

(2013) 09 DEL CK 0059

In the Delhi High Court

Case No : Co. A (SB) 22 of 2013 With Co. Application 833 of 2013

Gurpartap Singh and Another

APPELLANT

Vs

M/s. Vista Hospitality Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Civil Procedure Code, 1908 (CPC) — Order 18 Rule 19, Order 7 Rule 11, Order 7 Rule 11(a)
Companies Act, 1956 — Section 10E, 10E(4C), 10F, 397, 397(2)
Criminal Procedure Code, 1973 (CrPC) — Section 195, 196
Income Tax Act, 1961 — Section 131, 255, 255(6)
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2014) 1 AD 626 : (2014) 120 CLA 421 : (2013) 203 DLT 538 :
(2013) 138 DRJ 335 : (2013) 5 ILR Delhi 3684

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Advocate : Virender Ganda, Mr. Rakesh Kumar and Mr. Aditya Nayyan, for the Appellant; Ravi Gupta Mr. Ashish Aggarwal and Mr. Varun Sharma, Advocates for R-2 to 5, for the Respondent

Judgement

R.V. Easwar, J.—This is an appeal filed by one Shri Gurpartap Singh and Smt. Geeta Partap Singh u/s 10F of the Companies Act, 1956 ("Act", for short) impugning the order passed by the Company Law Board in C.P. No. 7(ND)/2013 and CA No. 41/2013 on 13.03.2013. It is necessary to give a brief background of the facts leading to the filing of the present appeal. The respondent-company, Vista Hospitality Private Ltd. was incorporated on 10.01.2003, with the appellants as the original promoters and directors. Pursuant to a joint venture agreement, hereinafter referred to as JVA, entered into between the appellants and the respondents herein on 21.12.2007 there was a restructuring of the shareholding as well as the board of directors under which the appellants, the Gurpartap group, came to hold 65% and the respondents, the Jhankar group, came to hold 35% of the shares in the company. The board of directors consisted

of 5 directors nominated by the Gurpartap group and 3 directors nominated by the Jhankar group. Upto the year 2010, the affairs of the company were running smoothly. Sometime early in the year 2011, it appears that disputes over the functioning of the company and the conduct of its business arose between the two groups. There were allegations and rebuttals that the respondents were trying to entice away the clientele of the company to their concern, Jhankar Banquets, which was operating opposite to the company and thereby causing loss. It was also alleged by Gurpartap group that the Jhankar group was acting to the detriment of the company's business.

2. In the above situation, the Gurpartap group, the appellants herein, filed a petition before the Company Law Board (CLB) in C.P. No. 101(ND)/2012 under sections 397-398 of the Act alleging oppression and mismanagement and sought reliefs by way of permanent injunction against the Jhankar group (i) from diverting the business of the company to their own business and (ii) from acting contrary to the understanding arrived at in the JVA and (iii) to pass orders directing the parties to make offers for buying out the other party's shares even before the expiry of the lock-in period of five years which was to expire on 20.12.2012 and (iv) to direct that respondent No. 3 was not capable of being appointed a director of the company.

3. The aforesaid company petition was mentioned before the CLB on 30.08.2012, on which date it would appear that the respondents took the plea that the petition was not maintainable in view of the provision in the JVA for arbitration and wanted to move an appropriate application. The plea was allowed and on the next day, the respondents filed an application u/s 8 of the Arbitration and Conciliation Act, 1996 which was numbered as C.A. No. 468/2012. The appellants filed their reply to the application. Some attempt at a settlement appears to have been made which did not fructify.

4. The application filed by the respondents in CA No. 468/2012 was taken up for hearing by the CLB on 14.01.2013. What happened on that date as well as the next two dates was a matter of intense debate and considerable arguments were advanced on that point before me which I will refer to at the appropriate juncture. I will for the present only notice what was stated in the orders passed by the CLB on 14.01.2013 and 16.01.2013 and the letter dated 15.01.2013 written by the appellants to the CLB.

5. On 14.01.2013, the order passed by the CLB was this:

Arguments were part heard. To continue on 16.01.2013 at 10.30 am as item No. 2.

Sd/-

(Justice D.R. Deshmukh)

Chairman

On 15.01.2013, a letter was written by the appellants (respondents before the CLB in the application) which is as below:-

To,

The Bench Officer,

Company Law Board, C.G.O. Complex, Paryavaran Bhawan

New Delhi

Reg.: Company Petition in the matter of "Shri Gurpartap Singh & Anr. Versus M/s. Vista Hospitality Private Limited & Ors." before the Hon"ble Company Law Board, Principal Bench, New Delhi

Sir,

This is with reference to the filing of the fresh Company Petition u/s. 397-398 read with Section 402 of the Companies Act, 1956 in the above said matter, a copy of which is enclosed herewith.

Kindly note that earlier Company Petition being C.P. No. 101(ND) of 2012 was filed before the Hon"ble Bench u/s. 397-398 read with Section 402 of the Companies Act, 1956. The last date of hearing in the said petition was 14.01.2013 and the next date of hearing in the matter is 16th January, 2012.

The Petitioners would like to withdraw the said Company Petition i.e. 101 (ND) of 2012, which is pending before the Hon"ble Bench and coming up for hearing on 16th January, 2013 and would seek a liberty to file the fresh company petition before the Hon"ble Bench.

The Petitioners would serve the present company petition along with its annexures on the Respondents on 16th January, 2013 i.e. the next date of hearing fixed in the said C.P. No. 101(ND) of 2012 on which date the Petitioners are proposed to withdraw the said C.P. No. 101(ND) of 2012 and will serve the company petition to the Respondents.

Take notice that we have filed the accompanying Company Petition u/s 397, 398 read with Section 402 of the Companies Act, 1956 against the Respondents. The above said petition is likely to be listed on 17th day of January, 2013 at 2.30 P.M.

Please find attached herewith the copy of the Petition along with Annexures.

Thanking you

Yours faithfully

Sd/-

(Rakesh Kumar)

Advocate

- CC to: 1. M/s. Jhankar Banquets Private Limited, G-87, Preet Vihar, Delhi-110092
2. Shri Mahesh Kapoor, G-87, Preet Vihar, Delhi-110092
3. Smt. Usha Kapoor, G-87, Preet Vihar, Delhi-110092
4. Shri Balvinder Sachdeva, D-72, Lajpat Nagar, New Delhi-110024

(Counsel for the aforesaid Respondents will be duly served in the forthcoming hearing in C.P. No. 101(ND) of 2013 on 16th January, 2013).

Encl.: Copy of Petition along with Annexures

The petition filed on 15.01.2013 under cover of the above letter was numbered as CP No. 7(ND)/2013.

On 16.01.2013, the CLB passed the following order:

Counsel for the Petitioner sought leave to withdraw the petition with liberty to file a fresh petition on a fresh cause of action. Prayer is not opposed. Leave granted. Petition is dismissed as withdrawn.

Sd/-

(Justice D.R. Deshmukh)

Chairman

6. It would appear that after the above order was passed, the applicants before the CLB (Jhankar group) filed an application in CA No. 41/2013 for dismissal of the C.P. No. 7(ND)/2013. This application was a composite application for dismissal of the petition both u/s 8 of the Arbitration and Conciliation Act, 1996 and under Order VII, Rule 11 of the CPC (CPC) read with Regulation 44 of the CLB Regulations.

7. CP No. 24(ND)/2013 was thereafter filed by the Jhankar group in February, 2013 under sections 397-398 of the Act alleging oppression and mismanagement on the part of the Gurpartap Singh group, the appellants herein. That petition remains to be disposed of by the CLB as on date.

8. The CLB passed orders in C.P. No. 7(ND)/2013 and CA No. 41/2013 on 13.03.2013. The following are its findings:

a) The petition filed earlier by the petitioner in CP No. 101(ND)/2013 was withdrawn by the petitioner on 16.01.2013 with liberty to file a fresh petition on a "fresh cause of action". The petition filed thereafter in CP No. 7(ND)/2013 does not disclose any fresh cause of action, which it must, under Order VII, Rule 11 of the CPC.

b) The fresh petition does not disclose any fresh cause of action. The averments in paragraphs 6.1 to 6.50 and 6.55 to 6.64 are identical with the averments in the earlier petition which was withdrawn. In fact, the fresh petition was signed

and filed on 15.01.2013, even before the withdrawal of the earlier petition on 16.01.2013.

c) The petitioners being in control and management of the company by virtue of their majority shareholding "have failed to substantiate any oppressive act by the minority, i.e., the Respondents or to satisfy on the existence of a situation justifying winding up of R-1 company. Therefore on both counts the application u/s 397, 398, 402 of the Companies Act must fail as held in Shanti Prasad Jain Vs. Kalinga Tubes Ltd.,

d) It can be said "with absolute certainty that after the withdrawal of the earlier petition on 16.01.2013 no fresh cause of action has arisen in favour of the Petitioners to file a fresh petition u/s. 397, 398 & 402 of the Companies Act 1956 against the Respondents.

In the aforesaid view of the matter, the CLB held that the CP No. 7(ND)/2013 was liable to outright rejection for not having disclosed any fresh cause of action under Order VII, Rule 11 of the CPC. That part of the application filed by the Jhankar group which was based on Section 8 of the Arbitration and Conciliation Act was however rejected. The CA No. 41/2013 filed by Jhankar group was thus partly allowed and the main company petition filed by Gurupartap Singh (appellants herein) was dismissed for non-disclosure of any fresh cause of action.

9. It is the aforesaid order of the CLB that is impugned in the present appeal.

10. Sections 397 and 398 of the Companies Act read with Section 402 of the said Act confer wide powers and ample jurisdiction upon the CLB to pass such orders and give such directions as it thinks fit to achieve the object. These powers are without any limitation or restriction and the only limitation on the exercise of such powers is that there should be a nexus between the order that may be passed by the CLB and the object sought to be achieved by these Sections. In order to reach the conclusion 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, it is open to the CLB to hold a thorough inquiry into the allegations made in the petition. If the allegations are found correct, the CLB is empowered to make such order as it thinks fit, with a view to bringing to an end the matters complained of. In order that the CLB may make an order u/s 397, it must be satisfied firstly that the affairs of the company are being conducted in a manner oppressive to any member or members; secondly that the facts would justify the making of a winding-up order on the ground that it is just and equitable that the company be wound up and thirdly that a winding-up order would unfairly prejudice the applicant or applicants.

11. Considering the vast and unlimited powers exercisable by the Company Law Board with reference to the petitions filed under Sections 397 and 398 of the Act it would be first necessary to examine whether the petition can be disposed of on preliminary or technical grounds. In the present case there are two preliminary or technical grounds on which the company petition filed by the appellants herein

before the CLB was dismissed. The first is that the petition was not maintainable since it was filed by the majority shareholders who held 65% of the total shareholding in the company. The argument on behalf of the appellants on this point was that so long as the requisite conditions of Section 399 are satisfied, the petition should be held maintainable even if it is filed by shareholders having a majority shareholding. Section 399 specifies the members of a company who shall have the right to apply u/s 397 or Section 398. Clause (a) of sub-section (1) of the Section provides that in the case of a company having a share capital not less than 100 members of the company or not less than 1/10th of the total number of its members whichever is less or any member or members holding not less than 1/10th of the issued share capital of the company may apply. The company involved in the present case being a company having a share capital, it is open to any member or members holding at least 1/10th of the issued capital to approach the CLB u/s 397 or Section 398. This is the only condition which, according to the learned counsel for the appellants, needs to be satisfied and there is no requirement that a petition against oppression and mis-management should be filed only by minority.

12. The Calcutta High Court in *Ramashankar Prosad and Others Vs. Sindri Iron Foundry (P) Ltd. and Others*, seems to have decided this issue for the first time in India. In that case the argument put forth was that the petition was not maintainable because it was filed by the majority. In support of the argument, reliance was placed on the judgment of the Supreme Court in *Shanti Prasad Jain Vs. Kalinga Tubes Ltd.*, The Division Bench of the Calcutta High Court rejected this argument. Distinguishing the English Companies Act, under which only a minority can file a petition against oppression and mis-management by the majority, the Division Bench held that the English Act did not contain a section like Section 399 of the Indian Act which, according to the Calcutta High Court, was a code by itself as to the qualification necessary for filing an application under Sections 397 and 398. It appears to have also been argued before the Court that Section 399 only fixed the lower limit of the qualification of the shareholders and not the upper limit. This argument was also rejected by holding that if the Legislature had only fixed a lower limit, but no upper limit as to the qualification for relief and if the object of the section is to prevent a mischief and to remove oppression and mis-management of the companies, there was no reason why an upper limit should be implied so as to bring the section in line with the English section. According to the Court, the section was of a remedial nature and, therefore, the proper construction thereof should be to give the words used their widest amplitude. The Calcutta High Court also dealt with the argument based on the judgment of the Supreme Court in *Shanti Prasad Jain (supra)*. The argument was rejected in the following words:-

61. No doubt in *Shanti Prasad Jain Vs. Kalinga Tubes Ltd.*, the Supreme Court referred extensively to the English decisions and observed more than once that it was the minority which had the right to complain of oppression by majority. But *Shanti Prasad Jain Vs. Kalinga Tubes Ltd.*, was one of complaint by a minority

and the court was not called upon to go into the question as to whether a majority which had been paralysed by the wrongful acts of a minority could seek the protection of the court under that section. Indeed, speaking of Section 397 read with Section 399 the court observed "it gives a right to members of a company who comply with the conditions of Section 399 to apply to the court for relief u/s 402 of the Act or such other reliefs as may be suitable in the circumstances of the case if the affairs of a company are being conducted in a manner oppressive to any member or members including any one or more of those applying." This quotation goes to show that in the view of the Supreme Court a member or members applying u/s 397 had to qualify u/s 399.

13. The position was dealt with also by the Kerala High Court in *Dr. V. Sebastian and Others Vs. City Hospital P. Ltd. and Others*, by a learned Single Judge (M.P. Menon, J.). The learned judge held as under:-

It is true that ss. 397 and 398 are intended primarily to protect the minority interests. In ordinary cases, the majority will be able to protect itself by controlling the directors at general body meetings. But, where the majority is prevented from doing so, despite the clear indication in the articles that majority rule based on the right to demand poll should operate as a correcting influence, the majority becomes an artificial minority entitled to claim protection under ss. 397 and 398. When the directors with the majority backing, oppress the minority and misconduct the affairs of a company, occasion arises for interference by the courts. But, when the directors, with only minority support, seek to stifle the majority by taking advantage of some defect or error, I think such a situation can also be remedied in a like manner. The Calcutta High Court has held in *Sinduri Iron Foundry (P.) Ltd., In re* [1964] 34 Comp Cas 510, that such a remedy is available to the majority when it is rendered ineffective by the wrongful acts of a minority. (The decision was confirmed in appeal-See *Ramashankar Prosad and Others Vs. Sindri Iron Foundry (P) Ltd. and Others*, .

In *J.P. Srivastava and Sons Pvt. Ltd. and Others Vs. Gwalior Sugar Co. Ltd. and Others*, the Supreme Court noted that any member/members of a company may apply under Sections 397 and 398 of the Act to the CLB complaining of mis-management or oppression "provided such member or members have the requisite shareholding as prescribed u/s 399 to do so".

14. In the light of the above authorities it appears to me that the objection raised by the respondents both before the CLB as well as before me that the petition before the CLB was not maintainable because it was filed by the majority shareholders, cannot be upheld.

15. I will now proceed to consider the other preliminary ground on which the petition was held not maintainable by the CLB. Before I do so, it is necessary to bear in mind, having regard to the object and purpose of Sections 397 and 398 and the very wide and unbridled powers given to the CLB u/s 402, that the CLB should be extremely reluctant to reject the petition in the threshold itself on

highly technical grounds. In *Jer Jer Rutton Kavasmaneck and others Vs. Gharda Chemicals Ltd. and others*, the learned Single Judge (S.S. Nijjar, J., as he then was) was confronted with a situation where, in an application u/s 397 and 398 of the Companies Act, counsel for the respondents had taken an objection that the company petition was not maintainable and should be dismissed under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 as disclosing no cause of action. It must also be noted that in the days before the establishment of the CLB, petitions complaining of oppression and mis-management were being filed before and dealt with by the High Courts. Under Rule 6 of the Companies (Court) Rules, 1959, the provisions of CPC, so far as they are applicable, applied to all proceedings under the Companies Act. Even so, the objection of the respondents in that case that the company petition should be dismissed in limine on the ground that it did not disclose any cause of action was rejected. The reasoning of the Bombay High Court runs thus:-

I am of the considered opinion that the judgment in *Khimji M Shah and others Vs. Ratilal Damodardas Modi and others*, has correctly interpreted the law laid down by the Supreme Court. Even the Supreme Court in the case of *Shanti Prasad Jain Vs. Kalinga Tubes Ltd.*, has held that facts and events leading up to the filing of the petition are relevant. Keeping the aforesaid proposition of law in view, the court is now required to see as to whether sufficient facts have been pleaded to make out an arguable case of oppression as well as mismanagement. It is a settled proposition of law that whilst exercising powers under Order 7, rule 11, the courts act with utmost caution. Dismissal of a petition at the threshold leads to very serious consequences. The courts in India as well as in England have been very reluctant to reject the plaint at the threshold. Order 7, rule 11(a) of the CPC provides that the court may reject the plaint/petition if it discloses no cause of action. A similar provision occurring in Rules of the Supreme Court, Order 18, rule 19 in England was considered in the case of *Drummond-Jackson v. British Medical Association* [1970] 1 All ER 1094, wherein Lord Pearson observes as follows (page 1101):

Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases.....

Similar views expressed by other judges are also noticed in that judgment which are as follows:

In *Nagle v. Feilden*, [1966] 1. All ER 689 695, Danckwerts L.J. observes:

The summary remedy which has, been applied to this action is one which is only to be applied in plain and obvious cases, when the action is one which cannot succeed or is in some way an abuse of the process of the court".

Salmon L.J. at page 697 observes:

It is well settled that "a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable.

Thus, the rule appears to be that the plaint can be rejected in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process of the court. The plaint should not be struck out unless the case is unarguable. In the same judgment, Sir Gordon Willmer observed as follows (page 1105):

The question whether a point is plain and obvious does not depend on the length of time it takes to argue. Rather the question is whether, when the point has been argued, it has become plain and obvious that there can be but one result.

Thus, it becomes clear that the petition could be struck out only if the case put forward is unarguable.

Thereafter, at page 44 of the report the High Court observed as under:-

At this stage the court is not required to decide the petition on the merits. The petition could be held to be demurrable only if the claim put forward cannot be established even if all the allegations made in the petition are accepted to be true. Such is not the position here. Very complicated questions of fact and law have been raised. It is only at the final hearing of the petition that the court would be able to decide the issues as to whether the dividend squeeze could amount to an oppression. The court would also have to decide as to whether or not transfer of shares made in contravention of the articles of association would amount to an act of oppression. The court would also have to decide as to whether or not the remuneration received by respondent No. 2 is an act of oppression. These are all matters which require detailed consideration and have to be decided on the merits at the final hearing of the petition.

16. It appears to me, on a careful reading of the judgment of the Bombay High Court (supra), that the CLB cannot dismiss a petition u/s 397 /398 of the Act as not maintainable, unless the petition raises issues which are absolutely unarguable or frivolous or in a case where the petition does not disclose the satisfaction of the basic requirements of these sections. In this light, I proceed to examine the question whether the CLB was justified in rejecting the company petition on the ground that it did not disclose any fresh cause of action within the meaning of Order VII Rule 11 of the CPC.

17. Order VII Rule 11 of the CPC is in the following terms:-

R. 11. Rejection of plaint.-The plaint shall be rejected in the following cases:-

- (a) Where it does not disclose a cause of action;
- (b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) Where the suit appears from the statement in the plaint to be barred by any law:

18. The first question for consideration now is whether the provisions of the CPC are applicable to proceedings before the CLB; and the further question to be considered is whether, if those provisions are applicable to the proceedings before the CLB, the CLB was right in dismissing the fresh petition filed on 15.01.2013 on the ground that it did not disclose a fresh cause of action.

19. I would for the moment assume that the provisions of the CPC are applicable to the proceedings before the CLB. Even so, I am unable to agree with the CLB that the fresh petition filed on 15.01.2013 did not disclose any fresh cause of action. It is necessary to bear in mind the sequence of the events leading to the filing of the fresh petition. In the first petition filed by the appellants herein in Company Petition No. 101(ND)/2012, several allegations were made and several acts were brought to the notice of the CLB which according to the petitioners constituted oppression and mis-management on the part of the respondents. When the petition came up for hearing on 14.01.2013, arguments were heard in part and they were to continue on 16.01.2013. For the present I would proceed on the assumption that there was no suggestion from the CLB on that date that the petition may be withdrawn and a fresh petition may be filed. On 15.01.2013, the petitioner (Guru Partap Group) filed a fresh petition before the CLB under cover of a letter of even date. A perusal of the letter shows that it refers to the hearing which took place on 14.01.2013 and also to the fact that the next date of hearing was 16.01.2013. Thereafter, the petitioners state that they would like to withdraw Company Petition No. 101(ND)/2012, which is to come up for hearing on 16.01.2013 and would seek liberty to file the fresh petition before the CLB. The copy of the petition along with the relevant annexures were annexed to the letter and filed before the CLB as per endorsement made thereon (Diary No. 214/16.01.2013). On 16.01.2013 the CLB passed an order stating that the petitioner sought leave to withdraw Company Petition No. 101(ND)/2012 with liberty to file a fresh petition on a fresh cause of action. Since the prayer was not opposed, leave was granted and the petition was dismissed as withdrawn. When the fresh petition which was numbered as Company Petition No. 7(ND)/2013 was mentioned on 22.01.2013 and notice was issued, it was noticed by the CLB that Company Application No. 41/2013 had been filed in the meantime by the respondent u/s 8 of the Arbitration and Conciliation Act, 1996 and also on the basis of Order VII, Rule 11 of the CPC. The petitioner was granted a week's time to file a reply in the aforesaid application. The matter was directed to be listed on 15.02.2013, on which date it was heard. The application in Company Application No. 41/2013 as also the fresh company petition in C.P. No. 7(ND)/2013 were

disposed of by order dated 13.03.2013.

20. It further needs to be noted that in the fresh petition filed on 15.01.2013, the petitioner added paragraphs 6.51 to 6.54 and in these paragraphs had drawn the attention of the CLB to the fact that the lock-in period of 5 years mentioned in the JVA for transfer of shares between the petitioners and the contesting respondents had already expired on 21.12.2012 and it was because of this that the earlier Company Petition No. 101(ND)/2012 was withdrawn with liberty to file a fresh petition. The other contents of the fresh petition were mere repetition of the contents of the earlier petition. The argument on behalf of the appellants was that by withdrawing the earlier petition the petitioners did not admit that there was no cause of action and that having regard to the fact that the contents of the earlier petition were retained in the fresh petition, with the addition of the reference to the fact that the lock-in period had expired on 20.12.2012, the fresh petition was in substance and in effect a continuation of the earlier petition with an additional fact being brought to the notice of the CLB. The contention further is that the earlier cause of action was not abandoned by the petitioners. My attention was also drawn to the reply filed by the petitioners (appellants herein) to the application filed by the respondents under Order VII, Rule 11 before the CLB, particularly to the averment in paragraph 15 that the petitioner chose to file the fresh petition on a fresh cause of action, which did not mean that the cause of action which constituted the basis for filing the earlier petition had lapsed and that the fresh petition was "carrying the said cause of action in addition to the subsequent cause of action arising in favour of the petitioners and against the respondents..... ". These arguments were countered on behalf of the respondent by submitting that there was no fresh cause of action which arose after the filing of the first petition on the basis of which the fresh petition filed on 15.01.2013 could be justified, that the relief sought by the petitioner in the fresh petition is identical to the relief sought in the earlier petition and that the withdrawal of the first petition by the petitioners gave a vested right to the respondent and that in these circumstances the CLB was justified in law in dismissing the fresh petition as not based on any fresh cause of action.

21. Having considered the rival submissions on this point, I am of the view that the contentions advanced on behalf of the appellant should prevail. I have already opined that the CLB should be reluctant to strike out any proceedings before it on technical grounds. This is particularly so with reference to proceedings under Sections 397 and 398 of the Act alleging oppression and mismanagement and seeking remedies. It should be the effort of the CLB to bring to an end all matters complained of and towards this end the CLB is empowered to make such order as it thinks fit. It is the interest of the company that is the paramount consideration u/s 397 /398. Therefore, the permission granted by the CLB to the petitioners to withdraw the petition and file a fresh petition on a fresh cause of action should not be viewed on the basis of the parameters for a strict implementation of Order VII Rule 11(a) of the CPC. It should be looked at more as a substantive compliance, particularly when the fresh petition did not abandon

or omit the earlier cause of action but merely added one more cause of action namely the expiry of the lock-in period on 20.12.2012. Obviously it was during the pendency of the first petition that the lock-in period expired. The expiry of the lock-in period undoubtedly facilitated a possible arrangement under which the CLB could direct either party to acquire the shares of the other party. It was only with a view to bringing this to the notice of the CLB that the petitioners withdrew the earlier petition and filed a fresh petition. In substance and effect this was merely an amendment or an addition to the earlier petition and to the contents thereof. The expiry of the lock-in period could have even been brought to the notice of the CLB in the course of the oral submissions made before the CLB. The withdrawal of the first petition might even have been prompted by the discovery, in the course of the argument before the CLB on 14.01.2013, that the lock-in period had expired. In my view the CLB was not justified in preferring to adopt a very technical approach.

22. In any case as held by the Supreme Court in *Shanti Prosad Jain vs. Kalinga Tubes Ltd.* (supra) it is necessary for the petitioner who has filed a petition u/s 397 of the Act to show that the conduct complained of was oppressive and "this requires that events have to be considered not in isolation but as part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members". This observation shows that the acts complained of as being oppressive have to be viewed in a wholesome manner and without dissecting them into separate, disjunctive or component parts of oppression. What is complained of is oppression and such oppression may be the result of several continuous acts, all of which constitute what the Supreme Court describes as a consecutive story. It is neither proper nor necessary to look at each act of oppression disjointedly. Viewed from this angle also, there is no justification, in proceedings u/s 397 of the Act, to insist on a fresh petition being filed only on the basis of a fresh cause of action. I would even venture to say that in a petition u/s 397, there is no room for such theories as fresh cause of action. The observations of the Supreme Court cited above also add strength to my view, that what was brought to the notice of the CLB in the fresh petition was only one more development after the filing of the petition, which would be a relevant development, which the CLB ought to note while passing orders u/s 402 with a view to bringing to an end the matters complained of. On this basis I would further venture to think that the CLB was not also justified in insisting on a fresh petition being filed only on a fresh cause of action. The approach of the CLB, with respect, seems to me highly technical, an approach not called for and even indicted by the spirit of Sections 397 and 398.

23. The above discussion of mine is on the assumption that the provisions of the CPC are applicable to the proceedings before the CLB. In fairness to the arguments advanced before me, I must also deal with the question whether the provisions of the CPC are applicable to proceedings before the CLB. I may start

with a very basic common sense approach prompted by the very rationale of constituting specialised tribunals to deal with issues arising out of special legislation. The Central Administrative Tribunal (CAT) deals with service matters relating to employees of the Central Government; the Income Tax Appellate Tribunal deals with issues arising out of assessments made under the Income Tax Act, 1961. Similarly, the CLB exclusively deals with issues arising out of the working of the Companies Act, 1956. All these Tribunals have been given power to regulate their own procedure. In exercise of such power, rules/regulations have been framed by these Tribunals. It has been uniformly held that in order to make the functioning of these specialised Tribunals effective, the strict provisions of the CPC, Indian Evidence Act, 1872 etc. are not applicable to the proceedings before such Tribunals. It is quite normal to find in the enactment constituting these Tribunals a provision which makes only some of the provisions of the CPC applicable to proceedings before them. So far as the CLB is concerned, Section 10-E(4-C) provides as follows:-

(4-C) Every Bench referred to in sub-section (4-B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters namely:

- (a) discovery and inspection of documents or other material objects producible as evidence;
- (b) enforcing the attendance of witnesses and requiring the deposit of their expenses;
- (c) compelling the production of documents or other material objects producible as evidence and impounding the same;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence on affidavits.

24. The other sub-sections which are relevant are the following:-

(4-D) Every Bench shall be deemed to be a Civil Court for the purpose of section 195 and [Chapter XXVI of the Code of Criminal Procedure, 1973] and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code.]

[(5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law Board shall in the exercise of its powers and the discharge of the functions under this Act, or any other law be guided by the principles of natural justice and shall act in its discretion.]

[(6) Subject to the foregoing provisions of this section, the Company Law Board shall have power to regulate its own procedure.]

25. Pursuant to the power given under sub-section (6) of Section 10E the CLB has framed the Company Law Board Regulations, 1991 governing the proceedings before it. Similar provisions occur in the Income Tax Act, 1961 also. Section 255 read with Section 131 of the said Act, confers upon the Income Tax Appellate Tribunal the following powers which are vested in a Court under the CPC when trying a suit in respect of the following matters, namely (a) discovery and inspection, (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath, (c) compelling production of books of accounts and other documents and (d) issuing commissions. Section 255(6) further provides that the proceedings before the Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code, and further that the Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure. Sub-section (5) of Section 255 of the Income Tax Act, 1961 confers upon the Income Tax Appellate Tribunal the power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings. Pursuant to this power, the Income Tax Appellate Tribunal has framed the Income Tax Appellate Tribunal Rules, 1963 regulating its functioning.

26. Thus wherever the legislature so desired, specific provisions were enacted in the statutes creating the Tribunals as to the extent of the applicability of the provisions of the CPC in the functioning or the proceedings before such Tribunals. The result is that except the provisions of the CPC which have been so made applicable, the other provisions are not applicable. In *Union of India (UOI) Vs. R. Gandhi, President, Madras Bar Association*, the Supreme Court has observed as under:-

iii) While courts are governed by detailed statutory procedural rules, in particular the CPC and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the CPC only where it is required, and without being restricted by the strict rules of the Evidence Act.

27. The aforesaid observations cover not only the CLB but also Tribunals in general.

28. The position, therefore, is that unless specifically conferred, the provisions of the CPC are not applicable to CLB. My attention was also drawn to the following judgments in which a similar proposition was accepted:-

(i) *B. Subba Reddy Vs. S.S. Organics Limited and V.N. Sundana Reddy*, .

(ii) *K. Muthusamy and P. Durai Vs. S. Balasubramanian and Others*, .

(iii) *Ultrafilter GMBH Vs. Ultrafilter (India) P. Ltd. and Another* .

29. It is, however, possible to postulate an argument that though the provisions

of the CPC are not applicable to CLB, there is no prohibition in applying the principles evolved in the CPC. There can be no quarrel with such an argument, subject to the caveat that the well recognised principles embedded in the elaborate provisions of the CPC can be invoked to the proceedings before the CLB with a view to suppressing the mischief and advancing the cause of justice. This seems to be the purpose of Regulation 44 of the CLB Regulations. Even if this argument is given effect to, I do not think that the CLB in the present case was justified in any manner in throwing out the fresh petition on the basis of the principle behind Order VII Rule 11(a). In addition to the reasons which I have earlier given, on the basis of the vast powers conferred upon the CLB in petitions complaining of oppression and mis-management and the expectation of the Companies Act that the disputes arising out of acts of oppression and mis-management should be effectively put an end to by the CLB, I would add that the principle embedded in Order VII Rule 11(a) ought not to have been invoked in the present case to defeat the right of the appellants to the remedy against acts of oppression and mismanagement allegedly committed by the respondent, without even examining the petition on merits. As rightly contended on behalf of the appellants, section 397(2) requires the CLB to form an opinion, that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members. It is difficult to visualise the possibility of such an opinion being formed by the CLB without examining the acts of the oppression and mismanagement complained of or without inquiring into the question whether there is substance in the complaint or not. The CLB not only has to form such an opinion but shall further pass such order as it thinks fit with a view to bringing to an end the matters complained of. It needs no emphasis that the interests of the company are paramount in moulding the relief and the remedy u/s 397 is an alternative to winding-up. A company is a corporate personality and is normally promoted to foster economic growth of the country. Its proper functioning is, therefore, essential for the economic strength of the country. The provisions of Section 397 and 398 are a step towards ensuring that companies formed for this purpose do not get derailed because of lack of probity or merely because of egoistic disputes between the men behind the company. Rejection of the petition filed u/s 397 /398 of the Act on a technical or a preliminary ground leaves the disputes unsettled which goes against the mandate of the provision. The disputes are allowed to linger and that is not good for the company or the public interest. Having these factors in mind I am unable to uphold the dismissal of the fresh company petition filed by the appellants herein before the CLB on the basis of the principle embedded in Order VII, Rule 11(a) of the CPC, even assuming that there is no bar on the principles embedded in the CPC being invoked to proceedings before the CLB.

30. There is one more reason for my view. Though the appellant's petition before the CLB was dismissed as not maintainable for not disclosing a fresh cause of action, the petition filed by the respondents before the CLB in C.P. No.

24(ND)/2013, also under Sections 397 and 398 of the Act, complaining of acts of oppression and mis-management against the appellants, is still stated to be pending before the CLB pursuant to an order passed by the CLB on 19.02.2013. On this date the CLB passed an order for listing the petition filed by the respondents herein along with the fresh petition filed by the appellants before the CLB. However, the fresh petition filed by the appellants was dismissed, though the petition filed by the respondents was adjourned and is kept pending. When both the petitions were initially directed to be listed together for hearing it would have been just and equitable that the mutual allegations were examined and an opinion was formed as to whether the affairs of the company were being conducted in a manner prejudicial to public interest or oppressive to any member or members and it was eminently desirable that the CLB passed an order with a view to bringing to an end the matters complained of. Taking up both the petitions together for hearing would have given an opportunity to the CLB to see the points of view of both the sides in order to arrive at a just decision. This is one more reason which, in my view, ought to have prevailed upon the CLB and persuaded it not to throw out the fresh petition filed by the appellants herein on the basis of principle behind Order VII, Rule 11(a) of the CPC.

31. Regulation 44 of the CLB Regulations, 1991 reads as under:-

44. Saving of inherent power of the Bench - Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.

32. The above rule shows that the inherent power of the Bench is preserved subject to the condition that such power shall be exercised only for the ends of justice or to prevent abuse of the process of the Bench. It is difficult to fathom how the filing of the fresh petition by the appellants herein was contrary to the ends of justice or can be said to result in the abuse of the process of the Bench. The CLB could have examined the merits of the fresh petition and taken a decision on the merits and could have also decided the petition filed by the respondents at the same time. In other words both the petitions which are under Sections 397 and 398 of the Act could have been disposed of in a consolidated manner. The impugned order dated 13.03.2013 shows that the CLB was of the opinion that the petitioners could not satisfy that a situation existed which justify the winding-up of the company. The only reason for this conclusion given by the CLB in paragraph 3 of the impugned order is that the petitioners were in control of the management of the company to the exclusion of the respondent and being in majority have failed to substantiate any oppressive act by the minority. That the petitioners were the majority shareholders of the company was the only ground put against them on merits and it was presumed, without examining the various allegations made in the fresh petition, that a minority cannot act against the majority under any circumstances. There is no other reason given on the merits of the allegations and it appears to me that the CLB, with respect,

expressed its opinion on merits without actually examining them. There is no reference to any of the allegations made in the fresh petition or to the contents of the elaborate pleadings in the petition. The order of the CLB which is impugned before this Court, therefore, does appear to me to be unsustainable, in so far as it purports to reject the petition also on merits.

33. It was argued on behalf of the appellants that it would be a contradiction to say, on the basis of Section 8 of the Arbitration and Conciliation Act, 1996 that in view of the specific clause in the JVA, the disputes between the parties should be referred to arbitration and also say, in the same breath, that there is no fresh cause of action. This contradictory stand, according to the learned counsel for the appellants, was taken by the learned counsel for the respondents which, according to him, cannot bear scrutiny. When the respondents filed Company Application No. 41/2013 on the ground that in view of the arbitration clause, the CLB would have no jurisdiction to entertain the petition filed by the appellants herein and also in the same application took a ground that there was no fresh cause of action in filing the fresh petition, they were to some extent taking a contradictory stand. If there were disputes which needed to be referred to arbitration, for the very same reason, it can also be said that there was a continuing cause of action on the basis of which the fresh petition may be entertained. This position need not, however, be examined further because I have already taken the view that in the very nature of things, acts of oppression and mis-management are a continuous story and they cannot be dissected into separate causes of action. I have also expressed the view that by filing the fresh petition, the petitioners (appellants herein) were merely bringing to the notice of the CLB another aspect of the JVA which may assist the CLB in dealing with the petition on merits. The CLB ought not to have disposed of the petition on merits, without actually examining the merits of the allegations made in the petition.

34. In the course of the arguments the learned counsel for the appellants took up the position, inter alia, that the earlier petition was withdrawn at the suggestion of the CLB, which was made after it was noticed that the lock-in period of 5 years had expired on 20.12.2012 and the petition having been withdrawn at the suggestion of the CLB, the CLB was not justified in refusing to entertain the fresh petition on the ground that it disclosed no fresh cause of action. This was strongly contested by the learned counsel for the respondents, the argument being that there was nothing in the orders passed by the CLB to suggest that the first petition was withdrawn at the behest of the CLB with liberty to file a fresh petition on a fresh cause of action and that the Judge's record is final and nothing can be permitted to be stated by the parties against the same. I do not consider it necessary to examine this aspect of the matter despite the elaborate arguments advanced by both the sides on this issue. I have preferred to rest my decision on the assumption that there was no such suggestion by the CLB and that in withdrawing the earlier petition and filing the fresh petition, the petitioners (appellants herein) were acting on their own.

35. For the above reasons I am of the view that the impugned order passed by the CLB on 13.03.2013 in Company Petition No. 7(ND)/2013 and Company Application No. 41/2013 should be set-aside. I hold accordingly and remand the matter to the CLB which will now deal with the petitions filed by the appellants herein u/s 397 and 398 and dispose them of on merits and in accordance with law. It is for the consideration of the CLB whether the cross-petition filed by the respondents herein (C.P. No. 24(ND)/2013) before the CLB under the above sections should also be heard along with the petition filed by the appellants herein. The appeal is allowed in the aforesaid terms, with no order as to costs. The Co. Appl. No. 833/2013, consequently stands disposed of.