

(2012) 03 MAD CK 0175
In the Madras High Court
Case No : C.A. No. 28 of 2010

G. Vijayalakshmi alias Brinda and another	APPELLANT
Vs	
Tirupur Textiles P. Ltd. and others	RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Companies Act, 1956 — Section 10F, 297, 397, 397(2), 398

Citation : (2013) 113 CLA 299 : (2012) 175 CompCas 1

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : Aravind P. Dattar, for Mysamy Associates, for the Appellant; P.H. Aravindh Pandian, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman, J.—The appellants herein aggrieved over the order of the Company Law Board dated September 6, 2010, in dismissing their petition made in C. P. No. 3 of 2007 (G. Vijayalakshmi alias Brinda v. Tirupur Textiles P. Ltd. [2010] 160 CompCas 375) have come up with the present company appeal. Respondents Nos. 1 to 9 are the respondents herein and respondents Nos. 10 and 11 are the legal representatives of the deceased fourth respondent. The case of the appellants, in a nutshell, is set out hereunder:

(a) The first respondent-company (hereinafter referred to as "the company") was incorporated as a private limited company on January 19, 1956, under the Indian Companies Act, 7 of 1913. G. T. Krishnaswamy Naidu, P. Asher, T. N. Rajasekaran and G. T. K. Sivasubramaniam were the subscribers of the memorandum and articles of association and all of them are now no more. The main object of the company is to carry on spinning of yarn from cotton. After the incorporation, the paid-up capital of the company was initially increased to Rs. 7,50,000 consisting of 7,500 equity shares of Rs. 100 each. G. T. Krishnaswamy Naidu and his wife Vijayammal were holding 2,000 and 1,000 shares respectively. Apart from them, G. T. Krishnaswamy Naidu's sons, viz., G. T. K. Rajasekaran, G. T. K.

Sivasubramaniam, G. T. K. Parthasarathy and G. T. K. Shanmugasundaram were allotted 1,000 shares each. P. Asher, a third party, who was in no way related to G. T. Krishnaswamy and his family, was allotted 500 shares. Thus, the entire paid-up capital of 7,500 shares of Rs. 100 each and 7,000 equity shares of Rs. 100 each were held by the family members of G. T. Krishnaswamy Naidu, except 500 shares which were allotted to P. Asher in whose name the licence was initially granted by the Government of India for the textile mill.

(b) 1,000 shares of the said G. T. K. Rajasekaran son of G. T. Krishnaswamy Naidu, were transferred in the name of his son R. Ranganathan. After the death of G. T. Krishnaswamy Naidu and his wife Vijayammal, their 3,000 shares were equally transmitted in the name of his sons, viz., G. T. K. Rajasekaran, G. T. K. Sivasubramaniam, G. T. K. Parthasarathy and G. T. K. Shanmugasundaram and they got 1,000 shares each. The said three persons were holding 2,000 shares each apart from 1,000 shares, which were transferred to the said R. Ranganathan and 500 shares, which were allotted to the said P. Asher. Thus, out of the paid-up capital of 7,500 shares, prior to December 31, 1974, except for 500 shares and 1,000 shares, which were transferred to the said R. Ranganathan, the rest of 6,000 shares were being held by the said three brothers.

(c) The appellants are the daughters of late G. T. K. Shanmugasundaram, who was one of the directors of the company from the date of incorporation till his death. The members of the board of the company were only G. T. Krishnaswamy Naidu and his sons, except P. Asher. So long as G. T. K. Sivasubramaniam was alive, he was functioning as the managing director of the company. Since he did not have any issues, he adopted the second respondent and after his death, the second respondent has been appointed as the managing director of the company and ever since then, he has been in control and management of the affairs of the company.

(d) The company had adopted new set of articles including Table "A" of the Companies Act, 1956 (for short, "the Act") with effect from October 1, 1965. The company had three subsidiaries as on December 24, 1975, which were--

(i) Tirupur Gin and Press P. Ltd. ;

(ii) Vijayeswari Ring Travellers P. Ltd., (the eighth respondent); and

(iii) Sovereign Engineers P. Ltd., (the ninth respondent).

2. As on today, the eighth and ninth respondents are no longer subsidiaries. After the introduction of section 43A of the Act, the company became a public limited company with effect from April 1, 1976, by virtue of the turnover. After their father's death on November 6, 2000, the appellants have been making representations to the second respondent that they should be associated with the management of the company and they should be made as directors. The sixth respondent is an employee of the company and he has been functioning as

an executive director with effect from February 18, 2002. The third respondent is a house wife, the mother of the second respondent and the fifth respondent is a friend of the second respondent. The fourth respondent is another director, who was associated with the company after the death of his father, P. Asher, who was a director from the date of incorporation till his death. The fourth respondent became a director of the company with effect from December 19, 1969:

(d) As on today, the company has 3 units, viz.,

(i) Spinning divisions, Unit No. 1, Anupparpalayam, Tirupur-641 652.

(ii) Unit No. 2, 1486, Avinashi Road, Peelamedu, Coimbatore-641 004.

(iii) Unit No. 3, Jubilee Unit, 15, Velampalayam Village, Tirupur-641 652.

All the three units put together have 59,376 spindles.

(e) The appellants are holding 27,600 shares which constitute about 31 per cent of the paid-up capital of the company. Even though they hold the said percentage, after the death of their father in the year 2000, they were not associated with the management of the company. The second respondent, realising that the appellant's father had no male issues, after his death, has been avoiding whenever the appellants or their representatives tried to meet him for an amicable settlement of either bringing them on the board or their nominees or making necessary arrangements to spin off one of the undertakings to the appellants for their due entitlement. All that efforts have become futile since the second respondent, who has majority shares, sought to it that his own yes-men were brought on the Board so that he will have absolute control of the affairs and management of the company.

(f) The company is having several cars (Mercedes Benz, S-Class, etc.) and the second respondent is the only person enjoying them. The company does not declare more than 15 per cent, dividend. The company had reserve as on March 31, 2006, a sum of Rs. 9,64,50,354.19. The company had modernised its plant and machinery for the past 9 years and replacing old and outmoded machines with modern, sophisticated and high productivity machinery.

(g) The appellants have not been receiving any notices for the extraordinary general meetings and the annual general meetings alleged to have been held by the company for the past 6 years. They have not raised any query with regard to the same since the second respondent has been negotiating for amicable settlement of the due entitlement in the business of the company. As stated above, they have also not asked for representation of the Board since they have been hoping for a fair settlement of their entitlement. The second respondent and associates have taken undue advantage of their silence and took it as their seal of approval for the various acts of mismanagement on the divergence of the funds of the company to the companies in which the second respondent has interest and has been putting through various transactions which are detrimental to the interests of the company and its shareholders.

(h) The company has about 14 acres of land in Avinashi Road, Peelamedu, Coimbatore-104, where the second unit is functioning. The second respondent has master minded a scheme, by which he has decided to settle all the workmen of unit 2 and tries to sell 14 acres of land to commence a new business. The above 14 acres of land alone will fetch several crores. Further, the company has constructed, a big bungalow at its cost which is worth several crores. The second respondent is living there, without paying any rent. Such action on the part of the second respondent utilising his steam roll majority on the board and general meeting shows that he is not bothered about the interest of the company.

(i) In the name of modernisation, the old machineries are in the process of being sold by the company at the instance of the second respondent and the actual price is not brought into the books of the company, but only reflected in the accounts as if the plant and machineries are being sold to book value. The difference in the market value and the book value is being siphoned off by the second respondent and his associates which is detrimental to the interests of the company and the appellants.

(j) The second respondent as the managing director of the company is being paid Rs. 7,07,793 which includes the contribution to provident fund, etc., and the sixth respondent, who is at the beck and call of the second respondent is also being paid a sum of Rs. 8,80,300 towards salary. The sixth respondent has been re-appointed for a period of 5 years with effect from November 1, 2005, at the extraordinary general meeting alleged to have been held on December 28, 2005. Apart from the above, there are several inter-company transactions, which are reflected in the balance-sheet of the company for the year ending March 31, 2004, March 31, 2005 and March 31, 2006, which are detrimental to the interests of the company. The provisions of section 297 of the Act are not complied with. They are being benefited by virtue of entering into various transactions with the company at its expense.

(k) The company is not disclosing the actual income in its books. Companies similarly situated in Coimbatore having similar spindles are making enormous profits and they have reserve worth several crores. The company has nearly 60,000 spindles and all its plant and machineries are modernised. The net profit for the year ending on March 31, 2006, is only a sum of Rs. 47,88,000 which is very meagre and it must earn a net profit of not less than Rs. 5 crores per annum. Therefore, the appellants pray that an investigation is required to find out the suppression and diversion of the company's funds by the persons in control of the affairs of the company.

(l) The entire plant, machinery, land and building of the 3 units are mortgaged to Andhra Bank, Tirupur for the facilities availed by the company from time to time. A bare perusal of the balance of the company for the year ending on March 31, 2005 and March 31, 2006, would disclose that several lakhs of rupees had been obtained under various heads and charges have been created from time to time in respect of the amounts sanctioned and disbursed by the said bank to the

company.

(m) The appellants did not interfere with the functioning of the company after the death of their father with the pious hope that the second respondent would amicably find out an exit route for them. After the death of their father, in spite of the best efforts taken by them, the appellants are excluded from participating in the management of the company and enjoying other benefits which they are entitled to in view of their shareholding. The company is being managed by one family to the exclusion of other family. Therefore, the appellants have established oppression and denial of legitimate expectation could be just and equitable ground for dissolution of partnership. Therefore, the company could be wound up on the just and equitable grounds.

(n) When the above group of shareholders have formed the company and have been participating in the affairs of the company for a long time, there can be a presumption of the denial of legitimate expectation and exclusion of one group from the management is an act of oppression. The conduct of the second respondent and his associates is a departure from the fair play in the management of the affairs of the company and the appellants have lost their confidence in view of the exclusion of their participation in the management and they are entitled to relief as stated above.

3. The case of respondents Nos. 1 and 2, in nutshell, is set out hereunder:

(a) The appellants are just housewives and they did not ever envisage any role in the management of the company and they did not attend a single annual general meeting, though notices were sent to them regularly. As far as the allegation of oppression is concerned, it is not clear as though they opposed any decision of the company and the majority shareholders just overruled them.

(b) The case of the appellants that their father G. T. K. Shanmugasundaram was a director on the board of the company from the date of incorporation till his death is factually incorrect. At the time of incorporation of the company, he was a minor, aged about 14 years and he was inducted as director only on June 3, 1968. The claim of the appellants that after the death of their father, they had been making representation to the second respondent through their relatives and friends and sought association in the management of the company is totally untrue. Had the appellants approached these respondents with any such proposal most certainly they would have got a suitable response. The case of the appellants that the second respondent using his majority holdings, saw to it that his own yes-men were on the board to enable him to retain absolute control over the management of the company is nothing but a ridiculous and self serving statement. Nothing prevented the appellants, who hold 30.66 per cent of the paid-up capital of the company to raise grievances before the proper forum like the annual general meetings of the company.

(c) The second respondent has been permitted by the members of the company to use the office car at the extraordinary general meeting held on February 21,

2003. The company has several cars and one of the cars is being used by the second respondent for official purpose.

(d) Though notices for the general meetings have been sent to the appellants, they have not chosen to attend any of the meetings. Immediately, after the declaration of the dividend at the respective annual general meetings, the dividend cheques were promptly posted to the appellants and they have encashed all the cheques.

(e) The allegation of mismanagement saying that there has been divergence of the funds of the company and that various transactions which are detrimental to the interests of the company were being entered into are baseless and they are unsubstantiated. The company has no intention of disposing of the land at Peelamedu, Coimbatore, where its second unit is functioning and settle the dues of all the workmen of that unit. The company, at present, has no intention to commence any new business. In fact, the properties of the company already stand mortgaged to the Andhra Bank and thus, they cannot be sold unless and until the charge is satisfied.

(f) The company does not own any bungalow at Coimbatore and the second respondent resides in his own house.

(g) The accounts of the company would show that all the old machineries had been sold only at market value and that the amounts realised have been duly reflected in the books of account. This goes to show that the old assets have not been sold at book value and that the profits earned thereof have been duly brought into the accounts.

(h) While pointing out that the company's net profit for the year ended on March 31, 2006, is a sum of Rs. 47,88,000 (actually, the figure is Rs. 48,39,818), the appellants have conveniently omitted to refer to the aggregate free reserves of the company as on March 31, 2006, amounting to over Rs. 9 crores, which included a sum of Rs. 45 lakhs transferred to the general reserve out of the current profits.

(i) The alleged transactions involving the disinvestment of shares held by the company in its erstwhile subsidiaries, viz., the eighth and ninth respondents herein took place three decades back. At that time, the second respondent was 13 year old boy and that the said decision to disinvest the shares of these companies was taken by the father of the appellants.

(j) The respondents never did anything to dilute the shareholding strength of the appellants, though it was within their power to do so.

4. The case of the third respondent is as follows:

(a) The third respondent is the adoptive mother of the second respondent. The company has been managed by the second respondent in a very successful manner especially during the turbulent times of the textile industry.

(b) The appellants deliberately and unnecessarily published the interim orders given by the Company Law Board in English and Tamil newspapers. While doing so, they have not published the real operative part of the interim order but their own interpretation so as to gain an undue mileage in the minds of the public.

(c) After the death of the third respondent's husband and the second respondent's adoptive father, the second respondent was unanimously appointed as the managing director of the company to which the appellants' father wholeheartedly consented to and approved the proposal.

(d) The appellants' legitimate expectations have been raised for the first time in the company petition as an afterthought to extract money from the respondents.

(e) There are adequate number of independent professional directors on the board of the company to safeguard the interests of the shareholders. These professional directors are not the yes-men of the second respondent.

5. The case of respondents Nos. 3, 4, 5 and 6 is as follows:

(a) The appellants became the shareholders of the company only on June 22, 1990 and therefore they neither have personal knowledge about the company nor had any business knowledge of the company.

(b) The new articles of association in accordance with the special resolution passed at the extraordinary general meeting of the shareholders held on September 22, 1971, even before the second respondent became the director of the company and the appellants became the shareholders of the company.

(c) The appellants never made any attempt to sort out any of the issues as there are no issues between them to be settled. The fifth respondent is a professional who possesses vast experience in the field of banking and finance and is an independent director. The sixth respondent is also an independent director, who possesses vast experience in the field of textiles for more than 50 years.

(d) There was no proportional representation on the board right from the incorporation of the company and independent directors alone were on the board. The appellants never made their offer to participate in the management or to have the proportional representation on the board. The directors were appointed only on the basis of the experience and not on the basis of shareholding.

(e) None of the machinery were sold to any of the interested persons and they were sold in the open market at the prevailing market rates which were duly accounted in the proper accounts of the company.

(f) The appellants have not made out any prima facie case in favour of them to grant any relief in their favour.

6. The case of respondents Nos. 8 and 9 is as follows:

(a) The address of the registered office of the eighth respondent-company had

been wrongly mentioned as No. 3/317, Vellankurichy Road, Peelamedu, Coimbatore instead of A.5, Coimbatore.

(b) These respondent-companies ceased to be the subsidiaries of the first respondent-company during the year 1977, when the company took a strategic decision to disinvest the shares held by them. The second respondent who was a 13 year old boy at that time, was not in the picture at all when this decision was taken. Significantly, the decision was taken by the then board of directors of the company, of which at that time, none other than the father of the appellants was an active member.

(c) The shares of the ninth respondent-company were purchased from the first respondent-company on September 7, 1977, by the father of the second respondent and his other family members. After the demise of his father, the shares held by him were transmitted to the second respondent on December 10, 1984. The entire shares of the eighth respondent-company were purchased from the first respondent-company by the ninth respondent-company on October 3, 1977. Thus, the eighth respondent-company became a wholly owned subsidiary of the ninth respondent-company and continues to remain so even today.

(d) These respondents are totally independent companies and have a business of their own and the value of the transactions entered into with the first respondent-company during the last five years form a very insignificant proportion of their respective turnovers.

7. Based on the above pleadings, I have heard Mr. Aravind P. Dattar, learned senior counsel appearing for the appellants and Mr. P. H. Aravindh Pandian, learned senior counsel appearing for the respondents.

8. The first respondent (hereinafter called as "the company") was incorporated as a private limited company on January 19, 1956, under the Indian Companies Act. The subscribers of the memorandum and articles of association were--

(1) G. T. Krishnaswamy Naidu

(2) P. Asher

(3) T. N. Rajasekaran

(4) G. T. K. Sivasubramaniam

9. Sl. No. 1 is the father and Sl. Nos. 3 and 4 are the sons. The said P. Asher was the third party who is nowhere connected with the family of the others. The genealogy table of G. T. K. Naidu family is set out hereunder in order to know the relationship between the family members and also in order to know the parties to the proceedings:

G. T. Krishnaswamy Naidu and his wife Vijayammal

10. The said G. T. K. Rajasekharan, one of the sons of G. T. Krishnaswamy Naidu was adopted by T. R. Narayaswamy and thereafter, he was no longer associated

with the company. His 1,000 shares were transferred in the name of his son R. Ranganathan who has also sold the said shares and the same has been proportionately distributed among G. T. K. Sivasubramaniam and G. T. K. Shanmugasundaram. After the death of G. T. Krishnaswamy and his wife Vijayammal, their 3,000 shares were equally transmitted in the name of his 3 sons, viz., G. T. K. Sivasubramaniam, G. T. K. Parthasarathy and G. T. K. Shanmugasundaram. Each of them got 1,000 shares. The said three brothers were holding 2,000 shares each apart from 1,000 shares which were transferred to R. Ranganathan and 500 shares which were allotted to P. Asher.

11. The appellants are the daughters of G. T. K. Shanmugasundaram. The first respondent is the textile mill, the second respondent is the son of G. T. K. Sivasubramaniam and his wife Kamala alias Krishnakumari, the third respondent. During the pendency of the company appeal, the fourth respondent died and his legal representatives have been brought on record as respondents Nos. 10 and 11. Respondents Nos. 5 and 6 are the outsiders.

12. The first respondent-company had 3 subsidiaries as on December 24, 1975 and they are:

- (1) Tirupur Gin and Press P. Ltd.;
- (2) Vijayeswari Ring Travellers P. Ltd. (respondent No. 8); and
- (3) Sovereign Engineers P. Ltd. (respondent No. 9).

However, now they are no longer the subsidiaries.

13. After the introduction of section 43A of the Act, the company became a public limited company with effect from April 1, 1976. It is the case of the appellants, after the death of their father G. T. K. Shanmugasundaram on November 6, 2000, they have been making representation to the second respondent through their relatives and friends that the appellants be associated with the management of the company and they should be made as directors. All efforts to sort out the issue amicably fell on deaf ears. The appellants, who are holding 27,600 shares, which constitutes about 31 per cent of the paid-up capital of the company, could not be associated with the management of the company, in view of the adamant attitude of the second respondent. The second respondent has majority shares and he saw to it that his own yes-men were brought on the board so that he will have absolute control of the affairs and management of the company. Several allegations against the second respondent persist. It is detrimental to the interest of the company and its shareholders. Therefore, the second respondent and his associates should not be allowed to deal with any of the immovable assets of the company or encumber the same. It is all the more important for an investigation to find out the suppression and diversion of the company's funds by the persons in control of the affairs of the company. The appellants have lost their confidence in view of their exclusion from participation in the management.

14. Therefore, according to them, they have moved the Company Law Board under sections 397, 398 and 402 of the Act, seeking for the following reliefs:

(a) To appoint the appellants as directors or their nominee on the board of the company.

(b) To amend the articles of association of the company to give effect to the proportional representation on the board.

(c) To declare the transfer of shares by the first respondent-company in the capital of the eighth and ninth respondents are null and void.

(d) To declare that the eighth and ninth respondents continue to be the subsidiary of the first respondent-company.

(e) To appoint an auditor to go into the books and records of the company and surcharge respondents Nos. 1 to 9 whoever responsible for the defalcation of the funds with respect to inter-company transactions as reflected in the balance-sheets for the year ending March 31, 2005 and March 31, 2006.

(f) To pass an order of injunction restraining respondents Nos, 1 to 9 from selling, alienating or encumbering any of the immovable assets of the company.

(g) To pass an order of injunction restraining the seventh respondent from granting any further facility for any new venture which the company intends to carry on.

(h) To appoint an administrator by superceding the board of the company.

15. On the other hand, the contesting respondents have denied the various allegations made by the appellants. The Company Law Board has framed the following issues and has given finding for each issues which are set out one by one hereunder:

Issue No. 1: Whether respondent No. 1 is a family company to which principles of quasi partnership applies ?

Finding: Principles of partnership cannot be invoked.

Issue No. 2: Whether the petitioners in the company petition have established oppression and mismanagement of the affairs of the company by the second respondent and his associates?

Finding: The petitioners in the company petition have failed to prove the alleged mismanagement and oppression by the majority shareholder, viz., the second respondent.

Issue No. 3: Whether the second respondent has mismanaged the company?

Finding: The petitioners in the company petition have failed to prove the alleged mismanagement by the second respondent and others.

Issue No. 4: Whether the petitioners in the company petition are entitled to an order from the Company Law Board directing the company and the second respondent to purchase the shares of the petitioners or to spin any one of the three units to them ?

Finding: The Company Law Board declined to pass an order on the prayer of the petitioners for exit from the company.

16. Thus, in view of the findings referred to above, the Company Law Board has dismissed the company petition filed by the appellants. Finally, the Company Law Board has held as follows (page 409 of 160 Comp Cas):

Before concluding, I will refer to the suggestion made by the second respondent that the petitioners have an alternate remedy to invoke the provisions under the articles to get their shares transferred if they have a desire to exit from the company. The dispute is between cousins. Respondent No. 3 had even stated in the counter that she treats the petitioners as her own daughters. It is some time prior to the marriage of the petitioners (1990) that, their father had transferred shares to them. At this distance of time, it is reasonable and probable that they wish to disassociate with the company, and plan their future rather than remaining in the company by encashing the dividend. Hence I suggest the company or respondents to purchase their shares if the petitioners seek a transfer of shares by invoking the provisions of articles of association, at a reasonably fair price, rather than the parties fighting the suits. I hope that respondent No. 2 and respondent No. 3 will take the initiative with a sense of co-operation and accommodation to purchase the shares of the petitioners at a mutually acceptable price, so as to bring to an end the matters complained of, and the decade old relationship continues to be cordial. The parties are at liberty to apply u/s 402 of the Act, in case any clarification is required.

Thus, the said order of the Company Law Board is challenged in this company appeal.

17. As regards the first issue framed by the Company Law Board, viz., whether respondent No. 1 is a family company to which principles of quasi partnership applies, is concerned, as stated already, the Company Law Board has held that the principles of dissolution of partnership cannot be invoked. It has to be seen whether the said finding rendered by the Company Law Board is proper or not. The company was indeed incorporated in the year 1956 by G. T. Krishnaswamy Naidu, the grand father of the appellants and the second respondent. Out of 2,500 shares, 2,000 shares were held by the family members consisting of G. T. Krishnaswamy Naidu and his two sons. Five hundred shares alone were given to Asher, the fourth respondent herein. The licence to run the spinning mill was in his name. The Company Law Board found that the family members find their place in the board not because of their closeness with G. T. Krishnaswamy Naidu. When the company was incorporated in the year 1956, G. T. Krishnaswamy Naidu and his two sons, namely, G. T. K. Sivasubramaniam, the second

respondent's father and T. N. Rajasekaran alone were made subscribers to the company, apart from a non-family member, the fourth respondent. After transmission of the shares, either due to the death of the shareholders or relinquishment of shares, now the entire shares are being held by the appellants' group and the second respondent's group. It is not disputed that the second respondent is having the majority shares.

18. The Company Law Board found on perusal of the history of the family, in relation to the functioning of the company that it is difficult to find out that a right was impliedly reserved for the family members to be on the board as of right. There is nothing on record to show that each branch of family would be given directorship permanently, since it is evident that the four sons of G. T. Krishnaswamy Naidu are no longer the members of the company. It has also been found by the Company Law Board that no material is placed before it even to presume that there is a basic understanding between the parties for equal participation in the management of the company. Finally, the Company Law Board found that the appointment of directors is done in accordance with the articles of association and therefore, it has taken the view that the principles of dissolution of partnership cannot be invoked in the case on hand. I am in entire agreement with the finding of the Company Law Board. Nothing has been placed before me to come to a different conclusion.

19. The next issue that has been decided by the Company Law Board is that the allegation of mismanagement made by the appellants against the second respondent and his associates was not proved. It is to be seen whether this finding rendered by the Company Law Board is justifiable.

20. As could be seen from the company petition filed by the appellants before the Company Law Board, the following allegations have been made against the second respondent and his associates, viz.:

(i) The company is having several cars and the second respondent is the only person enjoying them.

(ii) The company has constructed a big bungalow at its cost worth about several crores and the second respondent is living there without paying the rent.

(iii) In the name of modernisation, the old machinery are in the process of being sold by the company at the instance of the second respondent and the actual price is not brought into the books of the company, but only reflected in the accounts as if plant and machinery are being sold to book value.

(iv) There are several inter company transactions, which are reflected in the balance-sheet of the company in the year ending 2004-05 and 2005-06 which are detrimental to the interest of the company. Except Tirupur Gin and Press P. Ltd., which is wholly owned subsidiary of the company and the other companies and associate concerns are all under the control and management of the second respondent.

(v) The company is not disclosing the actual income in its books.

(vi) Several lakhs of rupees had been obtained towards loan under various heads and charges.

21. As regards the first allegation is concerned, I am of the considered view that the company having a turn over of more than 100 crores, definitely would be having several cars and one car could have been used by the second respondent. In view of the above stated position, I am of the considered view that merely because the company owns several cars and one is being used by the second respondent, the same cannot be said to be mismanagement of the affairs of the company by the second respondent.

22. The second allegation namely, that the first respondent has constructed a big bungalow at its cost worth about several crores and the second respondent is living there without paying any rent cannot also be countenanced, since in the counter affidavit, it has been made very clear that the first respondent-company does not own any bungalow at Coimbatore and the second respondent resides at his own house and the company has nothing to do with the accommodation. When such a categorical statement has been made in the counter affidavit of the second respondent, the appellants have not established by any worth coming documents to prove that the first respondent-company owns a bungalow at Coimbatore and the second respondent resides in the said bungalow.

23. As regards the third allegation is concerned, it has been clearly spelled out in the counter affidavit that the old machinery have been sold by the company at the market price. It is further stated that the company has modernised its plant and machinery over the past 9 years by replacing the old and outmoded machines with modern, sophisticated and high productive machinery. It is also contended on behalf of the second respondent that the accounts of the company are regularly audited by the statutory auditors and that the audit reports never contained any adverse remarks on all the aspects referred to by the appellants about the selling of the old machinery not at the actual price. In view of the categorical statement made in the counter affidavit and in view of the fact that the appellants have not established that the old machinery have been sold for a lesser price, I am of the considered view that this allegation is also liable to be rejected.

24. Even with regard to the fourth allegation, absolutely there is no proof on the side of the appellants.

25. As regards the allegation that the company is not disclosing the actual income in its books, it would be suffice to extract the counter affidavit of the respondent in this regard and the same is extracted hereunder:

The allegations contained in paragraph 6(m) make amazing reading and are again mere verbal expressions without any supporting material. The statement claiming that the company is not disclosing the actual income in its books,

merely exposes the ignorance of the petitioners. They do not also realise that in making that irresponsible statement they are questioning the integrity of the statutory auditors of the company. In stating that the companies similarly situated in Coimbatore are making enormous profits and that they have huge reserves, the ignorance of the petitioner again comes out loud and clear. While pointing out that the company's net profit for the year ended March 31, 2006, is a sum of Rs. 47,88,000 (actually, the figure is Rs. 48,39,818) the petitioners have conveniently omitted to refer to the aggregate free reserves of the company as on March 31, 2006, amounting to over Rs. 9 crores, which included a sum of Rs. 45 lakhs transferred to the general reserve out of the current profits. Moreover, the actual cash profits earned by the company during the year ended March 31, 2006, amount to Rs. 12.58 crores and not just Rs. 48.40 lakhs, after considering an amount of Rs. 12.10 crores provided for depreciation out of the current year's profits. This only exposes the incapacity of the petitioners to read and understand the balance-sheet and profit and loss account of the company. They are unable to understand that the depreciation amount itself, being a cash accumulation, is a huge hidden reserve and it is ploughed back into the business towards the modernisation of the plant and machinery, which is necessary for the very survival of the company. The alleged suppression and diversion of the funds of the company is thus a myth fabricated by the ignorant minds of the petitioners.

26. The above extracted portion of the counter affidavit would prove that the allegations of the appellants are far from truth. That apart, the appellants have not established by any acceptable evidence or documents that the company is not disclosing its actual income in its books.

27. As regards the sixth allegation, viz., several lakhs of rupees had been obtained towards loan under various heads and charges is concerned, it is stated in the counter affidavit that the alleged transactions involving the disinvestment of the shares held by the first respondent-company in its erstwhile subsidiaries namely, the eighth and ninth respondents herein, took place 3 decades back during the year 1977. It transpires that the second respondent is only 13 years old at that time. While so, the said allegation, on the face of it, appears to be incorrect. It is further stated that the decision of disinvesting of shares of the companies was taken by the appellants' father himself with the consultation of his brothers. Hence, this allegation also is without any substance.

28. Thus, the entire allegations set out against the second respondent about the mismanagement of the affairs of the company are without any substance and without any merit.

29. Section 398 of the Companies Act envisages an application to the Company Law Board for a relief in the case of mismanagement. Section 398 of the Act is reproduced hereunder:

398. (1) Any members of company who complain--

(a) that the affairs of the company are being conducted in a manner prejudicial to the interests of the company ; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company has taken place in the management or control of the company, whether by an alteration in its board of directors or manager or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the company,

may apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the Company Law Board is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Company Law Board may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

30. The above provision contemplates that any member of the company can approach the Company Law Board making a complaint:

(a) that the affairs of the company are being conducted in a manner prejudicial to the interest of the company ;

(b) that a material change has taken place in the management which will be likely to affect the affairs of the company.

31. In the given case on hand, as discussed already, the appellants have not established that neither the second respondent nor the other persons managing the company abused their dominant position and conducted the affairs of the company in such a way which is prejudicial to the interest of the company. No material has been placed to substantiate the allegation of mismanagement. It is the common law that burden of proof of mismanagement lies always on a person who pleads the same. Some details have to be given on the said allegation. Otherwise, it would not be possible for the courts to examine those allegations. On the facts and circumstances of the case, I am of the view that there was no basis for the finding that the second respondent or the other directors had abused their fiduciary power or has abused the affairs of the company in breaching of its articles or the Act.

32. In view of the discussions made above, I am of the considered view that the appellants have not made out a case of mismanagement against the second respondent or his associates. The Company Law Board has dealt with this issue extensively and came to the right conclusion that the appellants herein have not

established mismanagement either by the second respondent or by his associates. Therefore, the said finding arrived at by the Company Law Board does not require any interference in this appeal.

33. The next issue which has to be considered in this appeal is about the alleged oppression by the second respondent. It is the case of the appellants that they have made repeated attempts for settlement either by getting a board seat or an exit by giving any of the undertakings to them in lieu of their shares. It has to be seen that the request made by the appellants to appoint them as directors was defeated at the extraordinary general meeting held on April 28, 2007. In fact, the appellants never expressed their willingness or desire to participate in the management, after the death of their father in the year 2000. No document is forthcoming to show that the appellants have expressed their willingness or desire to participate in the management after the death of their father.

34. One of the aspects that has to be seen is that several acts of oppression alleged by the appellants have occurred during the lifetime of the appellants' father and the appellants were not even the shareholders of the company. Further more, the articles of association do not specify that there must be a representation in the board from each branch of the family. As per the articles, absolute power is vested with the board of directors to fill up the office of directorship. While so, there is no basis for the contention that the appellants are entitled to a legitimate expectation for representation in the board. Further, it has to be seen that the appellants' father died on November 6, 2000 and during his lifetime, he has not made any request to make the appellants or their nominees as directors in the company. It is not even the case of the appellants that they be made as directors on the basis of the shareholding pattern. It is all the more evident that the company at no point of time followed the principles of proportionate representation even in the allotment of shares.

35. The Company Law Board also found that the respondents have been protecting the interest of the appellants which could be seen from the way in which the shares have been transmitted in favour of the appellants soon after the death of their father G. T. K. Shanmugasundaram, without any delay. The appellants were issued with bonus shares, besides dividend on an average of 15 per cent every year even after the death of their father. There is also evidence to show that notice of annual general meeting was served on the appellants and the annual reports were also sent to them periodically. Considering those aspects, the Company Law Board found that the interest of the appellants is well taken care of by the majority group and that the appellants have failed to prove the oppression by majority of the shareholders. I am in entire agreement with the said finding of the Company Law Board.

36. To summarise the issue, the following factors would establish that absolutely the appellants have not proved "oppression" as pleaded by them, viz.:

(A) Admittedly, no right was reserved for the family members to be on the board

as of right. Not even there is no material to show that there was understanding within the parties for equal participation in the affairs of the company.

(B) The articles of association do not specify that there must be a representation to the board from each branch of the family. Thus, as per the articles of association, absolutely power is vested with the board of directors to fill up the office of the directorship. Hence, it cannot be contended on behalf of the appellants that the appellants have to be taken as directors and that they are entitled to the legitimate expectation for representation in the board.

(C) The father of the appellants, who was a director in the company, during his lifetime, has not made any request to make the appellants or his family members as directors of the company.

(D) Absolutely, there is no material placed before the Company Law Board or before this court to prove that the board of directors were appointed on the basis of the shares held by them. Not even it has been proved that the principles of proportionate representation was in existence even in the allotment of shares.

(E) It is a fact that the requisition made by the appellants to appoint them as directors was defeated at the extraordinary general meeting held on April 28, 2007.

(F) It is not denied by the appellants that they were participating in the extraordinary general meeting through proxy.

(G) Though it is alleged that the appellants were not receiving notice of the extraordinary general meeting, the same has not been substantiated.

(H) It seems, during 1996, the appellants have withdrawn the fixed deposits kept with the company and thereafter, they have never contributed anything towards the growth of the company.

(I) Respondents Nos. 2, 4 and 6 seem to have collectively placed fixed deposits to the tune of Rs. 614.36 lakhs as on March 31, 2007. Besides that, the second respondent gave personal guarantee over several properties owned by him.

(J) In the counter affidavit filed by the second respondent before the Company Law Board, it is stated by the second respondent that the appellants never wrote any single letter to the company or its managing director and never took recourse to any to other mode of action available to them under the Act to make them as directors. This has not been controverted by the appellants by producing necessary documents to show that they made request for becoming the directors of the company.

(K) When the appellants have never expressed their desire to participate in the management of the company and in the process, they cannot be heard to say that they have to be made as the directors of the company.

37. That apart, any member of the company could move the Company Law

Board complaining that the affairs of the company are being conducted in a manner oppressive to any member or members. Section 397 of the Act is, thus, extracted hereunder:

397. (1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or oppressive to any member or members including any one or more of themselves may apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1) the Company Law Board is of the opinion--

(a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members ; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up ;

the Company Law Board may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

38. In [2008] 142 CompCas 235 (V. 9. Krishnan v. Westfort Hi-Tech Hospital Ltd.), the Hon''ble apex court in paragraph 15 of the said judgment, after considering several judgments of the Hon''ble apex court, viz. (page 245):

(a) Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others,

(b) M.S. Madhusoodhanan and Another Vs. Kerala Kaumudi Pvt. Ltd. and Others, .

(c) Dale and Carrington Invt. (P) Ltd. and Another Vs. P.K. Prathapan and Others,

(d) Sangramsinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) thr. Lrs. and Others,

(e) Kamal Kumar Dutta and Another Vs. Ruby General Hospital Ltd. and Others,

has held that oppression would be made out:

(a) Where the conduct is harsh, burdensome and wrong.

(b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-?-vis the others.

(c) The action is against probity and good conduct.

(d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive

or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under sections 397 and 398.

(e) Once conduct is found to be oppressive under sections 397 and 398, the discretionary power given to the Company Law Board u/s 402 to set right, remedy or put an end to such oppression is very wide.

(f) As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact.

39. Further, in paragraph 31, it has been further held as follows (page 252 of 142 Comp Cas):

As rightly pointed out that the Company Law Board missed a most basic principle of section 397, namely, that mere unfairness does not constitute oppression. When the petitioners were given the right to subscribe to the "rights issue" along with all others in the same proportion, no prejudice, whatsoever, could have been caused to them. It is not in dispute even by the petitioners that the need for more funds was an admitted position. In *Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others*, this court has pointed out if there is a need for funds the fact that the directors have incidentally enriched themselves would not entail a court to set aside the issue of shares. In fact, no unfair prejudice has been caused to the petitioners. The Company Law Board failed to take note of all these vital aspects and relied on irrelevant materials. Apart from these, it is pointed out that the company having turned the corner and doing well, it would be fair exercise of discretion by this court not to interfere with the High Court judgment.

40. What is oppression was considered in the decision reported in *Jaladhar Chakraborty and Others Vs. Power Tools and Appliances Co. Ltd. and Others*, . It would be useful to extract the same and the same is extracted hereunder (page 515):

What does the word "oppressive" mean in this context? In our judgment, oppression occurs when shareholders, having a dominant power in a company, either (1) exercise that power to procure that something is done or not done in the conduct of the company's affairs or (2) procure by an express or implicit threat of an exercise of that power that something is not done in the conduct of the company's affairs ; and when such conduct is unfair or to use the expression adopted by Viscount Simonds in *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1958] 3 All ER 66; [1959] 29 CompCas 1 (HL) "burdensome, harsh and wrongful" to the other members of the company or some of them, and lacks that degree of probity which they are entitled to expect in the conduct of the company's affairs.

It has been further held in the said decision that the act of oppression not only has to be alleged with sufficient particulars but must also be proved to the satisfaction of the court. It must be a continuing one.

41. In the case of Government of West Bengal Vs. Chatterjee Petrochem (Mauritius) Co. and Others, , it has been held that the relief cannot be granted on the ground of "oppression" or "mismanagement" solely on the basis of legitimate expectations of the shareholders for participation in the management. It has been further held that a member of the company is not entitled to allege "oppression" by saying that the other members conducted the affairs of the company without giving him an opportunity of opposing the resolution unreasonably.

42. In the case of Bagree Cereals (P.) Ltd. and Others Vs. Hanuman Prasad Bagri and Others, , it has been held that conditions necessary for the relief while making allegations of "oppression" and "mismanagement" are that the person who approached the Company Law Board seeking relief u/s 397 of the Act should make out a case for the same. He shall also establish that such winding up would unfairly prejudice him. It has been further held as follows (page 471):

... a petitioner to be successful u/s 397 has to make out a case for just and equitable winding up. If that case cannot be made out, if the facts fall short of the case upon which the company court, which is a court of equity feels that the company should be wound up on just and equitable grounds, then and in that event no relief can be had by the petitioners in regard to section 397.

It is possible for the adversary group to resist the conclusion of just and equitable winding up. It might be shown by the adversaries that winding up the company is neither just nor equitable and that an order for winding up would be unfair and unjust to the contending adversaries. If they succeed in showing this, no relief can be had u/s 397.

Even if the adversaries fail in showing this, i.e., they fail in showing that a winding up order on just and equitable ground would unfairly prejudice the adversaries, even then relief, inter alia, u/s 402 does not automatically follow as a consequence of success u/s 397. The petitioner u/s 397 has to satisfy the court on a further point. He must satisfy the court that although the facts are such that a just and equitable winding up of the company is called for, yet were the petitioners to apply for such a winding up and were the petitioners to be even successful in such a petition, yet such order of winding up would unfairly prejudice the petitioners u/s 397 themselves. That is why they come u/s 397 and they do not apply u/s 433(f), which is the section for just and equitable winding up.

In short, for the court to grant relief u/s 397, the respondents must fail to show that just and equitable winding up would unfairly prejudice them and the petitioners must succeed in showing that just and equitable winding up would, even if granted, unfairly prejudice the petitioners . . .

Sometimes it so happens in minority petitions that asking the question whether the company petitioner will be unjustly prejudiced on winding up, becomes an obviously unnecessary and empty exercise.

Such is the case where two groups of nearly equal shareholding fight with each other for the control of the company. If one were to wait during a battle of this type, and ask, if the company petitioners have made out the case that winding up of the company will unfairly prejudice them, the querist would be met with a simple and straightforward answer, that nobody wants a winding up, the two sets are fighting for the company not its winding up . . .

Again it might be that winding up of the company is no solution for the minority shareholders, because the worth of the company shares has been reduced to almost a mere nothing by the misdeeds of those very persons against whom the minority complains.

43. The relief u/s 397 of the Act indisputably is of wide amplitude. That does not mean that every act of omission or commission on the part of the majority shareholders constitutes oppression which requires an order u/s 397 of the Act. But the court must arrive at a conclusion based on the materials that majority shareholders abused their dominant position and had oppressed the minority shareholders and acted against the interest of the company and it is just and reasonable to order winding up.

44. Learned senior counsel appearing for the appellants by relying on the decision reported in [1995] 1 BCLC 14 (CA) (Saul D. Harrison and Sons plc, In re) contended that if the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to its members generally or of some part of its members including at least the appellants, it would justify an order of winding up. But in the same judgment, it has been held that "if the above said grounds are made out, the court has a discretion to make such an order as it thinks fit for giving relief in respect of the matter complained of including in particular the relief that has been sought for in this case, which is an order that other members or the company itself buy the petitioners' shares". It has been further held in the said decision that in deciding what is fair or unfair for the purpose of section 459 of the Act, it is important to have in mind that fairness is being used in the context of commercial relationship. The articles of association are just what their name implies: the contractual terms which govern the relationship of the shareholders with the company and each other. They determine the powers of the board and the company in general meeting and everyone who becomes a member of a company is taken to have agreed to them. Since keeping promise and honouring agreements is probably the most important element of commercial fairness, the starting point in any case u/s 459 will be to ask whether the conduct of which the shareholder complains was in accordance with the articles of association.

45. Yet another decision that was relied on by learned senior counsel appearing

for the appellants is reported in [1999] 97 CompCas 807 (HL) (O'Neill v. Phillips and A Company (No. 00709 of 1992)), In re [1992] 2 BCLC 1. In the said case, the question that was called upon to decide was whether the company's affairs were conducted in a manner unfairly or prejudicial to the minority shareholders. In paragraph 5 of the said judgment, it has been held as follows (page 814 of 97 Comp Cas):

In section 459 Parliament has chosen fairness as the criterion by which the court must decide whether it has jurisdiction to grant relief. It is clear from the legislative history (which I discussed in *Saul D. Harrison and Sons plc*, In re [1995] 1 BCLC 14, 17-20 (CA) that it chose this concept to free the court from technical considerations of legal right and to confer a wide power to do what appeared just and equitable. But this does not mean that the court can do whatever the individual judge happens to think fair. The concept of fairness must be applied judicially and the content which it is given by the courts must be based upon rational principles. As Warner J. said in *J. E. Cade and Son Ltd.*, In re [1992] BCLC 213, 227: "The court... has a very wide discretion, but it does not sit under a palm tree".

Although fairness is a notion which can be applied to all kinds of activities, its content will depend upon the context in which it is being used. Conduct which is perfectly fair between competing businessmen may not be fair between members of a family. In some sports it may require, at best, observance of the rules, in others ("it's not cricket") it may be unfair in some circumstances to take advantage of them. All is said to be fair in love and war. So the context and background are very important.

46. Thus, considering the decision referred to above and summing up the entire discussions made above, I am of the considered view that the appellants have not made out a case u/s 397 of the Act and that they have not proved "oppression".

47. Learned senior counsel appearing for the appellants contended that there is a legitimate expectation, on the part of the appellants to be in the board of management of the company.

48. In [2007] 137 CompCas 151 (Ker); [2007] 2 Comp. LJ 143 (*Westfort Hi-Tech Hospital Ltd. v. V. S. Krishnan*), what is "legitimate expectation" was considered at length. Paragraphs 15, 15.1, 15.2, 15.3 and 16 of the said judgment are usefully extracted hereunder (page 177 of 137 Comp Cas):

The doctrine of legitimate expectation has its genesis in the field of administrative law. Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy. The apex court in *Navjyoti Co-Group Housing Society etc. Vs. Union of India and Others*, , after considering the House of Lords decision in *Council of Civil Service Unions v. Minister for the Civil Service* [1984] 3 All ER 935, held as follows (page 494):

It may be indicated here that the doctrine of "legitimate expectation" imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such "legitimate expectation". Within the conspectus of fair dealing in case of "legitimate expectation", the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in.

But, the above principle cannot be extended in company law. The doctrine of "legitimate expectation" is mostly confined to the right of a fair hearing before a decision which results in negating a promise or withdrawing of an undertaking. For getting the benefit of legitimate expectation, there should be a clear promise or a clear and unambiguous representation and burden of proof is on the person who claims the benefit on the basis of legitimate expectation. This principle that is applicable in administrative law is unknown on company law, in any event, in this case, it was not proved by the petitioners that there was any promise made by the chairman that they will continue as directors for ever because of their investment. As observed in *Union of India and others Vs. Hindustan Development Corpn. and others*, legitimate expectation is not the same thing as anticipation. It is different from a mere wish or desire or hope and a mere disappointment would not give rise to legal consequences. The court observed as follows (page 540):

The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence ... Such expectation should be justifiably legitimate and protectable.

Quoting from *Attorney General for New South Wales v. Quin* [1990] 64 Aust. LJR 327, the apex court observed as follows (page 548):

To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law.

Even though legitimate expectation can be used as a substantial right against the public authorities with certain conditions, in this case, petitioners were unable to prove that the promoters gave them any promise at all even though they must have expected or wished a permanent berth in the board, but, the retirement of one-third directors and their re-election is a statutory prescription and they were unable to prove that the promoters" promised that they will vote always in their favour so that they will be reelected. Even if the theory of "legitimate expectation" is applicable in company law, the burden of promise was not discharged by the petitioners.

For application of the doctrine of legitimate expectation, there should be ample

proof that there is reasonable basis for legitimate expectation and it should not be against the statute . . .

49. Learned senior counsel appearing for the appellants further relied on the decision reported in [1999] 97 CompCas 807 (HL) (O'Neill v. Phillips and A Company (No. 00709 of 1992), In re [1992] 2 BCLC 1 again on the point of "legitimate expectation". Paragraph 6, which was relied on by learned senior counsel, is usefully extracted hereunder (page 818 of 97 Comp Cas):

In *Saul D. Harrison and Sons plc*, In re [1995] 1 BCLC 14 at 19 (CA), I used the term "legitimate expectation", borrowed from public law, as a label for the "correlative right" to which a relationship between company members may give rise in a case when, on equitable principles, it would be regarded as unfair for a majority to exercise a power conferred upon them by the articles to the prejudice of another member. I gave as an example the standard case in which shareholders have entered into association upon the understanding that each of them who has ventured his capital will also participate in the management of the company. In such a case it will usually be considered unjust, inequitable or unfair for a majority to use their voting power to exclude a member from participation in the management without giving him the opportunity to remove his capital upon reasonable terms. The aggrieved member could be said to have had a "legitimate expectation" that he would be able to participate in the management or withdraw from the company.

50. However, in the same judgment, in paragraph 8, it has been held as follows (page 821 of 97 Comp Cas):

I do not think that there is any support in the authorities for such a stark right of unilateral withdrawal. There are cases, such as *A Company* (No. 006834 of 1988), *Ex parte Kremer*, In re [1989] BCLC 365, in which it has been said that if a breakdown in relations has caused the majority to remove a shareholder from participation in the management, it is usually a waste of time to try to investigate who caused the breakdown. Such breakdowns often occur (as in this case) without either side having done anything seriously wrong or unfair. It is not fair to the excluded member, who will usually have lost his employment, to keep his assets locked in the company. But that does not mean that a member who has not been dismissed or excluded can demand that his shares be purchased simply because he feels that he has lost trust and confidence in the others. I rather doubt whether even in partnership law a dissolution would be granted on this ground in a case in which it was still possible under the articles for the business of the partnership to be continued. And as Lord Wilberforce observed in *Ebrahimi v. Westbourne Galleries Ltd.*, In re [1972] 2 All ER 492 ; [1973] AC 360, 380, one should not press the quasi-partnership analogy too far: "A company, however small, however domestic, is a company not a partnership or even a quasi-partnership . . .".

51. The next contention of learned senior counsel appearing for the appellants is

that since the second respondent does not want the appellants in the management of the company, even though they are having 31 per cent shares of the company, since they are not interested in the company, they should be allowed to exit from the company which is possible, if the second respondent purchases the shares on a fair price. Alternatively, it was suggested that in lieu of the shares, one of three units could be allotted to them.

52. However, learned counsel appearing for the second respondent strongly opposed such suggestion. According to him, the appellants have not made out any case in respect of mismanagement or oppression and the appellants have approached this court in order to sell away their shares for a fancy price. It is also contended that if the appellants need exit, they can invoke clauses 23 to 26 of the articles of association and get their shares transferred.

53. The Company Law Board rightly held that there are no pleadings seeking an exit from the company. In any considered view, the said finding rendered by the Company Law Board is on well footing which does not require any interference in this appeal.

54. However, learned senior counsel appearing for the appellants contended that in ground (h), (s) and (t), the appellants have pleaded an exit from the company. But, I am unable to accept the said contention of learned senior counsel appearing for the appellants. In ground (h), what all that has been stated is that "the petitioners waited long enough for the second respondent to make necessary arrangements for their exit. . . The second respondent realising that the petitioners' father had no male issues and after his death, has been avoiding whenever the petitioners or their representatives tried to meet him for an amicable settlement of either bringing them on the board or their nominees or making necessary arrangements to spin off one of the undertakings to the petitioners for their due entitlement".

55. Again, in ground (s) and (t), it is stated as follows:

(s) The company is being managed by one family to the exclusion of the other family. Therefore, the petitioners have a legitimate grievance of being oppressed by the majority shareholders and the petitioners claim to be on the board of company is justified. Therefore, the petitioners have established oppression and the denial of legitimate expectation could be just and equitable ground for dissolution of partnership. Therefore, the company could be wound up on the just and equitable grounds. It is financially sound and it will not be in the interest of the company or the petitioners who are minority shareholders to wind up the company and the prayer of the petitioners for a representation on the board of the company is deserved to be granted by this Hon'ble Bench.

(t) The facts and circumstances narrated above indicate that on piercing the corporate veil, the real structure is found to be not that of a company. It is in principle of partnership. Equitable consideration that is applicable to a partnership could be applied to that of the company. When the above group of

shareholders as stated above, have formed the company and have been participating in the affairs of the company for a long time, there can be a presumption of the denial of legitimate expectation and exclusion of one group from the management is an act of oppression. The conduct of the second respondent and his associates is a departure from the fair play in the management of the affairs of the company and the petitioners have lost confidence in view of the exclusion of their participation in the management and they are entitled to relief from this Hon'ble Bench pertaining to the acts complained. The facts stated above establish that the conduct of the respondents are oppressive, burdensome and harsh and it would be just and equitable to the winding up of the company, which will unfairly prejudice the petitioners.

56. The above extracted portions in the company petition before the Company Law Board would reveal that absolutely there was no statement made by the appellants that they seek an exit from the company. The Company Law Board has rightly found so, in my considered view. No doubt section 402 of the Act empowers the Company Law Board to pass an order for the purchase of shares or interests of any members of the company by other members thereof or by the company. When the appellants have not pleaded before the Company Law Board seeking an exit from the company, there is no rhyme or reason to contend that the Company Law Board should have directed the second respondent or the company to purchase the shares of the appellants. In this connection, I see force in the contention of learned counsel appearing for the second respondent that the intention of the appellants is to spin off one of the three units of the company and when it has not been materialised, they have gone to the Company Law Board making an allegation of mismanagement and oppression.

57. Even otherwise, if the appellants need to exit the company, they are at liberty to invoke clauses 23 to 26 of the articles of association and get their shares transferred. However, they have failed to do so. Having failed to do so, they cannot make a complaint against the company or the second respondent.

58. Learned counsel appearing for respondents Nos. 1 and 2 contended that when there is no oppression or mismanagement, no relief of sale or otherwise can be granted. To the said proposition, learned counsel appearing for the second respondent relied on the following decisions:

(A) In *Jaladhar Chakraborty and Others Vs. Power Tools and Appliances Co. Ltd. and Others*, it has been held as follows (page 526):

The last question to be decided in this matter is whether the court can compel the company or the respondents to purchase the shares of the petitioner. As noted above the petitioners are willing to sell their shares in the company at market value. The offer is not acceptable to the company or the respondents. In my view having held that there was no ground of oppression or mismanagement, there is no question of the court passing any order for bringing to an end any matter complained of either u/s 397 or 398. The substratum for passing any

order u/s 397 or 398 is not available. As observed by Buckley L. J., in *Jermyn Street Turkish Baths Ltd., In re* [1971] 41 CompCas 999, 1023 (CA) ; [1971] 3 All ER 184 (at page 201):

If this could be regarded as an act of oppression, which in our opinion it cannot, it would not, we think, justify an order that one side should buy the shares of the other. So drastic a remedy would go far beyond what is necessary to put an end to this particular form of oppression.

Again, as observed in *Maharani Lalita Rajya Lakshmi M.P. Vs. Indian Motor Co., (Hazaribagh) Ltd. and Others*,

It is also proper to emphasise that the power of the court to make such order, as it thinks fit, u/s 397(2) of the Act is expressly stamped with the purpose of "bringing to an end the matters complained of". Therefore, wide as the power of the court is following from the words of the expression "such order as it thinks fit" it is nevertheless controlled by the overall objective of this section which must be kept strictly in view that the order must be directed "to bringing to an end the matters complained of". The marginal note of section 397 of the Companies Act shows also that the purpose of the order of the court in this section is to give "relief in case of oppression".

The decision in *Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others*, does not assist the petitioners. In that case the Supreme Court had held against the petitioners and found that there was no oppression. But the Supreme Court found that the Indian shareholders had purchased the shares at a price less than what had initially been offered by them. The Indian shareholders had all along offered to purchase the shares at a premium. They resiled from this stand at a meeting held on May 2, of which adequate notice had not been given to the foreign shareholders. It was in that context that the Supreme Court held (at page 1360):

Even though the company petition fails and the appeal succeeds on the finding that the holding company has failed to make out a case of oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in which they would have been, if the meeting of May 2 were held in accordance with law . . . There is no reason why we should not call upon the Indian shareholders to do what they were always willing to do, namely, to pay to the holding company a fair premium on the shares which were offered to it, which it could neither take nor renounce and which were taken up by the Indian shareholders in the enforced absence of the holding company. The willingness of the Indian shareholders to pay a premium on the excess holding or the rights shares is a factor which, to some extent, has gone in their favour on the question of oppression. Having had the benefit of that stance, they must now make it good. Besides, it is only meet and just that the Indian shareholders who took the rights shares at par when the value of those shares was much above par, should be asked to pay the difference in order to

nullify their unjust and unjustifiable enrichment at the cost of the holding company. We must make it clear that we are not asking the Indian shareholders to pay the premium as a price of oppression. We have rejected the plea of oppression and the course which we are now adopting is intended primarily to set right the course of justice, in so far as we may.

In this case the respondents had never expressed any willingness to purchase the shares of the petitioners. There is also no act of inequity in this case as the illegal meeting in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* [1981] 51 CompCas 743 (SC), of which justice demands rectification.

I do not read *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* [1981] 51 CompCas 743 (SC), as an authority for the proposition that even in cases where oppression and mismanagement are not found u/s 397 or 398 of the Act, the court can compel the company or the respondents to buy out the dissident shareholders.

(B) In *Vardhaman Dye-Stuff Industries Pvt. Ltd. and Others Vs. M.R. Shah*, , it has been held as follows (headnote):

In a petition filed under sections ` and 398 of the Companies Act, 1956, the Company Law Board held that no case of oppression had been made out by the shareholder. The Board, however, directed the company to purchase the shares of the shareholder. On appeal, the company, challenged the operative part of the order of the Board as being contrary to law and impermissible:

Held, allowing the appeal, that the shareholder had not made out any case for exercise of equitable jurisdiction to grant such relief as granted by the Board. There was no case of oppression and mismanagement or for winding up of the company on any just or equitable ground to bring the case u/s 397 or 398 and/or even section 402 of the 1956 Act. The submission that the High Court may not disturb the order of the Company Law Board as section 10F referred to an appeal only on a question of law was not correct. The order, specially its operative portion, was perverse and not sustainable. The order was to be quashed and set aside.

(C) In [1987] BCLC 94 (*A Company (No. 004377 of 1986), In re*), it has been held that where the articles of association of a company sets up machinery for the fair and independent valuation of a member's shares, a member seeking to sell his shares on the breakdown of relations with other members should not be entitled (where there is no allegation of bad faith or impropriety) to complain of unfair conduct if he has made no attempt to use the valuation machinery provided for in the articles.

(D) In [1989] BCLC 365 (*A Company (No. 006834 of 1988), Ex parte Kremer, In re*), it has been held that the principle to be derived from the cases is that when it is plain that the appropriate solution to a breakdown of relations is for the

petitioner to be able to sell his shares at a fair price and the articles contain provisions for determining a price which the respondent is willing to pay or the respondent has offered to submit to an independent determination of a fair price, the presentation or maintenance of a petition u/s 459 of the 1985 Act will ordinarily be an abuse of the process.

(E) In the case of Palghat Exports Private Ltd. and P. Ramkumar Vs. T.V. Chandran and Others,), it has been held that a shareholder cannot get the relief u/s 397 of the Act in order to settle his personal problem. It has been further held that (page 235): "it is difficult for us to discern a different object which will satisfy section 397 of the Companies Act other than an outside object of section 397 of recovering the amount invested for purchasing the shares".

59. However, learned senior counsel appearing for the appellants relied on the decision reported in Debi Jhora Tea Co. Ltd. Vs. Barendra Krishna Bhowmick and Others, Paragraph 26, which was emphasised by learned senior counsel, is usefully extracted hereunder (page 782):

It should be borne in mind that when a court passes an order under sections 397, 398 and 402 as has been done in the instant case there could be no limitation on the court's power while acting under the sections. Instead of the winding up of a company, the court under the abovementioned sections has been vested with ample power to continue the corporate existence of a company by passing such orders as it thinks fit in order to achieve the objective by removing any member or members of a company or to prevent the company's affairs from being conducted in a manner prejudicial to the public interest. The court u/s 398 read with section 402 of the Act has the power to supplant the entire corporate management. Under the aforesaid sections, the court can give appropriate directions which are contrary to the provisions of the articles of the company or the provisions of the Companies Act.

However, it has to be seen that it has been held therein that such power could be exercised only when a court passes an order under sections 397, 398 and 402 of the Act.

60. In yet another decision that was relied on by learned senior counsel appearing for the appellants is reported in [1991] BCLC 598 (A Company, Ex. P. Holden, In re), it has been held that a valuation of the company's shares under the articles was to be carried out by an expert who would not be obliged to give reasons for his decision ; there were no provisions enabling H to put representations before the expert: and, most importantly, there were claims against the company which would need to be evaluated and there was no guarantee that they would be taken into account in the valuation. On the facts, H was not acting unreasonably in seeking to have his shares valued pursuant to a court order u/s 459 of the 1985 Act rather than to rely on the valuation under the pre-emption provision in the company's articles of association. Accordingly, the application of the petitioner would be granted.

61. However, I am of the considered view that it is only a discretionary relief and apart from that, the appellants have not made out any case either u/s 397 or 398 of the Act.

62. Yet another decision that has been relied on by learned senior counsel appearing for the appellants is reported in *Sishu Ranjan Dutta and Another Vs. Bhola Nath Paper House Ltd.*, . The question that has been called upon in the said decision was whether the courts have power to divide the assets of the company. In the said case, a Special Officer was appointed to divide the assets of the company. Relying on the said decision, it has been contended on behalf of the appellants, by learned senior counsel appearing for the appellants, that this court has got ample power to appoint a chartered accountant to value the assets of the company and allot a share over the property. But, in the said decision, in view of the dispute between the two groups, there was a deadlock in the company and the two groups could not carry out the business of the company. Apart from that, mismanagement and oppression were proved in the said case. Paragraph 17 of the said judgment is thus, extracted hereunder (page 899):

Regarding the question of deadlock it is admitted that the two groups who hold equal shares in the company are not in a position to carry on the business of the respondent-company any longer and there is a complete deadlock and, therefore, there is a just and equitable ground for winding up the company, which is a pre-requisite for exercising the power under sections 397 and 398 of the Companies Act, 1956 and on the material placed before me in the pleadings and the annexures in the main application and the interim application and from the conduct of the parties it is quite clear that there are sufficient grounds for granting relief under sections 397 and 398 of the Companies Act, 1956, as both the cases for mismanagement and oppression have been proved and made out by the petitioners which are practically admitted by the respondents and it will be prejudicial to public interest and, therefore, the court has ample power under sections 397 and 398 of the Companies Act, for intervention and to pass a suitable order for putting an end to the matter complained of so that the business of the respondent-company may be carried on smoothly and the only way in this case appears to me to divide the assets of the respondent-company equitably between the two groups after payment of all the liabilities of the company and for that purpose a Special Officer should be appointed to administer the company and discharge the functions of a board, as there is no valid board of the respondent-company, who will run the said business till the liabilities of the respondent-company are liquidated and the guarantee of the petitioners to the respondent-company's banker. United Industrial Bank Ltd., and the charge of the property of petitioner No. 2 as guarantor, being the security for the loan granted by the said banker to the company, is released and accounts of the company are completed. It is now well-settled that the power of the court under sections 397 and 398 read with section 402 is very wide and that has been recognised in various decisions of this court.

63. Learned senior counsel appearing for the appellants also relied on the decision reported in (2004) 119 CompCas 385 . By relying on the said judgment, learned senior counsel contended that if the minor shareholders are not permitted to enter into the management of the company, their representation to enter on the board deserves to be granted or alternatively, it is contended by learned senior counsel that the appellants should be permitted to sell their shares to the second respondent or other directors for a fair price. However, as rightly contended by learned counsel appearing for respondents Nos. 1 and 2, that is the case where the petitioner thereon established oppression by the respondents. Hence, the said judgment will not be applicable to the case on hand.

64. Learned senior counsel appearing for the appellants relied on the decision reported in M.S.D.C. Radharamanan Vs. M.S.D. Chandrasekara Raja and Another, , and contended that even in a case where technically speaking there may not be any oppression within the meaning of section 397 of the Act for the purpose of setting right things, the court could pass orders u/s 402 of the Act. He has further contended that if there is inter se factional dispute between two groups in a company, the share of one group could be directed to be purchased by the other company. However, that is the case where father and son were the only two shareholders/directors. There were serious disagreement between them. Under those circumstances, the Division Bench of this court directed the son to purchase the share of the father in the company. Thus, considering the facts and circumstances of the case, the Division Bench of this court has held that there was no difficulty in invoking section 402 of the Act. But, in the present case on hand, such position does not prevail. Hence, the said judgment will not be applicable to the case on hand.

65. The above referred to decision was taken up to the Hon''ble apex court and the judgment rendered therein is reported in M.S.D.C. Radharamanan Vs. M.S.D. Chandrasekara Raja and Another, . By relying on the same, learned senior counsel appearing for the appellants submitted that if oppression has been made as a ground for the purpose of invoking the jurisdiction of the Company Law Board in terms of sections 397 and 398 of the Act, the Company Law Board has got the power to pass any further order in the interest of the company. He further added that; while considering the same, there is no hard and fast rules and just an equitable test alone has to be applied.

66. There is no quarrel over the said proposition made by learned senior counsel appearing for the appellants. The burden of proving oppression or mismanagement, no doubt, is on the shoulders of the person who raised the same. However, the court has to considered the entire materials on record to come to such a conclusion. Further, even if oppression or mismanagement has not been made out, the courts are not powerless to grant such relief so as to do substantial justice between the parties. However, as pointed out by learned counsel appearing for respondents Nos. 1 and 2, in the case cited above, there were two directors and there was no co-operation among them. The Company

Law Board and the High court noticed the deadlock in regard to the conduct of the business of the company. The finding so arrived at by the Company Law Board and the High Court made the Hon''ble apex court to hold that sections 397 and 398 of the Act empower the Company Law Board to remove oppression and mismanagement. Ordinarily, in a case where a case of oppression has been made a ground for the purpose of invoking the jurisdiction of the Company Law Board in terms of sections 397 and 398 of the Act, a finding of fact to that effect would be necessary. But, the Company Law Board is not powerless to pass any other or further order in the interest of the company, if it is of the opinion, that it would protect the interest of the company.

67. Even the judgment reported in [1984] 55 CompCas 462 (Del) (Eastern Linkers P. Ltd. v. Dina Nath Sodhi), which was relied on by learned senior counsel appearing for the appellants has no application to the present case on hand since on facts in the case cited, though the company in question was a company in reality, it was found that it is a partnership between two individuals, who were directors and serious dispute has arisen between them and hence, it was held that it would be just and reasonable to order winding up of the company.

68. In the case of Brownlow v. G. H. Marshall Ltd. reported in [2002] 2 BCLC 655 (Chd), it has been held that the position was that the brother and sisters were equal shareholders and were directors of the company. When the sister was removed from directorship, she commenced the proceeding u/s 459 of the 1985 Act seeking for a direction to purchase her share at a value to be determined by the court. In such circumstances, it has been held in the said decision as follows:

In the circumstances of the instant case, having regard to the fact that the company was one in which considerations of a personal character arose out of the relationships between the family shareholders, equitable considerations might disentitle the majority from removing a minority shareholder from office without making a reasonable offer, if asked, for the purchase of the minority member''s shares. The existence of service agreements did not change the position. It had never been suggested between the parties that the separate agreements between the company and the individual directors were intended to affect the rights or expectations, as shareholders, of those directors who held shares. No agreement had been reached between the shareholders as to what would happen to the shares of person dismissed from employment under the agreements. In the absence of such agreement or some contrary understanding, the terms of the service agreements did not override the equitable considerations already described. Accordingly, B''s claims for an order that her shares should be purchased by one or more of the respondents would succeed.

69. However, in the facts and circumstances of the present case on hand, the said judgment will not have any bearing.

70. Even in the case cited by learned senior counsel appearing for the appellants reported in Hind Overseas Private Limited Vs. Raghunath Prasad Jhunhunwalla

and Another, in paragraphs 32 to 36, it has been held as follows (page 104 of 46 Comp Cas):

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

The principle of "just and equitable" clause baffles a precise definition. It must rest with the judicial discretion of the court depending upon the facts and circumstances of each case. These are necessarily equitable considerations and may, in a given case, be superimposed on law. Whether it would be so done in a particular case cannot be put in the strait-jacket of an inflexible formula.

In an application of this type allegations in the petition are of primary importance. A prima facie case has to be made out before the court can take any action in the matter. Even admission of a petition which will lead to advertisement of the winding up proceedings is likely to cause immense injury to the company if ultimately the application has to be dismissed. The interest of the applicant alone is not of predominant consideration. The interests of the shareholders of the company as a whole apart from those of other interests have to be kept in mind at the time of consideration as to whether the application should be admitted on the allegations mentioned in the petition.

The question that is raised in this appeal is as to what is the scope of section 433(f) of the Act. Section 433 provides for the circumstances in which a company may be wound up by the court. There are six recipes in this section and we are concerned with the sixth, namely, that a company may be wound up by the court if the court is of the opinion that it is just and equitable that the company should be wound up. Section 222(f) of the English Companies Act, 1948, is in terms identical with the Indian counterpart, section 433(f). It is now well-established that the sixth clause, namely, "just and equitable", is not to be read as being ejusdem generis with the preceding five clauses. While the five earlier clauses prescribe definite conditions to be fulfilled for the one or the other to be attracted in a given case, the just and equitable clause leaves the entire matter to the wide and wise judicial discretion of the court. The only limitations are the force and content of the words themselves, "just and equitable". Since, however, the matter cannot be left so uncertain and indefinite, the courts in

England for long have developed a rule derived from the history and extent of the equity jurisdiction itself and also born out of recognition of equitable considerations generally. This is particularly so as section 35(6) of the English Partnership Act, 1890, also contains, inter alia, an analogous provision for the dissolution of partnership by the court. Section 44(g) of the Indian Partnership Act also contains the words "just and equitable".

Section 433(f) under which this application has been made has to be read with section 443(2) of the Act. Under the latter provision where the petition is presented on the ground that it is just and equitable that the company should be wound up, the court may refuse to make an order of winding up if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

71. Learned counsel appearing for the second respondent contended that the shareholders have no right over the property of the company. He has relied on the judgment reported in *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, . The relevant portion made in paragraph 7 of the said judgment is usefully extracted hereunder (page 5 of 25 Comp Cas):

That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company.

72. In the decision reported in [2009] 151 CompCas 502 (Del) (*Ravi Raj Gupta v. Hansraj Gupta and Co. P. Ltd.*), which was relied on by learned counsel appearing for the second respondent, it has been held that (page 505): "A shareholder has a right only to the dividend and of participation in the annual general meetings and to vote there. A shareholder has no "say" in the management unless and until he becomes part of the management".

73. When an appeal can be entertained by the Company Law Board, was considered in the judgment reported in *Dale and Carrington Inv. (P) Ltd. and Another Vs. P.K. Prathapan and Others*, . In the said decision, it has been held that it is settled law that if a finding of fact is perverse and is based on no evidence, it can be set aside in appeal even though the appeal is permissible only on the question of law. The perversity of the finding itself becomes a question of law. The decision made thereunder will not attract the case on hand, since in the said judgment, it has been held as follows (page 182 of 122 Comp Cas):

In the present case we are concerned with the propriety of issue of additional share capital by the managing director in his own favour. The facts of the case do not pose any difficulty particularly for the reason that the managing director has neither placed on record anything to justify issue of further share capital nor has it been shown that proper procedure was followed in allotting the additional share capital. The conclusion is inevitable that neither was the allotment of additional shares in favour of Ramanujam bona fide nor was it in the interest of

the company nor was a proper and legal procedure followed to make the allotment. The motive for the allotment was mala fide, the only motive being to gain control of the company. Therefore, in our view, the entire allotment of shares to Ramanujam has to be set aside.

Even the Company Law Board found that the allotment of additional shares by Ramanujam to himself was an act of oppression on his part. The Company Law Board drew this conclusion solely for the reason that no offer had been made to the majority shareholders regarding issue of further share capital. The High Court accepted the finding of oppression. However, it placed it on a much broader base by taking into consideration various other factors. The High Court's finding is based on a much stronger footing. In fact, the High Court has gone on to conclude that Ramanujam has played a fraud on the minority shareholders by manipulating the allotment of shares in his favour. We find no reason to differ with the finding of the High Court.

74. Thus, summing up the entire discussions made above, I am of the considered view that the Company Law Board has rightly rejected the claim of the appellants and I do not find any merits in this company appeal. In fine, the company appeal stands dismissed.