

(1995) 05 MAD CK 0004

In the Madras High Court

Case No : Applications No's. 7151 of 1994 and 220, 435, 1312, 1628 of 1995 in C.S. No. 1128 of 1994 and Applications No's. 7153 of 1994 and 436, 1631 of 1995 in C.S. No. 1132 of 1994

Kothari Industrial Corporation Ltd. and another	APPELLANT
Vs	
Maxwell Dyes and Chemicals (P.) Ltd.	RESPONDENT

Date of Decision : 16-05-1995

Acts Referred:

Companies Act, 1956 — Section 209A, 397, 398, 61, 62

Citation : (1996) 85 CompCas 79

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Judgement

Govardhan, J.

(Application No. 7151 of 1994)

1. The deponent is the company secretary of the applicant. On September 7, 1994, this court passed an order in O. A. No. 849 and 850 of 1994

in the suit C. S. No. 1128 of 1994 and O. A. Nos. 855 and 856 of the 1994 in C. S. No. 1132 of 1994 directing that the annual general meeting

of the applicant-company as scheduled would go on with all the resolutions listed for consideration excepting resolutions Nos. 10 to 12. A transfer

petition was earlier filed by the applicant in the Supreme Court seeking the transfer of certain suits including this suit to the Delhi High Court or any

other High Court. When the above application came up for hearing on September 6, 1994, the Hon'ble Chief Justice of India directed that the

petition be posted for hearing on September 9, 1994. On September 9, 1994, the Supreme Court passed an order permitting the first applicant-

company to hold the annual general meeting on September 12, 1994, and

permitted the respondents and their associates to vote on the basis of their total shareholding submitted by them to the Supreme Court. The court further directed that the votes in respect of the number of partly convertible debentures (PCDs) offered and applied for and the number of additional partly convertible debentures, applied for under the rights issue of the applicant-company in respect of 11 Reliance companies be maintained separately. The Supreme Court further directed that the results of voting on resolutions Nos. 10 to 12 would not be declared nor would any decision about the passing of the said resolutions be taken on the basis of the said voting until further orders. The applicant-company was directed to keep the results of the voting on the rights shares in a sealed envelope and intimate them to the Supreme Court promptly. On September 12, 1994, the annual general meeting of the company was held. Poll was taken on resolutions Nos. 10 and 11. Consideration of resolution No. 12 was deferred till 27th September, 1994. The results of the other resolutions were announced either unanimous or by an overwhelming majority. On October 25, 1994, the sealed envelope was opened. As per the results, 94% of the shareholders present and voting approved resolutions Nos. 10 and 11 and 6% were against the resolutions. The votes in respect of shares covered by the rights PCDs (partly convertible debentures), claimed by the 11 Reliance companies were kept separately as per the directions of the Supreme Court. If these votes are also taken into account, about 87% of the shareholders approved resolutions Nos. 10 and 11 and 13% voted against resolutions Nos. 10 and 11.

2. The applicant-company received a fax on September 10, 1994, addressed by the Life Insurance Corporation of India to the applicant-company virtually withdrawing their earlier approval given to resolution No. 12 contained in the notice of the annual general meeting dated August 5, 1994.

The General Insurance Corporation of India (GIC) sent a similar letter on September 2, 1994. The applicant-company wrote to the LIC a letter seeking clarifications on the change in their stand taken by them as compared to their earlier stand taken in March, 1994, giving approval to the proposal in resolution No. 12. Till the date of the annual general meeting, viz., September 12, 1994, there was no reply. The board of directors of the applicant-company resolved to defer the consideration of resolution No. 12

on September 12, 1994. The chairman informed the decision of the board at the annual general meeting to defer resolution No. 12 to September 29, 1994, and sought the concurrence of the shareholders. The shareholders were overwhelmingly in favour of deferment of resolution No. 12 and, therefore, it was deferred to September 27, 1994. The Supreme Court directed the results of the voting on resolutions Nos. 10 and 11 to this court and the applicant-company could implement the resolutions after obtaining orders on the legality and validity of the said resolutions from this court.

3. Resolution No. 10 is as follows :

Resolved that the consent of the company be and is hereby accorded for change in the purpose of utilisation of the proceeds from the issue of

4,72,500 - 16% secured, redeemable partly convertible debentures (PCDs) of Rs. 400 each and the issue of 3,60,000 equity shares of Rs. 10

each at a premium of Rs. 15 per share to overseas corporate bodies (OCB) for the following projects instead of as originally proposed in the letter

of offer dated October 15, 1992 :

Rs. in lakhs

Granite tiles and expansion of granite

monument plants 482

Brewery project 1,216

Long-term sources for working capital 150

Issue expenses 70

1,918

Since a part of the total funds, viz., Rs. 1,216 lakhs out of Rs. 2,250 lakhs raised, PCDs was to be utilised for a new project, viz., the beer

project, instead of the purpose for which they were originally raised and since in order to comply with the conditions imposed by the financial

institutions and other authorities, the beer project could be implemented from the funds raised by PCDs earlier, after obtaining the approval of the

shareholders of the company at the annual general meeting. There is nothing

illegal in such a course of action and it is always left open to the shareholders to deny their permission in which case funds cannot be diverted to the new project not originally envisaged. In the instant case, not less than 87% of the votes polled were cast in favour of resolution No. 10 as proposed by the applicant-company. The company should, therefore, be permitted to implement the resolution. The votes cast against resolutions Nos. 10 and 11 were votes cast by the Reliance companies and their supporters. The Government of India, public financial institutions, the SEBI, the RBI and all other such authorities have permitted the company to implement the beer project. They would not have done so if resolution No. 10 had been illegal or invalid. They have examined the company's proposal to deploy the funds in a revised manner and only after convincing themselves, they have approved the applicant-company taking up the new project. Public financial institutions hold 34.65% in the aggregate equity capital of the applicant-company and they have voted in favour of resolutions Nos. 10 and 11 on September 12, 1994. The Andhra Pradesh Government has sanctioned land for the beer project. It has even given incentives in the payment of land value, if commercial production could be established before August, 1995. There is nothing illegal in the commencement of the beer project or in implementing the same or in utilising the funds raised for other purposes for the beer project. Any delay in the implementation of resolution No. 10 will cause undue hardship and damage to the applicant-company. The balance of convenience is in favour of the applicant-company. This court be pleased to dismiss the plaintiff's prayer for permanent injunction regarding resolution No. 10 and permit the applicant-company to implement the resolution.

4. Resolution No. 11 of the notice dated August 5, 1994, is as follows :

Resolved that pursuant to the provisions of section 81(1A) and other applicable provisions, if any, of the Companies Act, 1956 (including any re-enactment thereof), and subject to such further approvals as may be necessary from any authority and subject to such terms and conditions and modifications as may be prescribed in granting such approvals and agreed to by the board of directors of the company (hereinafter referred to as "the board" which term shall be deemed to include any committee of the board as may be constituted) consent be accorded to the board to issue,

offer and allot by private placement not exceeding 9,00,000 equity shares of Rs. 10 each at a premium to be calculated in accordance with the

guidelines of the Securities and Exchange Board of India (SEBI) dated August 4, 1994, and such other amendments as may be made thereto in

respect of calculation of the premium on the shares and that the said shares may be offered to Indians (NRIs/overseas corporate bodies (OCBs))

as the board, in its absolute discretion and in such manner and within such period and at such time or times may decide and in accordance with the

above-said guidelines of the Securities and Exchange Board of India and that the said shares so offered and allotted shall have a lock-in-period of

five years from the date of allotment. The aforesaid number of shares have been calculated on the basis of an estimated premium of Rs. 40 per

share and that the same shall be varied depending upon the calculation of the premium in accordance with the Securities and Exchange Board of

India guidelines by the statutory auditors of the company and a modification in regard to the number of shares, if necessary, will be placed at the

general meeting.

Resolved further that such aforesaid shares shall rank *pari passu* in all respects with the existing equity shares except as regards dividends. The said

shares shall rank for proportionate dividend from the date of allotment.

5. One of the conditions imposed by the Government of India on the company for implementing the beer project was that 20 per cent. of the

project cost is to be financed out of equity to be raised in hard foreign currency from non-resident Indians (NRIs) and foreign bodies corporate.

To enable the company to comply with this condition, it was proposed to seek the approval of the shareholders by means of a special resolution to

issue shares to NRIs/OCBs at a premium to be calculated in accordance with the guidelines in force and after obtaining the permission of the

Reserve Bank of India (RBI) under the Foreign Exchange Regulation Act, 1973 (FERA). The applicant-company has obtained the overwhelming

support and approval of its shareholders at the annual general meeting held on September 12, 1994, and has, therefore, complied with the

provisions of law and stipulations imposed by the Government of India while granting letters of intent for manufacture of beer. The applicant states

that there is nothing illegal in a company issuing shares to NRIs/OCBs on

preferential basis at a price calculated in accordance with the applicable guidelines and subject to the Reserve Bank of India approvals as required by law.

6. The respondents who are minority shareholders have a mistaken impression that their holdings in the company will get reduced if the shares are

issued to NRIs/OCBs, as per resolutions No. 11. The holdings of all the shareholders in the company will correspondingly be reduced and,

therefore, the respondents will not be prejudiced in this regard. In Company Petition No. 39 of 1994 filed by them before the Company Law

Board, the respondent has sought for injunction suppressing this suit. They did not get interim relief from the Company Law Board. They have not

referred to it before the Supreme Court.

7. The objections of the respondents are motivated and are not in the interests of the applicant-company and not in the interests of the majority of

the shareholder. The founders of the company, Mr. D. C. Kothari, father of the second applicant and H. C. Kothari, father of B. H. Kothari,

entered into a family arrangement under which the applicant-company is managed by the second applicant and four other companies established by

the same founders, are managed by the family members of B. H. Kothari. The objection of the respondent is with the aim of putting Mr. B. H.

Kothari in the saddle as their nominee. B. H. Kothari does not hold any shares in the applicant-company. He has never been a member of the

board of the applicant-company. The motive and intention of the respondent is only take over the management from P. D. Kothari.

8. Resolution No. 12 reads as follows :

Resolved that pursuant to the provisions of section 81(1A) and other applicable provisions, if any, of the Companies Act, 1956 (including any re-

enactment thereof), and subject to such further approvals as may be necessary from any authority and subject to such terms and conditions and

modifications as may be prescribed in granting such approvals and agreed to by the board of directors of the company (hereinafter referred to as

"the board", which term shall be deemed to include any committee of the board as may be constituted) consent be accorded to the board to issue,

offer and allot not exceeding 1,01,04,000 equity shares of Rs. 10 each at a premium to be calculated in accordance with the guidelines of the

Securities and Exchange Board of India (SEBI) dated August 4, 1994, and such

other amendments as may be made thereto in respect of calculations of the premium on the shares to Mr. Pradip D. Kothari and his group, viz., his relatives, associates and associate companies (hereinafter referred to as "the promoters group") as the board, in its absolute discretion and in such manner and within such period and at such time or times, may decide and in accordance with the abovesaid guidelines of the Securities and Exchange Board of India and that the said shares so offered and allotted shall have a lock-in-period of five years from the date of allotment. The abovesaid number of shares have been calculated on the basis of an estimated premium of Rs. 40 per share and the same shall be varied depending upon the calculation of the premium in accordance with the Securities and Exchange Board of India guidelines by the statutory auditors of the company and a modification in regard to the number of shares, if necessary, will be placed at the general meeting. Resolved further that such aforesaid shares shall rank pari passu in all respects with the existing equity shares except as regards dividends. The said shares shall rank for proportionate dividend from the date of allotment. It is further resolved that the aforesaid investment of the promoters group shall not exceed a limit of 51 per cent. of the equity capital of the company.

9. After the new economic policy, the financial institutions have been permitting the existing management of various companies in the domestic corporate sector, to increase their stake in the companies managed or owned by them to 51 per cent. with a view to stall the unhealthy takeover bids of companies with proven track records. When various companies have availed of this facility, there is no reason why the applicant-company's present management should not avail of this policy relaxation. It was only on September 2, 1994, and thereafter when litigation was started against the annual general meeting of the company that the financial institutions have changed their stand from what they had earlier agreed.

B. H. Kothari and the eleven Reliance companies want to take over the management of the company. It has, therefore, become necessary for the existing management to increase its stake in the company suitably in accordance with law and the guidelines in force so that the destabilisation moves initiated by B. H. Kothari and associates are not allowed to succeed. The

applicant, therefore, prays to permit him to implement resolutions

Nos. 10 and 11 and permit him to hold the adjourned annual general meeting to consider and put to vote resolution No. 12.

10. Application No. 1628 of 1995 :

The applicant is the whole-time director of the defendant-company. This court, by its order dated February 15, 1995, in Application No. 7152 of

1994, in C. S. No. 1128 of 1994, permitted the applicant-company to hold the adjourned annual general meeting of the company on March 20,

1995, to consider resolution No. 12 of the notice dated August 5, 1994. One of the conditions in the aforesaid order is that the results of the

voting on resolution No. 12 would not be declared nor would any decision about the passing of the resolution be taken on the basis of the said

voting till further orders. The adjourned annual general meeting was held on March 20, 1995, at 10 a.m. The applicant has filed an application

seeking permission of the court to implement resolutions Nos. 10 and 11 of the notice dated August 5, 1994. He prays that the sealed envelope

may be opened and the results of resolution No. 12 may be implemented.

11. In the counter, the respondent-plaintiff contends briefly as follows : The legality of resolution No. 12 is pending before this court. The

applicant-company cannot seek for opening of the envelope before this court. If the resolutions of polling are made known to the parties, the

results may become public which will have a serious consequence. Even if the results indicate that resolution No. 12 has been passed by the

requisite majority, the request for implementing the said resolution is untenable in the light of the orders of the Supreme Court of India to decide the

validity of resolutions Nos. 10, 11 and 12. The request for implementing the results may, therefore, be rejected.

12. O. A. No. 435 of 1995 :

The applicant is the director of the plaintiff-company. In the affidavit, he contends as follows :

The applicant has filed the suit for declaring that the notice issued by the first respondent-company calling for the 25th annual general meeting of the

company on September 12, 1994, for the passing of items Nos. 10 and 12, is illegal and unenforceable and for a permanent injunction restraining

the respondents from considering and passing the said resolutions. The Supreme

Court by its order dated September 9, 1994, permitted the first respondent-company to take up for consideration resolutions Nos. 10 to 12, but directed that the results would not be declared nor any decision would be taken about the passing of the said resolutions until further orders. At the meeting held on September 12, 1994, the consideration of resolution No. 12 was postponed illegally. The matter was again taken up in the Supreme Court on September 23, 1994, and the Supreme Court did not permit the respondent-company to take up for consideration resolution No. 12 until further orders. It was taken up on October 25, 1994, and the Supreme Court has held that the decision on the legality or otherwise of resolutions Nos. 10 and 11 will have to be considered by this court and until then they cannot be implemented. So far as resolution No. 12 was concerned, the Supreme Court gave liberty to the first defendant to move this court for consideration of the said resolution. The legality of the resolutions is now challenged by the applicant as per the directions of the Supreme Court.

13. Resolution No. 10 is illegal and cannot be implemented for the following reasons : The monies which were to be raised out of the rights issue were never intended to be utilised for a beer project, a different purpose. The company is obliged to keep the monies raised for specific purposes only for that purpose and so long as those purposes are not sought to be implemented, the company is obliged to keep the monies raised out of the rights issue, only in a separate bank account under the provisions of the Companies Act, which the first defendant failed to do. Consequent upon the change in the Government in Andhra Pradesh, a total prohibition was imposed in the State of Andhra Pradesh which bans the manufacture and processing of liquor and spirits in the State. The monies diverted and spent for the beer project have, therefore, become a waste. The company would not have landed in this piquant situation, had it waited for clearance from the authorities for the implementation of the beer project. The Regional Director, Department of Company Affairs, Madras, by his letter dated January 5, 1995, addressed to the Director of Inspection and Investigation, Department of Company Affairs has stated that even though the beer project has been conceived a long time back even prior to the issue of partly convertible debentures, it was not disclosed and that the company

has suppressed material facts to its shareholders and had never obtained a letter of intent from the Government of India for establishing the beer project. It appears that based on the abovesaid letter by the Regional Director, the Central Government has ordered a limited inspection u/s 209A of the Companies Act of the accounts of the company.

When the matter is the subject-matter of investigation in respect of the end-use of the funds, the utilisation of the funds, which were not be utilised for purposes other than envisaged, is not legal. Therefore, resolution No. 10 cannot be implemented. The beer project cannot be established in Andhra Pradesh where it can no longer be established, and on that ground also implementation of resolution No. 10 which would divert the monies to the beer project in Andhra Pradesh is not legal. The diversion of funds for the beer project is the subject-matter of pending proceedings before the Company Law Board under sections 397 and 398 of the Companies Act and the Company Law Board is seized of the matter. The applicant herein has, therefore, a prima facie case and the balance of convenience is with him for restraining the company from implementing resolution No.

10.

14. Resolution No. 11 pertains to allotment of shares on preferential basis to overseas bodies corporate/NRIs to an extent of 9 lakh shares.

Resolution No. 12 envisages allotment of shares on a preferential basis to persons in the management, viz., Pradip D. Kothari and his group, and

empowers the company to allot 51 per cent. of the shareholding on preferential basis. In terms of the guidelines issued by the Central Government,

the financial institutions which are the shareholders of the company, viz., LIC, GIC, UTI, etc., own 34 per cent. of the equity capital. Therefore,

they cannot obviously vote in support of these resolutions for the following reasons : (1) The company will have to establish that there is good

management and track record; (2) the promoters should provide and disclose the source of funds; (3) the funds which are to be raised by virtue of

preferential allotment or any allotment should be used for productive purposes; and (4) there should be no family dispute in the management. None

of the guidelines is satisfied in this case. There are serious allegations against the company. The defendants have not disclosed the source of funds.

The beer project can no longer be construed as a productive purpose as the

project was started in the State of Andhra Pradesh where it cannot be now implemented. There is also a serious family dispute which is conceded by the defendants before the Company Law Board. The financial institutions, unmindful of the guidelines of the Government of India, have voted in favour of resolution No. 12, though their attention was expressly brought to these allegations in the form of a writ petition filed by a shareholder. The question whether the financial institutions have acted in accordance with the directions of the Government of India is a serious matter for consideration, and that being the position, special resolution No. 12 cannot be implemented. The financial institutions can permit persons in the management or promoters group to increase their stake up to 22 per cent. only. But the resolution to be passed is for the specific purpose of enabling preferential allotment of shares to the promoters group to an extent of 51 per cent. The number of shares that are to be allotted is also expressly mentioned as 1,01,04,000 which constitutes 51 per cent. The resolution would amount to a complete violation of the guidelines of the Central Government and the Securities and Exchange Board of India. The meeting held on March 20, 1995, is also liable to be declared as illegal, since it was not adjourned validly by obtaining the approval of the members by a show of hands or by a poll. The very adjournment of the meeting on September 12, 1994, and the deferment of consideration of special resolution No. 12 is totally bad and is liable to be declared as illegal. Proxies which have been allowed in the meeting held on September 12, 1994, have been used for the meeting held on March 20, 1994, and it is not correct. The company deliberately did not send any fresh proxies with the ulterior motive of depriving the legitimate shareholders of the company as on date from participating in the meeting. The allotment of shares to overseas bodies corporate/NRIs is an indirect method to further consolidate the position of P. D. Kothari. The allotment of any shares to NRIs would merely enable P. D. Kothari to increase his holding indirectly and, therefore, resolution No. 11 is liable to be declared illegal. For the above reasons, an injunction restraining the defendants, and their men from, in any manner, giving effect to or implementing special resolutions Nos. 10, 11 and 12 said to have been passed on September 12, 1994, and March 20, 1995, may be ordered.

15. O. A. No. 220 of 1995 :

This application is filed by the plaintiff for injunction in C. S. No. 1128 of 1994.

In this application in the affidavit, the director of the application-company contends as follows : The first defendant-company has come out with a

sort ""right issue"" of PCDs, through letter of offer dated October 15, 1992. The company proposed to raise Rs. 1,890 lacks from the existing

shareholders and employees of the company by allotment of PCDs. The purpose is to utilise Rs. 873 lakhs for expanding the capacity of the

spinning mills at Singanallur, a sum of Rs. 520 lakhs was for modernisation of the existing mills at Singanallur and Vadamathurai by installing

imported autoconers; a sum of Rs. 637 lakhs was for the utilisation for the setting up of a 100 per cent. export-oriented unit for quarrying granite

blocks and processing into granite tiles with a capacity of 50,000 square metres. The respondent, with the intention of defeating the rights of the

applicant, deleted the names of the applicant and ten other companies on the ground that when the instruments relating to the transfer of shares

have been presented, they have not been duly stamped. The matter is now pending in the Supreme Court. The defendant-company had proceeded

to call for the annual general meeting of the company by notice dated August 5, 1994. In item No. 10 of the agenda, the company made it known

to the shareholders that the funds which were collected in the year 1992 for the specific purpose were to be diverted for establishing a beer

project, for which the company has got a letter of intent in April, 1993, subsequent to the closure of the issue and subsequent to the collection of

monies in April, 1993. The validity of resolutions Nos. 10, 11 and 12 have been challenged and suits are filed with interim applications. The

Supreme Court, by order dated September 9, 1994, permitted the respondent to hold the meeting on September 12, 1994, but, however, held

that the results of voting shall not be declared, nor could it be implemented until further orders. At the meeting held on September 12, 1994, the

respondent-company deferred the consideration of resolution No. 12. The Supreme Court passed an order on September 23, 1994, pointing out

that inasmuch as resolution No. 12 has not been put to vote, there will be an injunction until further orders as regards resolution No. 12. The

Supreme Court has subsequently held that this court should pass further orders.

As regards resolution Nos. 10 and 11, the Supreme Court has held that the legality or otherwise of resolutions Nos. 10 and 11 have to be considered by this court. This court, by its order dated February 15, 1995, permitted the respondent-company to hold a meeting for the consideration of resolution No. 12, but, however, has reserved the right in favour of applicant to even thereafter challenge the validity and legality of the resolution. The applicant is now moving this court for an order of injunction restraining the implementation of resolution No. 10.

16. The respondent filed a common counter to this application as well as in Application No. 1312 of 1995 contending the same averments which they have stated in the affidavit of the applicant in A. No. 7151 of 1994 and A. No. 1628 of 1995.

17. The applicant has filed a reply affidavit repudiating the averments in the counter and contending that Rs. 13 lakhs have so far been spent for the beer project even without getting the approval of the shareholders for diversion of funds and that too in a State where prohibition has been imposed.

18. O. A. No. 436 of 1995, Application No. 7153 of 1994 in C. S. No. 1132 of 1994 are similar to O. A. No. 435 of 1995 and Application No. 1628 of 1995 and 7151 of 1994 in C. S. No. 1128 of 1994.

19. Application No. 1312 of 1995 in C. S. No. 1128 of 1994 is an application filed by the plaintiff-applicant with a prayer to direct the respondent to keep the monies earmarked for the beer project in a separate bank account pending disposal of the suit and decision by this court on the legality and validity of resolution No. 10 of the notice dated August 5, 1994, and its implementation.

20. All the above applications are taken up for a common enquiry, since, all the above applications are in respect of resolutions Nos. 10, 11 and 12 of notice dated August 5, 1994.

21. Learned counsel appearing for the plaintiff, Mr. Mohan Parasaran, has opened his arguments by stating that the three resolutions Nos. 10, 11

and 12 for the company, Kothari Industrial Corporation Limited cannot be implemented even though the voting pattern of the resolutions is made

known it is just because there have been serious allegations made against the company for diversion of funds in an illegal manner detrimental to the

interest of the company as well as the shareholders and the Supreme Court has left open the implementation of these resolutions only after

establishing the legality of the same and has left open for the plaintiff to contend that the resolutions could not be implemented even though the

defendants claim that they have absolute and overwhelming majority of the votes polled by the shareholders in the annual general meeting held on

two different dates, viz., September 12, 1994, in so far as resolutions Nos. 10 and 11 and March 20, 1995, in so far as resolution No. 12 are

concerned. I have already extracted resolutions Nos. 10, 11 and 12 which are the subject-matter of the entire discussion, in the earlier part of this

order, while narrating the case of parties.

22. Learned counsel appearing for the defendants in his arguments has vehemently stated that the objections that have been raised by the plaintiffs

are motivated with the intention of inducting Mr. B. H. Kothari on the board of directors of the company and it is nothing but a proxy battle being

fought by the said B. H. Kothari and had drawn the attention of this court to para 13 of the plaint. In the said para, the plaintiff had stated that in

the interest of the company and the shareholders, the company would go into the hands of a professionally competent person and it would be most

appropriate that one of the original promoters of the company should be given a chance and at present, it would be none else than B. H. Kothari,

son of H. C. Kothari. The above statement, according to learned counsel appearing for the defendants, indicates the intention and the motive

behind the objections raised by the plaintiffs in this court. Learned counsel appearing for the plaintiffs would, on the other hand, argue that the

applicant had collected money from the shareholders for specific purposes and the particulars of the issue are specific, the monies so collected are

admitted to be utilised for other purposes and it is only with the intention of strengthening the hands of the second defendant who is in management

of the first defendant and it is an attempt made by the second defendant to defeat the rights of the others, in particular Mr. B. H. Kothari. The

question whether the objections with regard to the resolutions were made with the oblique motive or in the interests of the shareholders of their

company have to be seen by us before coming to a conclusion whether the first defendant could be permitted to implement the resolutions or

before passing an order granting injunction restraining the first defendant from implementing the resolution. To reach this goal, I am of the opinion

that we have to trace the history of this dispute a little in detail.

23. In C. S. No. 1128 of 1994 filed by Maxwell Dyes and Chemicals Limited and in C. S. No. 1132 of 1994 filed by Swadee Chemicals Private

Limited against the first defendant, Kothari Industrial Corporation Limited and another, the relief sought for is the same. That is the declaration of

the notice issued by the first defendant calling the public to the annual general meeting of the company on September 12, 1994, for the purpose of

considering and passing resolutions Nos. 10, 11 and 12 under the caption ""Special Business"" in the agenda, as illegal, void and unenforceable and

for a permanent injunction restraining the defendants, their officers, and subordinates, etc., from passing the above resolutions.

24. In the two suits, application for injunction were also filed in O. A. Nos. 220 of 1995 and 435 of 1995 in C. S. No. 1128 of 1994 and in O. A.

No. 436 of 1995 in C. S. No. 1132 of 1994. The learned judge (Hon"ble Mr. AR. Lakshmanan J.) has observed in his order as follows : ""Even

though a prima facie case has been made out for grant of interim injunction, the same is not granted in view of the representation made by the

advocates appearing for the respondents that the consideration of resolutions Nos. 10, 11 and 12 will be deferred until further orders."" There were

certain transfer petitions pending on the file of the Supreme Court. In Transfer Petitions Nos. 363 to 365 of 1994, the Supreme Court of India in

its order dated September 9, 1994, has passed an order as follows :

Taking all the facts and circumstances into consideration and having regard to the fact that the 25th annual general meeting is scheduled to meet on

September 12, 1994, and preparations for holding that meeting are complete and its postponement would inconvenience many, we think that the

ends of justice would be met if we permit the appellants to hold the meeting subject to the following conditions :

1. The appellants may hold the meeting on September 12, 1994, but the respondent shareholders will be permitted to vote on the basis of their

total shareholdings shown in the last column of the statement at page 218; however, the votes in respect of the number of PCDs offered and

applied for and the number of additional PCDs applied for in the rights issue shall

be maintained separately;

2. The result of the voting on resolutions Nos. 10 to 12 taken at the said meeting will not be declared nor will any decision about the passing of the

said resolutions be taken on the basis of the said voting till further orders. The question of the rights of the respondents in the number of PCDs

offered and applied for and the number of additional PCDs applied for in the rights issue shall be determined hereafter and the court's decision will

determine the outcome of resolutions Nos. 10 to 12;

3. The result of the voting on the aforesaid rights shares shall be kept in a sealed envelope and intimated to this court promptly; and

4. The above arrangement is purely interim and will not prejudice the rights and contentions of the parties, including the contention that the

resolutions are even otherwise illegal.

25. As per the above order, the defendant-company considered resolutions Nos. 10 and 11 at its annual general meeting held on September 12,

1994, the result of the voting was forwarded to the Supreme Court as per the directions of the Supreme Court in para 3 of the above order.

Resolution No. 12 was, however, deferred to be considered at the adjourned meeting fixed for September 27, 1994. As per the order dated

September 23, 1994, the Supreme Court has passed an injunction in respect of resolution No. 12, until further orders on October 25, 1994; the

sealed envelope was opened in the apex court and it showed that both resolutions Nos. 10 and 11 had been passed overwhelmingly with 94 per

cent. voting without taking into account the disputed shares and 87 per cent. of the voting after taking into account the disputed shares. The

Supreme Court has passed an order on that date holding that the decision on the legality or otherwise of resolutions Nos. 10 and 11 will have to

be decided before resolutions Nos. 10 and 11 can be implemented. As regards resolution No. 12, the Supreme Court has observed that it will be

open to the petitioners to request the High Court of Madras to permit them to put the said resolution for consideration at any subsequent

adjourned meeting of the company, and that the High Court will proceed to pass orders uninfluenced by their order dated September 23, 1994, in

so far as resolution No. 12 is concerned. It is only in pursuance of the above order of the Supreme Court of India, that the defendants-company

have filed Applications Nos. 7151 and 7153 of 1994 seeking permission of this court to hold the adjourned annual general meeting for considering resolution No. 12.

26. On February 15, 1995, this court, presided over by the Hon"ble Mr. Jagadeesan J., passed an order similar to the order passed by the

Supreme Court, permitting the applicants to hold the meeting on March 20, 1995, for considering resolution No. 12, and gave a direction to keep

the result of the voting in a sealed envelope and intimate it to this court. The annual general meeting was held on March 20, 1995, and the results

were forwarded to this court in a sealed envelope. This court has opened the envelope on April 7, 1995. It was seen that the resolution was

passed with 94.44 per cent. of voting without taking into account the disputed shares and there was only 5.56 per cent. of voting against the

resolution. After taking into account the disputed shares, the percentage of voting for the resolution was 87.66 per cent. and it was 12.34 per cent.

against the resolution. Since the Supreme Court, in its order dated October 25, 1994, and this court, in its order dated February 15, 1995, has

held that the legality or otherwise of resolution Nos. 10, 11 and 12 will have to be decided before the resolutions could be implemented, it is for us

now to examine and consider the same in the ensuing discussion.

27. Learned counsel, appearing for the plaintiff, has challenged the legality or otherwise of resolution No. 10 by contending that the applicant-

company collected the money from the shareholders, for specific purposes as detailed in the notice sent to the shareholders and yet the money so

collected was not utilised for the above purposes and it was diverted for the beer project in Andhra Pradesh without the consent of the Andhra

Pradesh Government and the shareholders and the money so collected ought to have been kept in a separate account as required u/s 73(3) of the

Companies Act with details of statement and in the present case, no statement of accounts was filed till date and the money has also not been kept

in a separate account. It is also argued by learned counsel that the Central Government, particularly the Department of Company Affairs, have

ordered investigation after coming to the conclusion that there has been an irregular deployment of funds by a company and that it is illegal for the

company to deploy the funds for purposes other than for which they have raised

the funds and inasmuch as the company has suppressed the facts of going into the beer project with the letter of offer dated October 15, 1992, it amounts to suppression of information under the prospectus and the resolution passed in pursuance of such a letter is illegal and the court cannot grant permission to implement the illegal resolution and be a party to the illegal activities of the second respondent. Learned counsel, appearing for the plaintiff, has also drawn the attention of this court to the letter of offer dated October 15, 1992, issued by the applicant-company to its shareholders offering PCDs, in which the particulars of the issue are given at page 9 of the said letter. As per the above particulars, the proceeds of the issue will be utilised to put up additional 10,080 spindles at the spinning mill at Singanallur, modernise facilities at the spinning mills, set up a 100 per cent. export oriented unit for the manufacture of 50,000 sq. mts. granite tiles, augment long-term sources for the working capital and meeting the issue expenses. According to the plaintiffs, it is only in pursuance of this letter of offer, the shareholders have paid funds and the notice for the annual general meeting is for conversion of these funds into the beer project regarding which there were no particulars given in the letter of offer and, therefore, it is an invalid resolution even if it is passed with a majority. Learned counsel, appearing for the respondent, would argue that the letter of offer is one issued to the existing shareholders and the requirements of section 81(1A)(a) and section 81(1A)(b) of the Companies Act have been duly complied with there is no requirement u/s 81(1) of the Companies Act to disclose to the shareholders anything else. According to learned counsel appearing for the defendants, this letter of offer has to be distinguished from the prospectus issued to the public calling upon them to purchase shares and so long as the requirements of section 81 are complied with, there is nothing improper or illegal in the conversion of the funds. Section 61 of the Companies Act permits the company to vary the terms of the contract referred in the prospectus by getting the approval of the shareholders of the company in the annual general meeting. When the letter of offer is accepted by the shareholders, a contract comes into effect between the company and the shareholders while the prospectus issued to the public itself is to be approved by the shareholders of the company in the annual general meeting to have a

contract. Therefore, there is no reasons as to why the prospectus issued to the shareholders could not be deployed for a different purpose than the one for which the notice has been issued. Further, the letters of intent for the manufacture of beer are received by Kothari Orient Industries Export Limited on December 15, 1992, from the Government of India and the Government of India in their letter dated December 15, 1992, have observed that they are prepared to issue an industrial licence under the Industries (Development and Regulation) Act, 1951, to Kothari Orient Industries (Exports) Limited for the manufacture of beer in their existing industrial under taking at Singanallur, District Anantapur, in the State of Andhra Pradesh, up to the capacity on the basis of maximum utilisation of plant and machinery. This letter has required Kothari Orient Industries (Exports) Limited to confirm their acceptance of the conditions imposed. Subsequently, in pursuance of the letter by Kothari Industrial Corporation Ltd., the Government of India, in their letter dated April 6, 1993, have stated that the scheme covered by the letter of intent issued in favour of Kothari Orient Industries (Exports) Ltd., will no be implemented by Kothari Industrial corporation Ltd., and that the said company will abide by the terms and conditions. From the above correspondence between the Government of India and the sister concern of the applicant-defendant and the defendant, it is seen that the letter of intent itself is dated December 15, 1992, and the Central Government has approved the said letter on April 6, 1993, and as such question whether Kothari Industries Corporation Ltd., is going to the beer project finds a place in the letter of offer dated October 15, 1992, does not arise at all. Subsequent to the letter of intent in his name, the defendant had approached the Industrial Credit investment Corporation of India, the lead institution in respect of the term loan lenders and also the debenture trustee for debenture holders and they have responded to the letter of intent seeking their consent for deployment of funds for the beer project instead of the projects mentioned in the letter of offer, viz., modernisation facilities, expansion of textile mills and they have sanctioned it as seen from the correspondence filed by the defendant along with their typed set of papers. The defendant addressed a letter on August 19, 1993, to the Industrial Credit and Investment Corporation of India Limited, seeking approval to revise the priority of implementation of their project giving particulars of the same. The ICICI, in

their letter dated November 22, 1993, have stated that based on the discussions they had with the representatives of the defendant, they are agreeable to the proposed changes as indicated in the annexure subject to certain conditions. This approval has been issued by the ICICI not only in their capacity as leading institution, but also as trustees for the PCDs as mentioned in the above letter itself. In this letter, it is specifically stated that the company shall raise Rs. 350 lakhs or 20 per cent, of the cost of brewery project, whichever is higher, by way of foreign/NRI equity at a premium which will have to be approved specifically. The defendant has sent a revised proposal for deployment of funds in the letter dated November 24, 1993, to the ICICI for according approval for the proposed issue of equity to NRIs and foreign bodies corporate, a total amount of Rs. 450 lakhs inclusive of a premium at Rs. 15 per share. the ICICI in their letter dated January 18, 1994, have informed the defendant that they have no objection to the proposed equity issue of Rs. 450 lakhs including premium to the NRIs/foreign investors subject to their obtaining the necessary statutory approvals and approval from shareholders for that purpose. The defendants have addressed a letter on January 18, 1994, to the financial institutions, viz, UTI. LIC. GIC, and its subsidiaries requesting the other factors in that letter, to fix a suitable premium for the shares to be offered to the promoters to keep their stake at the existing level of 16.91 per cent. consequent on the offer of Rs. 450 lakhs to foreign/NRI investors. In the said letter, they have informed the financial institutions that after receiving their approval, they would get the approval of the shareholders at an extraordinary general meeting. The defendant had also addressed a letter to the ICICI to approve the company's making a preferential offer to the promoters of such number of shares as would result in the promoters maintaining their equity holding at the present level of 16.91 per cent. The defendant had addressed to the Chairman, Securities and Exchange Board of India, Bombay, their letter dated February 23, 1994, seeking their guidance and suggestions in the beer project. The Securities and Exchange Board of India had sent a reply stating that their guidelines had been covering issues mentioned in the letter of the defendant like private placements and by way of preferential allotments to identified NRIs and OCBs., in favour of the defendant and that they are free to do so and determine the terms thereof including pricing, after

obtaining the consent of the shareholders. The Unit Trust of India, who was approached by the defendant-company for processing their application

and for decision for fixing up premium for preferential offer to the promoters group and for issue of shares to NRIs has sent a reply to the effect

that the total holding of the promoters including NRIs/OCBs after the proposed preferential offer shall not exceed 51 per cent. of the issued

capital. This letter has been signed not only by the General Manager, UTI, but also by the General Manager, GIC of India and the executive

Director of LIC of India, showing that the financial institutions have no objection for the deployment.

28. The defendant has also filed the letter received from the Zonal Manager of the Industrial Estate, Patancheru of Andhra Pradesh, which shows

that they are allotting 71,970.428 sq. mts. for setting up their industry for the manufacture of beer on outright sale basis, at a tentative rate of Rs.

60 per sq. mtr. The defendant has also filed the letter addressed to them by the Government of India permitting the applicant-company to

implement the letter of intent for the beer project in the State of Andhra Pradesh. The defendant has also filed a letter from the Reserve Bank of

India dated August 10, 1994, in which the Reserve Bank of India has stated that the defendant has their approval to enter into technical

collaboration with Dab Brau - Consult GmbH, Germany for the manufacture of beer subject to certain conditions. The Reserve Bank of India has

reiterated their approval remaining unchanged in their letter dated August 12, 1994, addressed to the defendant. The Reserve Bank of India has

also addressed a letter to the defendant stating that they shall be glad to know the exact amount of premium for the proposed issue to enable them

to consider their request for issue of equity shares to NRIs with repatriation benefits. It is thus seen that the defendant-company has addressed the

authorities, viz., the Central Government, the State Government, financial institutions like the ICICI, UTI, GIC, LIC, and also the Reserve Bank of

India for obtaining their consent and approval to the issue of debenture shares in favour of NRIs towards the beer project and the beer project has

been approved by the Government of India as well as the Government of Andhra Pradesh. The correspondence filed by the applicant also shows

that the Andhra Pradesh Government has even allotted plots for the factory to enable the defendant to start the beer project in Andhra Pradesh in

pursuance of the sanction given by them subject to the approval by the shareholders. Resolution No. 10 approves the deployment of the funds to

the beer project with a certain percentage of shares to NRIs and the objections raised by the plaintiff to hold that the deployment is not proper and

therefore, the resolutions illegal cannot be given any credence at all.

29. Learned counsel, appearing for the defendant, has cited two authorities reported in *Madan Gopal Jajoo and others Vs. Union of India* and

others, infra, for the proposition that a company could utilise funds raised for a particular project for which the funds were raised to another

project. The Supreme Court has held in the former decision that the approval obtained for the change in the scope of the project from the financial

institutions, viz., the ICICI, being a Government organisation, it is acceptable. It has also held that the deviation from the earlier proposal for the

deployment of funds to a project other than that for which a proposal was made was neither illegal nor void. In the latter case, the Supreme Court

has held that where the resolutions in the shareholders and debenture holders meeting were passed with overwhelming majority, any order by the

court that the debenture issue may be recalled would result in an unsettling effect on the capital market and it would affect the right of almost the

whole of the investing public. The Supreme Court has, therefore, not encouraged any deviation from the resolutions passed by a majority of the

shareholders. In the above circumstances the reasons given by the plaintiff to declare resolution No. 10 as invalid on the ground that the promoter

is trying to increase his share capital by issuing the debenture shares to NRIs who are his own associates is a wrong approach which has not been

notified in the notice and the project itself cannot be implemented is not a tenable contention. It is more so when the Ordinance introducing

prohibition in Andhra Pradesh which is taken as the sheet-anchor by the plaintiff to contend that the beer project could not be implemented in

Andhra Pradesh on account of the policy decision of the State Government itself is not challenged before the Supreme Court as contended by

learned counsel appearing for the defendant. Learned counsel, appearing for the defendant, would also argue that just because prohibition has

been introduced in Andhra Pradesh, it cannot be stated that the manufacture of beer itself is prohibited. According to him manufacture is to be

distinguished from consumption is also a point in favour of the defendant to come to the conclusion that the contention of the plaintiff that the beer

project cannot be implemented and any resolution recognising it, is an invalid one is not tenable one.

30. Learned counsel, appearing for the plaintiff, has also argued that there is an investigation pending against the defendant-company in respect of

the mismanagement and misfeasance of the affairs of the company and when an investigation is pending, a resolution diverting the funds of the

company to another project is not proper, since, it is not only the interest of the company but also the interests of the public which are also involved

in this. Learned counsel, appearing for the plaintiff, bases his argument on this aspect on account of the letter addressed by the Regional Director of

the Company Law Affairs, Madras, to the Director of Company Law. Learned counsel, appearing for defendants Nos. 1 and 2 would argue that

there is no such enquiry pending as alleged by learned counsel, appearing for the plaintiff, and the letter relied on by the plaintiff is an internal

correspondence between the Regional Director and the Director and it cannot be considered as evidence of investigation. The plaintiff (sic) would

also contend that a copy of the letter has not been sent to them and the letter surreptitiously obtained cannot be the basis to hold that there is an

investigation pending against the company. Learned counsel, appearing for the plaintiff, would reply the same by contending that whether motivated

or not, the fact remains that the investigation is pending and till the investigation is over, the beer project should not be permitted to be

implemented, since it would encourage the diversion of the funds and wasteful capital expenditure. Learned counsel would also request the

defendants to file an affidavit if necessary stating that there is no investigation pending against them. This argument of learned counsel, appearing for

the plaintiff, is not tenable since it is for the plaintiff to prove that there is an investigation pending against the company. The letter relied on by the

plaintiff ends with a note that it may, however, appear at the threshold that the diversion of PCDs for modernisation of the textile units to the beer

project has been requested by obtaining the approval from debenture-holders and members. This observation by the Regional Director would

drive us to the conclusion that the Regional Director has been satisfied that the deployment of funds is quite regular in view of the requisite approval

of the debenture-holders and members having been obtained. Therefore, the proposed inspection u/s 209A of the Companies Act cannot be

considered as an investigation pending against the company preventing them from implementing the resolutions passed on the beer project.

31. Learned counsel, appearing for the plaintiff, would also argue that no accounts have been furnished till date with regard to the collection of the

funds and the amount should have been kept in a separate account until the requisite permission is given by a stock exchange and it has also not

been done by the defendant-company and, therefore, there is a violation of section 73 of the Companies Act and on account of the same also, the

resolution cannot be permitted to be implemented. Learned counsel, appearing for the defendant, would argue that the stock exchange at Madras

has been informed of the transfer of the shares and they have also sent letters informing that the stocks in shares have been listed in the Madras

Stock Exchange. The provisions of section 73 of the Companies Act would be applicable only if a prospectus had been issued calling for

applications for shares and not in cases where a notice of issue has been sent to the shareholders. Letters of the stock exchange dated March 12,

1993, and September 24, 1993, reveal that the shares have been listed on the stock exchange at Madras. Therefore, the contention of the plaintiff

that the amount raised has not been kept in a separate bank account and, therefore, the resolutions cannot be permitted to be implemented is not

convincing and acceptable.

32. Learned counsel appearing for the defendant would also argue that even if it is assumed that there is a misstatement in the letter of offer, the

shareholder, who has subscribed on the basis of the misstatement, is entitled to compensation for loss or damage, if any, caused to him as per

section 62 of the Companies Act and the first defendant had also expressed its opinion that the plaintiff is at liberty to withdraw the application and

the stock invested if they are not for the deployment of the funds to the beer project and in spite of it the plaintiffs have not either withdrawn the

application or asked for repayment of the amount, but are simply objecting to the implementation of the resolution only to achieve their object of

bringing B. H. Kothari into the limelight. The plaintiffs are described as satellite companies of Ambani. B. H. Kothari, son of H. C. Kothari, is the

son-in-law of Mr. Ambani. He is not a director in the defendant-company. In the above background, the argument of learned counsel appearing

for the defendant that the objection with regard to resolution No. 10 passed by the shareholders is only to enable Mr. B. H. Kothari to take over

the management cannot be said to be without any basis or weight. I am, therefore, of the opinion that resolution No. 10 passed by an

overwhelming majority of the shareholders of the first defendant-company is to be permitted to be implemented.

33. The next resolution which we have to consider is resolution No. 11. This is attacked questioning the validity of the same by stating that offer

has been made to a select group, viz., NRIs to the detriment of the minority group. The contention of the plaintiffs is that the NRIs to whom shares

are offered will be close associates or relations of the promoter and offering the shares to them would only result in diluting the percentage of

holding of the plaintiffs and it cannot be approved. We have already seen that the offer to NRIs has been made to comply with the conditions

imposed in the offer letter of intent given by the Government of India and it has been approved by the ICICI who are the trustees of the debenture

shareholders. We have seen that the Securities and Exchange Board of India guidelines do not prohibit transfer of debenture shares to NRIs. The

Securities Contracts (Regulation) Act, the Reserve Bank of India, financial institutions, etc., encourage the transfer of shares up to 20 per cent. of

the purchase cost in favour of NRIs. The offer to NRIs, therefore, does not appear to be an offer made to increase the percentage of holding of

the shares with the second defendant, diluting the percentage of holding of the shares with the second defendant, diluting the percentage holding of

the plaintiffs. Resolution No. 11 being consequent upon resolution No. 10, the reason given by the plaintiffs to hold this resolution invalid and,

therefore, that should not be permitted to be implemented is, therefore, not sustainable.

34. Learned counsel, appearing for the plaintiff, would argue that the letters of intent and financial institutions no doubt permit the promoter to issue

debenture shares in favour of NRIs but it should not be against law. When learned counsel contends that the issue of shares could not be against

law and yet the first defendant proposed to issue shares in favour of NRIs it is for the plaintiffs to show how the issue of debentures in favour of

NRIs is against law. There is no such evidence placed before the court.

35. Learned counsel, appearing for the plaintiffs, relied upon in Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India)

Holding Ltd. and Others, , for questioning the validity of the resolution contending that the offer is made to a select group to the detriment of the

minority group. We have to refer to the decision in O. S. Appeals Nos. 39 to 42 of 1995, in the matter of Investment Trust of India Ltd.'s case

[1996] 85 Comp Cas 75, wherein a Division Bench of this court has held that Needle Industries (India) Ltd. and Others Vs. Needle Industries

Newey (India) Holding Ltd. and Others, , is not applicable to a listed public limited company. The defendant-company being a public listed

company, the law laid down in Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others, , cannot

be made applicable. Therefore, the contention of the plaintiff that resolution No. 11 encourages allotment of debentures in favour of a particular

section of people and, therefore, it cannot be implemented is untenable. I am, therefore, of the opinion that resolution No. 11 is to be permitted to

be implemented.

36. The plaintiffs have questioned the legality of resolution No. 12 on several grounds. The first ground of attack made by learned counsel,

appearing for the plaintiffs, is that the passing of the resolution on March 20, 1995, when a notice has been issued to hold the meeting on

September 12, 1994, is improper and illegal. The defendants have produced the original minutes of September 12, 1994. The plaintiffs have also

participated in the above meeting held on September 12, 1994. There are entries in the minutes which would show that the plaintiffs have

expressed their opinion when the second defendant has sought for postponing the meeting to a future date. After a discussion on the above subject,

it has been decided by the shareholders who were present on September 12, 1994, to have the meeting with regard to resolution No. 12

postponed to a future date. The Supreme Court was also aware of the adjournment of resolution No. 12 to a future date and they have also given

directions. In our court also, the adjournment of the meeting for considering resolution No. 12 has been considered and a direction has been given

by this court to hold the meeting on March 20, 1995. When the plaintiffs were

parties to the proceedings dated September 12, 1994, and the meeting was adjourned to a future date for considering resolution No. 12, the present contention of the plaintiffs that the adjournment was improper and, illegal and therefore, the resolution passed on March 20, 1995, is an illegal resolution, cannot be given any weight at all.

37. Learned counsel, appearing for the plaintiffs, has also argued that the two letters addressed by the financial institutions which was the reason

for the adjournment sought by the second defendant have not been placed before the shareholders and, therefore, there is suppression of a

material fact before passing the said resolution and on that ground also, the resolution has to be held as an invalid one. Here again, I wish to state

that the two letters of the financial institutions have been considered by those who have assembled at the meeting and only after a detailed

discussion with regard to the necessity for postponing the meeting, the meeting has been adjourned as in the minutes. Therefore, it cannot be stated

that there is any suppression of material fact before the shareholders who have assembled to pass resolution No. 12. Learned counsel, appearing

for the plaintiffs, would argue that there is no proper notice for the meeting date March 20, 1995. The meeting held on March 20, 1995, is a

meeting which has been adjourned from September 12, 1994. Since it was held after 30 days, a notice has also been sent enclosing the proxy

forms to enable such of those shareholders who have purchased shares subsequent to September 12, 1994, to participate in the meeting. The

meeting being a continuation of the original meeting, notice containing the same form of resolution and explanatory statement has been stated in the

notice and there is nothing improper to hold that there is no valid notice. At one stretch, learned counsel, appearing for the plaintiff, would argue

that there is no necessity for giving notice and at another stretch, learned counsel would argue that there is no proper notice. The plaintiffs are

blowing hot and cold at the same time with regard to the notice sent for the meeting held on March 20, 1995. I am of the opinion that it cannot be

appreciated at all. The resolution to be passed and the explanatory statement of accounts were made known to the shareholders to form an

opinion whether they should or should not approve the proposal regarding the increase of the percentage of the promoters by preferential offer up

to 51 per cent. Therefore, the contention of learned counsel, appearing for the plaintiff, that there was no mention about 206 per cent. as per the letter of the financial institution is not relevant since it is less than 51 per cent. Learned counsel, appearing for the plaintiffs, would also argue that proxies provided for the meeting of September 12, 1994, itself have been utilised for the meeting held on March 20, 1995, and that is also not proper. Since the meeting held on March 20, 1995, is only an adjourned meeting, there is nothing improper in using the proxies already furnished to the shareholders. At any rate, when the subsequent notice has been issued, new blank proxy forms have been sent to the shareholders and if anybody had desired to change the proxy, they could have done it. Even through fresh proxy forms have been sent for the meeting on March 20, 1995, to enable the purchasers of share subsequent to September 12, 1994, to exercise their option, the previous shareholders also could have utilised the same if they have an intention to change the proxy. Therefore, it cannot be ground to hold that the meeting has not been properly held and old proxies have been used. At any rate, none of the above reasons canvassed by the plaintiffs can be valid reasons for holding that the resolution passed on March 20, 1995, is an improper and illegal one. The main ground on which resolution No. 12 has been challenged by the plaintiffs is that there are disputes between two groups and one cannot defeat the other by increasing the shareholdings against the guidelines issued by the Government regarding the promoters' right to the detriment of the other. According to the plaintiffs, the promoters' right to increase the shareholding is only 26 per cent. and in the present case, as per the notice and resolution, the promoters' intention is to issue equity share numbering 1,01,04,000 at Rs. 10 each it is against the guidelines issued by the Government. Learned counsel, appearing for the defendants, would argue that there are no such guidelines issued by the Government as contended by the plaintiff. The attention of the court has been drawn to the wording in the notice as well as in the resolution which is to the effect that it is proposed to issue to Mr. Pradip D. Kothari and his relative associates, and associate companies, viz., the promoters group, not exceeding 1,01,04,000 equity share of Rs. 10 each in accordance with the guidelines dated August 4, 1994, of the Securities Exchange Board of India, details of which are set out in the explanatory statement relating to this

item. The wording used in the notice as well as the resolution is stated as "not exceeding". It does not necessarily mean that the minimum issue is

1,01,04,000; the maximum only is mentioned and, therefore, it is always open to the shareholders to reduce the same in the meeting after

discussion. But the result of the meeting had disclosed that except the plaintiffs, none other has opposed this proposal to increase the shareholding.

In the notice itself, it is mentioned that the proposal is subject to the guidelines of the Securities and Exchange Board of India. The lock-in-period is

also stated as five years. When the notice refers to the guidelines issued by the Securities and Exchange Board of India and the lock-in-period is

also mentioned, the shares, even if issued, cannot be utilised by the person in whose name they have been issued to the detriment of others.

38. Learned counsel, appearing for the defendants, would also argue that the only Act which was restricting the capital issues is the Capital Issues

(Control) Act of 1947, and this Act has been repealed by the Capital Issues (Control) Repeal Ordinance of 1992 promulgated on May 29, 1992,

and published on the same date in the Gazette of India (Extraordinary) and, therefore, there is no restriction on the promoters to increase the share

capital. Learned counsel has also brought it to the notice of this court that the number of companies of the Reliance group of which, the plaintiffs

also form part, have also increased their share capital to the maximum and the contention of the plaintiffs that the promoter cannot be issued with

51 per cent. of shares is only an attempt to vindicate their personal grievance. It is not disputed by the plaintiff that some of their sister concerns

have increased the capital issue. While so, there appear to be no bonafides in their objecting to the issue of the proposed number of shares in

favour of Pradip D. Kothari and his associates as per resolution No. 12. Learned counsel, appearing for the defendants, would also argue that

subsequent to the introduction of the liberalisation policy, the promoters can have their share capital up to 75 per cent. and the issue to the public is

restricted to only 25 per cent. This percentage of share which a promoter can have, subsequent to the introduction of the liberalisation policy, is not

challenged by the plaintiffs. Therefore, the proposal to issue 1,01,04,000 equity shares in favour of Pradip D. Kothari and 20 per cent. of shares

to NRIs cannot be considered as steps taken against the interest of the minority shareholders. On that ground, the resolution cannot be declared as

an improper or illegal one to deny the permission sought for by them.

39. Learned counsel, appearing for the plaintiffs, would argue that four things are to be considered by the financial institutions supporting the

preferential offer to promoters and they are : (1) the past record of the company; (2) funds to be used for productive purposes; (3) Source of the

promoters for the funding; and (4) there should not be any family dispute. Learned counsel, appearing for the plaintiffs, would argue that the fact

that an investigation is pending before the Director of Company Affairs is evidenced and, therefore, the management cannot be considered as

having a good past record. We have already seen that there is no investigation pending before the Company Law Board and what has been

suggested by the Regional Director to the Director is only to hold an inspector and, therefore, the management cannot be said to be having a past

record of shady nature. As far as the productive purposes are concerned, learned counsel would argue that the beer project cannot be considered

as a productive purpose and it is more so when the State in which it is to be implemented, has introduced total prohibition. The introduction of total

prohibition by the newly formed State Government of Andhra Pradesh is subsequent to the notice. That the previous Government has approved

the scheme and has offered its assistance cannot be denied. The manufacture of beer in collaboration with a foreign country is only productive in

nature and it cannot be stated that the funds are not to be used for productive purposes. Therefore, the second requirement is also satisfied. As

regards the source of funding, the promoters have indicated issuing of shares and collection of share capital through NRIs, financial institution

including the ICICI. Therefore, the third requirement is also satisfied. As regards the fourth requirement, learned counsel, appearing for the

defendants, vehemently argued that it is a misnomer to say that there is a family dispute between the two cousins which would stand in the way of

implementing the resolution. According to learned counsel, the fathers of P. D. Kothari and B. H. Kothari, viz., D. C. Kothari and H. C. Kothari,

who were brothers, have effected a mutual settlement between them in 1989 under which four companies have been set apart to the share of Mr.

H. C. Kothari and one, viz., the defendant to Mr. D. C. Kothari and even the minimum shares owned by one group in the companies of the others

have been withdrawn and each one of them is looking after the affairs of their companies for the past so many years and it is not correct to say that

there is a rift in the management of the defendant-company which would stand in the way of the resolution being recognised as a valid one. The

founders, namely, D. C. Kothari and H. C. Kothari, have divided among them and they have come to an understanding in the year 1989 with

regard to the management of the companies which have been allotted to their respective shares and, therefore, it cannot be stated that there is any

rift in the management of the first defendant-company which is under the control of Mr. P. D. Kothari, Learned counsel for the plaintiffs would

argue that it is only because of the support of the financial institutions, that this resolution has been passed and the stand taken by them in

modification of their earlier stand is not correct. This court cannot sit in judgment over the policy decision taken by the financial institutions whether

or not to support the resolution and decide the issue in favour of the applicant in the light of the arguments of the learned advocate. Resolution No.

12 cannot be held and invalid one holding that the financial institutions have not considered these aspects before granting their support to the

proposed issue of shares. Learned counsel, appearing for the defendants, would cite the decision reported in Bamford v. Bamford [1969] 1 All

ER 969, and would argue that unless some provision to the contrary is found in the charter or other instrument by which the company is

incorporated, the resolution of a majority of shareholders at a duly convened meeting upon any question, will be legally a competent one. In the

present case, all the three resolutions have been passed by an overwhelming majority of shareholders after due consideration of the stand taken by

the plaintiffs. In such a case, the majority alone will have their way and the minority can have their say alone. They cannot be permitted to nullify the

effect of the resolutions passed by the shareholders of the company. In this connection, when we consider the balance of convenience, it would

also show that if recognition for these resolutions is not given, the vast majority of the shareholders of the company will be prejudiced and hardship

will be caused to them since it is against their desire to pass the resolutions whereas no prejudice will be caused to the plaintiffs if the resolutions

are allowed to be implemented. It is more so, when the plaintiffs are actually agitating not for upholding any of their rights but to bring the interest of

Mr. B. H. Kothari to the limelight as contended by them in paragraph 13 of the complaint. The learned advocate for the defendants would describe the

dispute between the plaintiffs and defendants as a proxy battle fought by Mr. B. H. Kothari. There is considerable weight in this argument of the

learned advocate. For these reasons, I am of the opinion that all the three resolutions passed by the majority of shareholders have to be approved

and permission has to be granted to implement them. In that view, the applications are orders as follows :

O. A. No. 436 of 1995 in C. S. No. 1132 of 1994, O. A. No. 435 of 1995 in C. S. No. 1128 of 1994 and O. A. 220 of 1995 in C. S. No.

1128 of 1994 filed by the respective plaintiffs for injunction, are dismissed. Applications Nos. 7151 of 1994 for a direction to implement

resolutions Nos. 10 and 11, A. No. 1628 of 1995 for a direction to implement resolution No. 12 in C. S. 1128 of 1994 are allowed. So also, A.

No. 7153 of 1994 and A. No. 1631 of 1995 in C. S. No. 1132 of 1994 for directions to implement resolutions Nos. 10, 11 and 12 are allowed

as prayed for. Application No. 1312 of 1995 in C. S. No. 1128 of 1994 for a direction to the respondents to keep the money collected for the

beer project in a separate account is also dismissed.