rightly contended that the total claim of Rs. 67,68,724 in the residue and last issue, namely, issue No. 9, does not contain this sum of Rs. 5 lakhs, and if the claim under this issue is added to the claim under various other issues, the total claim mentioned above would be inflated by this amount of Rs. 5 lakhs. Really, as a matter of fact, on the petition itself, this issue does not arise and was wrongly incorporated as an issue for decision by this court.

67. Now I come to issue No. 6. This issue is comprised of claims under two heads, namely, (i) a sum of Rs. 8,37,715-3-3, and (ii) (a) Rs. 5,50,000 and (b) Rs. 7,41,000 said to be losses suffered on account of advances made to Messrs. Bhadani Brothers Limited and Messrs. J. R. Commercial Corporation and other private limited companies, through their shareholders, being the members of the joint Hindu family of Gurusaran Lal and Arjun Prasad. Relevant statements with respect to Messrs. Bhadani Brothers Limited is made in paragraphs 30 to 38 of the petition. Reference may be made in this connection to the resolution dated July 8, 1946, of the company which forms part as annexure " R " to the counter-affidavit of Lakshmipat Singhanian and which was attended to by Gurusaran Lal, Sohan Lal Jajodia, Jogeshwar Prasad and Arjun Prasad and adopted various resolutions and also resolved " to invest the money not immediately required with such persons or banks as the managing director may think fit but so that the investment in any bank shall not exceed Rs. 10,00,000 ". It appears that in pursuance of this resolution, the managing director opened a current account with Messrs. Bhadani Brothers Limited. This was done in the year 1946, the purpose being already indicated, which cannot be said to be in any way at that time motivated. Objection was, however, taken by Messrs. Vaish & Co., auditors, with respect to this account, and in the directors' report for the year ending 30th September, 1946 (exhibit 1), they gave the following report to the shareholders :

" Regarding the current account with M/s. Bhadani Brothers Ltd., the directors have obtained legal opinion and the opinion they have received is that the position taken up by the auditors is not correct. It may be stated in this connection that the account which is being maintained since November, 1944, with Messrs. Bhadani Bros. Ltd. is a banking account and that except for some time in 1946 and 1947, when the funds of the company remained with them in the above account it is Messrs. Bhadani Bros. Ltd. who have been creditors of the company and even now over Rs. one lakh is due by the company to Messrs.

Bhadani Brothers Ltd. Messrs. Bhadani Brothers Ltd. have not changed anything for acting as the agents of the company at Calcutta and they have paid interest to the company for the period the amount was with them which interest the company would not have got if the amount had been kept with the bank. In view, however, of the objection taken by the auditors, the company has decided not to have any banking account with Messrs. Bhadani Bros. Limited but the company will be entitled to take advances from them."

68. From this report, it appears that it was not a loan advanced by Giusaran Lal to this company as alleged by the petitioner, but it was in the nature of a mutual, open, running and current account, sometimes Messrs. Bhadani Bros. Ltd. itself being a creditor of the company and helping the company in its new adventure. In the report for the year ending 30th September, 1947 (exhibit 1/a), it was reported as follows:

" The account of Messrs. Bhadani Brothers Limited, a private limited company, in which some of your directors are interested as directors, showed in Nos. I and II accounts as per books of the company, maximum debits during the year of Rs. 25,46,985-15-10 and Rs. 87,900, respectively. The balances to the debit of the two accounts at the close of the year, however, amounted to Rs. 28,782-13-0 and Rs. 3,170-2-3, respectively (aggregating to Rs. 31,952-15-3). At the time we submitted our last report we were given to understand that the account of Bhadani Brothers Limited, after taking into account payments made by them for the company till then, would "show a credit of about a lakh of rupees in their favour "."

69. No evidence has been led on behalf of the petitioner to show that the financial status of Messrs. Bhadani Brothers Ltd. was in any way strained at that time. In paragraph 33 of the petition, the liquidator made the following allegations :

".....it appears that Lala Gurusaran Lal and Arjun Prasad who had absolute control of the books of the company caused reversal of certain entries in the said books made in order to eliminate the said debit but only succeeded in reducing the same. The said reversal was unauthorised, illegal, unjustified and wrongly made. M/s. Singhi & Co. who were appointed by this court after the liquidation order to continue as auditors reported on these reversals as follows :

" A list of reverse entries passed through journal for which no supporting documents and Board's sanction were available is attached marked D ","

70. Arjun Prasad in his affidavit-in-opposition has denied the dues and his case is that in the reports of the directors for the years ending 30th September, 1946 and 1947, to the shareholders, which were duly approved, when a dispute arose among some of the directors and the committee of directors later on, certain reversal entries were wrongly made at the instance of Sohan Lal Jajodia and it was on that account that Messrs. Singhi & Co., in their report for the year ending the 30th. September, 1948, stated that later on in January, 1950, when the

dispute between directors was settled, the wrong reversal of entries was corrected to the original position which were not re-submitted by the auditors for re-audit and that in their annual general meeting of the company held on the 2nd June, 1951, it was directed that the auditors of the company should examine the accounts of Messrs. Bhadani Brothers Ltd. once again, but the matter could not be carried to its finish on account of the commencement of the winding up proceeding.

71. Now, I come to the case against Messrs. J. R. Commercial Corporation. It is stated in paragraph 37 of the petition that on the 13th September, 1946. a sum of Rs. 5,50,000 was advanced by the company to this corporation by the managing director, Gurusaran Lal. It is admitted in the petition itself that on objection being taken by the auditors, this amount was transferred to the account of Bhadani Brothers Ltd. on the 20th of May, 1947, along with interest.

72. It is further stated in paragraph 38 of the misfeasance application that in the statement of affairs filed after the winding up order of the company, J. R. Commercial Corporation was still shown as debtor by the directors to the extent of Rs. 7,41,000, further, however, stating that this account was merged with the account of Bhadani Brothers Ltd. during 1947-48, a fact which was disputed by Bhadani Brothers Ltd. The case of the liquidator is that the advance by the directors of such large amount was "in wilful contravention of the provisions of the Indian Companies Act and ultra vires" and, therefore, each of the opposite parties is liable for the same.

73. With respect to this firm I would again refer to the directors' report for the years ending 30th September, 1946 and 1947. The first report reads as follows :

"Regarding the account with Messrs. J. R. Commercial Corporation Ltd. which was of a short duration and has been squared up, the company had certain surplus funds at the time and invested the same with Messrs. J. R. Commercial Corporation Ltd. for a short period. This account has also since been closed,"

74. The second report reads as follows :

"The account of Messrs. J. R. Commercial Corporation Limited, referred to in our last report, has been cleared off by transfer of the debit of Rs. 5,50,000 to the account of Messrs. Bhadani Brothers Limited on 20th May, 1947. The interest amounting to Rs. 10,961-11-6 on this account has also been debited to the account of Messrs. Bhadani Brothers Limited on 30th September, 1947."

75. I have already sufficiently indicated that the auditors appointed in the course of the winding up proceeding could not submit complete report for want of various relevant papers. The witnesses examined on behalf of the petitioner are so incompetent that on their evidence it cannot be held by any court that the alleged loss on this account was due to any act of misfeasance or bad faith on the part of the present opposite parties.

76. Reference may be again made to the resolution of the board of directors

dated the 8th of July 1946, whereby the managing director was authorised to invest the surplus money with such persons or bank as he may deem fit, the only limitation being that the investment in any bank should not exceed Rs. 10 lakhs.

77. It is apparent that none of the present opposite parties had any interest in the two private companies of the family of Gurusaran Lal. Jogeshwar Prasad in his counter-affidavit has simply denied his knowledge of these transactions. The case of the contesting opposite parties, Sohan Lal Jajodia and Onkar Nath Jajodia, is that these transactions were bona fide in pursuance of the resolution of the board of directors dated the 8th of July, 1946, passed in consideration of the best interest of the company and that Gurusaran Lal and his staff being responsible for the day to day management and being entrusted with actual working of the company and its funds, in course of the same they " had no occasion to suspect any unfair play". Their further case is that no amount is outstanding in the account of J. R, Commercial Corporation Ltd. as that was included in the account of Bhadani Brothers Ltd. and that they have discharged their functions bona fide and to the best of their ability inasmuch as " the actual management could not possibly be done from Calcutta where they normally resided, nor was it possible....." In the circumstances that the company needed liquid money at Calcutta and thought to keep it with some firms on interest payable at a very short notice, as and when required, in expectation of the shipments, do not prima facie appear as an act of misfeasance, malfeasance or the like, as alleged by the liquidator. Apart from the fact that the account books in the manner in which they have been made up and subjected to severe criticisms by all the auditors, it is difficult to conclusively come to a concluded view that actually amounts are due from the aforesaid private companies of the family of Gurusaran Lal to the company in question. But even assuming that it is so, as the deposits were made with them under the authority of the resolution of the board of directors in the circumstances already indicated, namely, that the amount was surplus and needed at Calcutta, the action was not in bad faith. It may be a case of a debt recoverable from those two private companies on proof thereof, but the accounts having remained in operation for a pretty long time in the nature of mutual, open and running account, duly approved by the shareholders as well, in my view simply because in course of time those companies failed to repay any outstanding amount for some reason or the other, it cannot entitle the liquidator to obtain any order for refund or return of the amount by the existing opposite parties now on the record of this case. The right, if any, of the liquidator lies in proceeding to realise those assets of the company, being debt in the nature of its debts.

78. Before, however, recording a concluded finding, I have to consider some of the authorities cited on behalf of the parties, but before I do that, I would better dispose of the case of the two remaining opposite parties, namely, C.C. Pyne and C.M. Rajgarhia, who have not appeared in this court to contest this case.

79. C. C. Pyne was a director of the company for a very brief period of ten

months only, i.e., from the 17th December, 1946, to 29th October, 1947, whereas Rajgarhia was there from the 29th October, 1947, until the company went into liquidation. It appears from the various reports of the directors that these two directors had never taken any active part in the affairs of the company nor any evidence has been adduced on behalf of the liquidator that these two directors were also personally responsible for any of the complained acts or were even guilty of any act of non-feasance. Admittedly, these two directors were not in any way connected with the family of the managing director nor they apparently have received any personal advantage out of the various impugned transactions. I would, accordingly, exonerate these two directors.

80. Mr. Ghose, in order to make up his difficulty of the paucity of evidence, sought to take aid of Section 548 of the 1956 Act which provides that where a company is being wound up, all books and papers of the company and of the liquidator shall, as between the contributories, be prima facie evidence of the truth of all matters purporting to be therein recorded. On the provisions of this section learned counsel contended that even in the absence of any positive evidence, he was entitled to all reliefs as the books of account did disclose losses to the extent of Rs. 67,68,724, which is covered by issue No. 9, and the onus shifted on to the delinquent directors to prove their innocence. It is difficult to accept this contention. In order to meet this bald contention, Mr. R.K. Verma rightly contended that the aforesaid provision applies only in case of a winding up proceeding, and although misfeasance proceeding was in the course of winding up of a company, it was entirely different in nature. If that would have been so, there would have been no necessity of engrafting Section 45H in the Banking Companies Act, making a special provision for assessing damages against delinquent directors, etc. There seems to be great substance in this contention. The nature of a misfeasance proceeding under the Indian Companies Act has been the subject-matter of judicial scrutiny on several occasions and it has been repeatedly held that such proceedings are judicial in nature and pertain to civil liabilities of a delinquent director, etc., and are very similar to proceedings in the nature of a suit. Reference may be made to only two decisions in this regard, namely, *Vadilal Chatrabhuj Gandhi Vs. Thakorelal Chimanlal Munshaw and Others*, and *Prabhakar Parashuramji Pandit Vs. Vikram Sugar Mills Ltd.*, . Buckley on the Companies Acts (thirteenth edition), at page 673, says that a company may have claims arising, not under the Companies Act, but under the general law as claims for misconduct for which it could sue. Against the like person it may have claims arising under the Act in the liquidation proceeding for which also it could sue. In respect of both the one and the other, if they produce pecuniary loss to the company by misapplication of its assets, a summary remedy may be had, and in this proceeding the court may examine the conduct of the officer and compel him to refund. Apart from this legal position to prove his case on proper material, the books of account, which are sought to be relied by the petitioner, have been the subject-matter of serious comments by all the auditors, reference to which has already been made earlier. I would, accordingly,

reject this part of the argument of Mr. Ghose.

81. Now, I would take up and discuss some of the relevant authorities cited at the Bar. Mr. Verma has strongly relied on Buckley on the Companies Acts, at page 866. The learned commentator has said that if an act is done by a director in the true and reasonable belief that it is for the company's interest, the fact that in promoting the company's interests, the directors also promote their own, does not of itself make them chargeable with breach of trust. This observation is based on the decision in the case of *Hirsche v. Sims* [1894] AC 654. At page 867 of Buckley's book, it has been further stated that if facts which may show imprudence in the exercise of powers undoubtedly conferred upon directors, that will not subject them to personal responsibility unless the imprudence is so great and so manifest as to amount to *crassa negligentia*. The court will not visit directors with the consequences of a mere error of judgment when they have acted *bona fide* and have intended to do what was right and best in the interests of the company. The leading case in support of this proposition, referred to by the learned author, is *In re City Equitable Fire Insurance Co.*, which has been described by the Supreme Court in the case of *Official Liquidator, Supreme Bank Ltd. v. P. A. Tendolkar*, as *locus classicus* on the subject to which I shall come again a little later. This court in the case of *Official Liquidator v. Shri Krishna Pd. Singh* 1969 CLJ 327 (Pat) has also held that the initial onus in a case of misfeasance is on the official liquidator to prove that the directors had committed misfeasance or breach of trust and were accountable for the amount claimed which belonged to the company. The question as to whether a director is liable to account has to be decided on the particular facts and circumstances of the case; it might be that they had placed trust on those who were put in a position of trust, for the purpose of attending to the management. The learned judge has made a distinction in the case of a managing director and other directors and expressly laid down that the case of the other directors, though they might have signed the balance-sheet, is different; unless it was shown that they had taken an active part in the affairs of the company or were accountable in some manner with the alleged transaction otherwise, it could not be said that any such director was fully aware of the various entries in the accounts and, in such, circumstances, they should be given the benefit of doubt.

82. In the case of *The Karnataka Films Ltd. Vs. The Official Receiver, Madras*, as such the Official Liquidator of *Chitrakala Movietone Ltd. and Others*, it was held that the loss to the company in respect of which compensation is asked for should be shown to be direct and not remote and more or less a speculative consequence of the misfeasance or the neglect of duty of the director or officer of the company against whom relief is sought.

83. The facts of the case in hand which have been discussed in sufficient elaboration earlier, in my opinion, are telling that the losses are not the result of any direct act of misfeasance or neglect of duty, but were inevitable consequences which follow on account of the circumstances beyond the control

of the company and the managing director, which cannot be said to be even an act of error of judgment. It has been held in the case *Dovey and the Metropolitan Bank v. John Cory* [1901] AC 477 which again has been referred to in the aforesaid case of *Supreme Bank Ltd.*, by the Supreme Court, that where money is lost through an error of judgment on the part of directors, it cannot be recovered either under this section or by action. The House of Lords had considered a charge of neglect against a director in that case which was to the effect that the said director did not attend to any details of business not brought before him by the general manager or the chairman. It was held that it could not be expected of a director that he should be watching either the inferior officer of the bank or verifying the calculations of the auditors himself. I am tempted to quote the following sentence from this report:

" The business of life could not go on if people could not trust those who are put into a position of trust for the express purpose of attending to details of a management. "

84. While considering this case, the Supreme Court quoted with approval the observations made in *Palmer's Company Law* (twenty-first edition), at page 575, that it was doubtful whether, if similar facts arose today as in that case, the court would decide in the same manner, because now-a-days the courts take a stricter view of the duties of a director than that taken some twenty-five years ago. Even in this context I may say that in the present case also, the activities of the directors complained of are of the years 1944 to 1946, about thirty years before from today.

85. Now, I may refer again to the two cases of the Supreme Court. The facts of the case of *P.K. Nedungadi Vs. The Malayalee Bank Ltd. (In Liquidation) and Others*, are quite distinguishable as the delinquent director, according to the finding, had derived personal benefit from the fraudulent acts and was, accordingly, held to be liable to repay and restore the same as he had directly enabled another director to perpetrate fraud, resulting in loss to the company.

86. Now remains the last case to be noticed, namely, *Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar*, already referred to earlier. After discussing the various English and Indian cases, the principle laid down in paragraph 40 of the report is as follows:

" It is certainly a question of fact, to be determined upon the evidence in each case, whether a director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A director may be shown to be so placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a company, even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to

every one who examines the affairs of the company even superficially. If he does so he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the company."

87. The principle laid down is derived from a series of cases referred to in this judgment and is well established. However, it is not possible to apply the said principle to the facts of the present case in the view that I have taken that none of them has been guilty of any fraud in the conduct of the business of the company in question nor any act complained of can be said to be a specific act of dishonesty and it cannot be said that they had shut their eyes ; rather a committee of directors was very soon appointed the moment they became apprehensive and suspicious of some of the acts of the managing director, Gurusaran Lal.

88. Having given my anxious consideration to the materials produced on the record and for the reasons fully discussed above, I must hold that the petitioner has miserably failed to substantiate his case against anyone of the present opposite parties. Therefore, the application must fail and is, accordingly, dismissed. In the circumstances, however, I will direct the parties to bear their own costs.