
(1995) 09 MAD CK 0048

In the Madras High Court

Case No : O.S.A. No's. 127 to 134 of 1995

Maxwell Dyes and Chemicals Private Ltd. and another

APPELLANT

Vs

Kothari Industrial Corporation Ltd. and another

RESPONDENT

Date of Decision : 27-09-1995

Acts Referred:

Companies Act, 1956 — Section 173, 81(1A)

Citation : (1996) 85 CompCas 111

Hon'ble Judges : M. Srinivasan, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Mohan Parasaran and Satish Parasaran, for the Appellant; Anil Diwan for T.V. Padmanabhan, R. Krishnamurthi, General and and S. Madhavan, for the Respondent

Judgement

A.R. Lakshmanan, J.—The common order, which is appealed against was passed by Government J. in respect of the prayers for interim

reliefs. The facts, which are the foundation for filing the present appeals are also closely interconnected with the reliefs sought for. The respondents

in all the appeals are common. Hence, all the appeals were heard together.

2. The first appellant has instituted C. S. No. 1128 of 1994 seeking for a declaration that the notice issued by the first respondent calling for the

25th annual general meeting of the company on September 12, 1994, for the purpose of considering and passing items Nos. 10, 11 and 12 under

the caption ""special business"" in the agenda is illegal, void and unenforceable and for permanent injunction restraining the respondents, their offers,

subordinate, etc., from considering and passing resolutions Nos. 10, 11 and 12 set out in the agenda in the notice for the 25th annual general

meeting of the first defendant-company under the caption ""special business"" to

be held on September 12, 1994, or any other date. The second appellant has filed the suit for declaring that the notice issued by the first respondent calling for the 25th annual general meeting of the company on September 12, 1994, for the purpose of considering and passing items 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 respondents, their officers, subordinates, etc., from considering and passing resolutions Nos. 10, 11 and 12 set out in the agenda in the notice for the 25th annual general meeting of the first respondent-company under caption ""special business"" to be held on September 12, 1994, or on any other future date.

3. The first respondent which was formerly known as Kothari (Madras) Limited had been incorporated under the Companies Act on July 1, 1970.

It proceeded to change its name to Kothari Industrial Corporation Limited in April 1984. The first respondent-company was formed, incorporated

and controlled by the family of the Kotharis who have been carrying on business in the city of Madras and elsewhere for several decades. The

family of the Kotharis first established its business, namely, Kothari and Sons, in the year 1918 and the said companies had been formed and

founded by Mr. C. M. Kothari who was the founder of the Kothari group of companies. The founder, C. M. Kothari, had two sons, namely, Sri

D. C. Kothari and H. C. Kothari. They had entered the family business in the years 1933 and 1936 respectively. Both of them acquired vast

business interests including tea and coffee estate, acquired spinning mills in the State of Andhra Pradesh, established a sugar factory under the

name and style of Kothari Sugars and Chemicals Limited and also started various other businesses. Many of the businesses which were started by

them were carried on jointly till the year 1982 and in the said year D. C. Kothari and H. C. Kothari decided to separate their business interests

and accordingly a scheme was worked out as a result of which some of the companies went to the control of D. C. Kothari. However, no express

agreement was reached among the family of the promoters, namely, Sri D. C. Kothari and H. C. Kothari, with regard to the first respondent-

company. H. C. Kothari passed away in early 1992 and soon, thereafter, in June, 1992, Sri D. C. Kothari also passed away which resulted in the

management of the H. C. Kothari group of companies coming into the hands of B. H. Kothari and the management of the D. C. Kothari group of

companies coming into the hands of P. D. Kothari, the second respondent herein.

4. The shareholding pattern in the first respondent-company was divided approximately as follows :

(i) Unit Trust of India, LIC, GIC : 34 per cent. of the share and their subsidiaries capital.

(ii) Sri P.D. Kothari and his group : 14 per cent.

5. The appellant along with ten others group companies along with Investment Trust of India and another Reliance group company, Reliance

Capitals, had substantial stakes in the share capital of the company which is almost equivalent to the holding of the second respondent and his associates.

6. According to the appellants, the second respondent, who was in the management of the first respondent-company, wanted to secure control

and management of the first respondent-company and exclude any role by the appellants and other companies which were supporting the second

respondent's cousin, B. H. Kothari, and which had also allowed various acts of oppression and mismanagement. According to the appellants,

when the appellants and other companies had acquired substantial stakes in the company by acquiring about 4,77,560 equity shares approximately

amounting to 6.23 per cent. of the equity capital of the company between June, 1991, and September, 1992, the respondents, with a mala fide

intention of removing the names of the appellants and other companies from the registers, had moved the Company Law Board for rectification of

the share registers, in spite of transfers having duly taken place and rights having accrued in favour of the appellants and other companies. It is the

case of the appellants that the attempt of the respondents for rectification of the share register was particularly made with a mala fide and oblique

motive in view of the fact that the first respondent company had resorted to a rights issue of partly convertible debentures to the existing share

holders by its letter of offer dated October 15, 1992. The appellants and other investing companies which had acquired shares in the first

responded-company had applied not only for the rights issue to which they are entitled but also for partly convertible debentures on additional

rights basis before the closure of the issue on December 15, 1992. It is their case that it was only after the closure of the issue that the respondents proceeded to institute company petitions as stated above before the Company Law Board seeking for rectification of the share register for deletion of the names of the appellants and other companies which was ultimately not accepted in the light of the judgment of the single judge and the Division Bench of this court (see [1996] 85 Comp Cas 79). The judgment of the Division Bench of this court has not been stayed by the Supreme Court.

7. According to the appellants, the respondents made attempts seeking permission of this court to have deployment of the proceeds raised from the shareholders for the implementation of a project relating to manufacture of beer, in the State of Andhra Pradesh; for raising the equity capital from non-resident Indians by way of foreign subscription for an aggregate value of Rs. 4.5 crores; and to raise the stake of the existing promoters of the company, namely, P. D. Kothari and his relatives, associates and associate companies from the present level of 14 per cent. to 51 per cent. in the equity share capital of the company. The further case of the appellants is that the appellants, after having been unsuccessful in the interlocutory applications and having lost in the Letters Patent Appeals, the respondents proceeded to call for the annual general meeting of the first respondent-company for September 12, 1994, at 10.30 a.m. at the Music Academy, Madras. In the said meeting, among other things, three important items were to be considered and transacted. They were (1) utilisation of the proceeds from the issue of rights issue of partly convertible debentures for the beer project; (2) offering of shares to non-resident Indians and overseas bodies corporate; and (3) to increase the stakes of the existing promoters and his relatives, associates. Inasmuch as items Nos. 10, 11 and 12 under the caption ""special business"" in the agenda for the meeting which was to be held on September 12, 1994, according to the appellants challenging the action of the respondents was illegal, they filed the suits for the reliefs.

8. This court by interim order, dated September 7, 1994 (AR. Lakshmanan J.) in O. A. Nos. 849 and 850 of 1994 in C. S. No. 1128 of 1994, and O. A. Nos. 855 and 856 of 1994 in C. S. No. 1132 of 1994 filed by both the

appellants herein found that, prima facie, a case has been made out by them for the grant of interim injunction. But, however, before this court, an undertaking was given by learned counsel who appeared for the respondents that the consideration of resolutions Nos. 10, 11 and 12 set out as special business in the notice for the 25th annual general meeting of the first respondent-company, which was to be held on September 12, 1994, or on any other future date will be deferred until further orders from this court. Accordingly, it was ordered that the meeting will go on with the other resolutions listed for consideration except resolutions Nos. 10, 11 and 12. After giving that undertaking, however, the respondent moved transfer petitions before the Supreme Court of India and the Supreme Court of India by order dated September 9, 1994, considering the facts and circumstances of the case and to avoid any prejudice to the large body of shareholders, permitted the meeting to take place by also allowing the appellants to vote not only in respect of the disputed but also undisputed shares in terms of the statements furnished to the Supreme Court. But, however, the Supreme Court of India directed that the result of voting will not be declared nor will any decision about the passing of the said resolutions be taken on the basis of the said voting until further orders. The Supreme Court directed the results of the voting to be intimated to it.

9. However, it is contended by the appellants that the at the meeting held on September 12, 1994, the second respondent proceeded to illegally adjourn the meeting only in respect of resolution No. 12 and allowed the voting to taken place in respect of resolutions Nos. 10 and 11 which is the subject-matter of the suit. In fact, the adjournment itself was ex facie illegal as it was done without there having been a motion brought in for adjournment and without there being a proposal or seconding for the adjournment and without even the consent of the shareholders. Further, the second respondent himself could not at all have been the chairman even in respect of the decision for adjournment of the meeting in respect of resolution No. 12 in which he was directly interested.

10. The results of the voting on resolutions Nos. 10 and 11 were sent to the Supreme Court of India. Liberty was also sought for by the respondents to hold the adjourned meeting on September 27, 1994. But the Supreme Court of India declined the request for permitting resolution

No. 12 to be taken up at the meeting on September 27, 1994, and held that resolutions No. 12 will not be put to vote at the meeting scheduled to be held on September 27, 1994, till further orders. As regards resolution No. 12, it was indicated that the said resolution was not put to vote at the meeting on September 12, 1994, but however, an order was passed on September 23, 1994, prohibiting the said resolution being taken up for consideration and to be put to vote at the next meeting which was to be held on September 27, 1994. It was directed by the Supreme Court that it will now be open to the respondents to request this court to permit them to put the said resolution for consideration at any subsequent adjourned meeting of the company and that this court will proceed to pass orders uninfluenced by the order of the Supreme Court, dated September 23, 1994, in so far as resolution No. 12 was concerned. This court was directed to consider expediting the hearing of the matter. Pursuant to the orders of the Supreme Court of India, there was one other consent order passed in respect of voting rights which was passed on January 3, 1995.

11. While matters stood thus, in the meanwhile the respondents filed Applications Nos. 7152 and 7154 of 1994 in C. S. Nos. 1128 and 1132 of 1994 filed by the appellants seeking for permission of this court to hold the adjourned annual general meeting to consider and to put to vote resolution No. 12 of the notice dated August 5, 1994, issued by the respondents to its shareholders by allowing the 11 Reliance companies to exercise their voting rights in the same manner as exercised by them in respect of resolution Nos. 10 and 11. This court by order dated February 15, 1995, after taking note of the earlier orders passed by the Supreme Court of India and other facts, granted permission for holding the adjourned annual general meeting for consideration of resolution No. 12 as prayed for in the light of the orders passed by the Supreme Court of India and further directed that the said meeting could be held on March 20, 1995. However, it was directed that the result of the voting on resolution No. 12 would not be declared but should be kept in a sealed envelope and intimated to this court. This court further held that merely because permission was given to the respondents to hold the meeting, the appellants herein will not lose their right to challenge the validity of the meeting. It was held by this court that it was always open to the appellants to challenge the validity of the meeting itself or the results thereof, when

the subject is taken up by this court for consideration.

12. Based on the said orders of this court, the respondents proceeded to issue notices by enclosing proxy forms.

13. In view of the subsequent developments which took place in the matter, the appellants herein had filed applications seeking for amendment of

the pleadings in the plaint, amendment of the cause title, relief sought for and also furnished various other documents supporting the claims for

amendment. In fact, the first appellant filed O. A. No. 435 of 1995 in C. S. No. 1128 of 1994 and the second appellant filed O. A. No. 436 of

1995 in C. S. No. 1132 of 1994 seeking for injunction restraining the respondents, their men, officers, subordinates or any one claiming under

them from giving effect to or implementing resolutions Nos. 10, 11 and 12 said to have been passed on September 12, 1994, and March 20,

1995, as is evident from the resolutions which were disclosed before the Supreme Court of India and this court. The respondent companies had

filed Application No. 7151 of 1994 in C. S. No. 1128 of 1994 and Application No. 7153 of 1994 in C. S. No. 1132 of 1994 seeking for

permission for the implementation of resolutions Nos. 10 and 11 approved by the general body of the company held on September 12, 1994.

They also filed Application No. 1628 of 1995 in C. S. No. 1128 of 1994 and Application No. 1631 of 1995 in C. S. No. 1132 of 1994 seeking

for opening of the sealed envelop in this court and causing the results of the poll to be known to the respondents and its shareholders and if the

results indicate that resolution No. 12 has been passed by the requisite majority as per the provisions of the Companies Act, to allow the

respondents to implement the same. The appellants also took out O. A. No. 220 of 1995 in C. S. No. 1128 of 1994 and sought for injunction

restraining the respondents from in any manner proceeding to further implement the beer project or from carrying out any construction for the beer

project or from carrying or on any manufacturing activities or trading activities either directly or indirectly in beer. One other Application No. 1312

of 1995 in C. S. No. 1128 of 1994 filed by the first appellant seeking for directing the respondents to keep the monies earmarked for the beer

project in a separate bank account pending disposal of the suit and the decision by this court on the legality and validity of resolution No. 10 of the

notice dated August 5, 1994, and implementation thereof in the light of the directions of the Supreme Court.

14. All the application were posed for hearing before the learned judge. Time for filing counter was given by the learned single judge in respect of

the application seeking for amendment of the complaints and pleadings and the said applications were adjourned for further hearing after vacation. In

the submission of the appellants even for deciding the entire interim applications under appeal, the decision on the applications seeking for

amendment of the complaint based on subsequent events was vital and relevant for determination of the issues and to assess the prima facie case and

balance of convenience.

15. The learned single judge proceeded to hear the applications and was pleased to pass common order May 16, 1995, allowing all the

application filed by the respondents and dismissing the applications filed by the applicant companies, thus in effect paving the way for

implementation of resolutions Nos. 10, 11 and 12 and also for the implementation of the beer project and thus overriding the various objections

which were raised by the appellants.

16. Mr. Mohan Parasaran contended that the order of the learned single judge is erroneous and the learned judge ought to have appreciated that

the applicants/appellants have established not only a strong prima facie case for grant of injunction restraining the implementation of resolutions

Nos. 10, 11 and 12 but also in respect of the implementation of the beer project and for deposit of monies in a separate bank account

earmarked for the beer project in the light of the reports that the monies earmarked for some other projects were diverted for the beer project

illegally, which was the subject-matter of enquiry u/s 209A of the Companies Act. Learned counsel contended that the learned single judge was in

error in not granting injunction with regard to the implementation of resolution No. 10 for establishing the beer project in the State of Andhra

Pradesh and that the learned judge ought to have seen that prima facie there is a strong case for grant of injunction in the light of the fact that in

respect of the very same beer project, there was already an investigation u/s 209A, which was ordered by the Central Government to be

conducted with regard to diversion of funds and must have further seen that the

beer project had been implemented even prior to getting the approval of the shareholders. According to the appellants, the learned judge had committed an error in holding that the beer project could not have been envisaged as on the date of the letter of offer on October 15, 1992, since the letter of intent by the Central Government was issued to the sister concern of the respondent only on December 15, 1992. The company failed to produce fund flow statements for the beer project which it was implementing in State of Andhra Pradesh even during the pendency of the suit and prior to the institution of the suit which would have clearly shown the utilisation of funds and the source for implementation of the beer project.

17. It is contended that the learned judge has not given due weight to the enquiry u/s 209A directed to be instituted by the Central Government in respect of the very beer project and has also failed to prove that the company has discharged its burden to the court by showing that there was no diversion of funds by not having kept the money earmarked for the beer project in a separate account from out of the monies collected for a different project. According to Mr. Mohan Prasaran, without the approval of the shareholders the company was in error in proceeding to implement the beer project and even in the counter filed by the respondents in Application No. 220 of 1995 this question about utilisation of the funds for the implementation of the beer project is quite evasive. In so far as resolution No. 11 which pertains to allotment of shares on preferential basis to overseas bodies corporate and non-resident Indians, it is the case of the appellants that the respondents cannot resort to private placements in a rights issue and resolution No. 11 was sought to be brought in so as to bring in investment from non-resident Indians or overseas bodies corporate, who are none other than the associates or relatives of the persons in the management of the respondent and this would only mean that what actually the respondent was seeking was to provide private placements with foreign bodies which, as per the understanding of the appellants, is quite contrary to the guidelines issued by the Securities and Exchange Board of India in terms of which it could be inferred that private placements could only be tagged to public issues and not to rights issues and allotment could be made only in accordance with the

prescribed percentage as part of a single composite issue and, therefore, the respondents could have only resorted to a fresh public issue and

could not have resorted to preferential issues in respect of resolution No. 11.

18. In so far as resolution No. 12 was concerned, Mr. Mohan Parasaran, contended that the learned judge was in error in seeking to distinguish

the judgment of the Supreme Court in S.K. Verma Vs. Smt. Kamla Kapur, . According to learned counsel, mala fides were writ large which was

the basis for resolution No. 12 as evident from several facts including the attempt on the part of the respondents to resort to rectification of the

share register after the closure of the rights issue resorted to by them in October, 1992, so as to completely throw out from the share register the

appellants and other group companies thereby reducing their holdings and resulting in the banishment of opposition against the management of the

second respondent. It is contended that the learned single judge was in error in relying upon the Division Bench ruling of this court which was given

in a different factual background where admittedly in that case, the appellants who were before this court were not qualified minority shareholders

and, therefore, it is incorrect on the part of the learned judge to have held that section 397 and 398 will not apply to listed public limited

companies. That question was not decided by this court in the context of proving mismanagement.

19. Mr. Mohan Parasaran then conceded that the original adjournment of consideration item No. 12 itself was clearly illegal and invalid, in view of

the fact that the adjournment of the meeting for consideration of item No. 12 was done without there having been any proposal or seconding of the

said proposal that the resolutions for adjournment have not been put to vote. Secondly, the decision to adjourn was taken and implemented by the

chairman, who himself was biased and interested in respect of resolution No. 12 and such a decision was taken in the light of the financial institution

withdrawing their support for resolution No. 12.

20. Mr. Mohan Parasaran contended that in the present case, the record of the company shows that there were serious allegations of

mismanagement and oppression which are the subject-matter of proceedings before the Company Law Board and investigation has been ordered

into the accounts of the company u/s 209A of the Act by the Central

Government. As regards use of funds for productive purposes, the implementation of the beer project in the State of Andhra Pradesh is not feasible and cannot be said to be productive as there is complete prohibition with regard to not only consumption but also manufacture of liquor and further in fact a family dispute was pending which was the result of the litigation including the one started by P. D. Kothari in seeking for rectification of the share register which is pending before the Supreme Court.

21. Mr. Mohan Prasaran then contended that essentially the dispute between the two cousin brothers was the backbone of the litigation and it is not a proxy fight but it is a direct fight between two cousin brothers which was not properly appreciated by the learned judge. It is submitted that the appellants have a strong prima facie case for grant of injunction in respect of the implementation Nos. 10, 11 and 12 and the balance of convenience also lies in granting injunction.

22. In fine, Mr. Mohan Parasaran contended that in so far as resolution No. 10 is concerned, prima facie, the resolution which is stated to have been passed on September 12, 1994, is illegal and cannot be implemented in view of the fact that there was already a diversion of monies for the beer project even without the approval of the shareholders, which is evident from enquiry, which has been ordered by the Central Government, into the accounts of the company u/s 209A of the Companies Act.

23. It is contended that in so far as resolution No. 11 is concerned, again a prima facie case and balance of convenience lie in granting the injunction and the illegality is apparent in this regard. It is argued that the action of the respondents in bringing in resolution No. 12 is a clear case of mismanagement and is contrary to the decision of the Supreme Court in the case of *Needle Industries*" [1981] 51 Comp Cas 743. Further, resolution No. 12 is deemed to have lapsed because consideration of the said resolution and the adjournment of the said resolution for subsequent consideration at the meeting held on September 12, 1994, is illegal.

24. Lastly, it is submitted that the monies which have been collected for different projects in October, 1992, and not implemented have to be kept under a separate bank account and even the funds which have been earmarked for the beer project have to be kept under a separate account

which has not been done and they have merely taken the objections that this being a rights issue, they had no objection to keeping the monies in a

separate bank account; but, when there are serious acts of mismanagement and allegations of diversions, a duty is cast upon the respondents to

keep the monies under a separate account even assuming that section 73(3) of the Companies Act is not attracted.

25. Our attention was drawn to the entire pleadings and the documents filed by both the parties and also the order passed by the court and the

Supreme Court. Our attention was also drawn to certain passage in Companies Act by A. Ramaiya, particularly with reference to the directors"

fiduciary duties and the chairman's power to adjourn the meeting and issue of further capital and propriety in rights issue, and also para 7.04 of

Law and Practice of Meetings by Shackleton, seventh edition.

26. Mr. Anil Diwan, learned senior counsel and Mr. R. Krishnamurthi, learned senior counsel, appearing on behalf of respondents Nos. 1 and 2,

respectively, drew our attention to certain passage in the plaint, counter-affidavits and rejoinders. Mr. R. Krishnamurthi invited our attention to the

various findings given by the learned single judge with reference to resolutions Nos. 10 to 12 and argued that the learned judge has gone through

the entire records and evidence placed before him and held that each and every institution and authority, both governmental and financial

institutions, have approved the proposal for the beer project, and has also elaborately dealt with the various contentions of the appellants. He

would further submit that the voting on the resolutions is a clear testimony of the fact that 94 per cent. of the shareholders are supporting the

respondents and have totally rejected the stand of the appellants and that the shareholders who supported the resolutions include the financial

institutions of this country, namely, the Unit Trust of India, Life Insurance Corporation of India Ltd., General Insurance Co. Ltd., ICICI and the

subsidiaries of the General Insurance Company, viz., New India Assurance Co. Ltd., Oriental Fire Insurance Co Ltd., United India Insurance Co.

Ltd., and the National Insurance Co. Ltd., who, in the aggregate hold about 34 per cent. of voting power. He also denied that resolution No. 12

was bought with an ulterior motive. As regards resolution No. 12, Mr. R. Krishnamurthi contended that the proceedings of the meetings were duly

recorded and the copy of the minutes was given to the appellants and they at no time questioned the minutes and, therefore, it is too late for the

appellants to raise this point before the appellate court. Concluding his arguments Mr. R. Krishnamurthi said that the learned single judge has rightly

held that balance of convenience is in favour of the respondents" implementing the shareholders" decision and cannot be against such

implementation especially when the appellants have not established as to how their rights would be affected if the decisions are implemented and

even if the appellants" rights are alleged to have been affected, in corporate democracy, the appellants have to sail with the majority and cannot

dictate terms to the company after the majority approval has been obtained. Therefore, he prayed for the dismissal of all the appeals.

27. Mr. Anil Diwan, learned senior counsel, while inviting our attention to the relevant passages in the plaint, counter-affidavits and other

documents and also the letter of intent given to the first respondent for the beer factory, and the letter of intent issued by the Government of India

and the letter to the ICICI by the first respondent and August 19, 1993, and the letter from the ICICI to the first respondent dated November 22,

1993, in regard to the utilisation of the proceeds of partly convertible debenture submitted that while considering the request of the first respondent

for approval for the change in the scope of the proposal of the proposal and utilisation of the proceeds of partly convertible debentures of Rs.

1,918 lakhs, the ICICI agreed to the proposed changes as indicated in the annexure subject to certain conditions mentioned in their letter dated

November 22, 1993. Mr. Anil Diwan also relied on the letter dated February 23, 1994, sent by the second respondent to the Chairman,

Securities and Exchange Board of India, Bombay, requesting him to consider and fix a suitable premium taking into consideration the peculiar

circumstance of the case mentioned in the said letter.

28. While answering the argument of Mr. Mohan Parasaran with reference to the letter dated May 1, 1995, of the Regional Director of the

Department of Company Affairs, learned senior counsel, Mr. Anil Diwan, pointed out that the said letter was not addressed to the first respondent.

With regard to the enquiry u/s 209A of the Company Act directed to be instituted by the Central Government in respect of the beer project,

learned senior counsel contended that the section 209A inspection is in no way relevant to decide the legality of the resolution. He said that

utilisation of funds for the beer project spent from debentures so far has seen the approval of the debenture-holders and the debenture trustees,

and the only dispute before this court is the deployment of funds from the share capital.

29. We have perused the letters and the other correspondence. As a matter of fact, the ICICI, the lead institution had specifically approved the

beer project and the deployment of the funds. Therefore, it is contended that the appellants' stand is untenable being one of obstruction in the

progress and development of the company, which is desired by a vast majority of shareholders representing 94 per cent. or 87 per cent., as the

case may be, and all the debenture-holders, the debenture trustees and the public financial institution having about 34 per cent. stake in to the

company. He also invited our attention to paragraph 39 of the common counter-affidavit dated July 10, 1995.

30. We have already seen that every institution and authority, both governmental and financial, has approved the proposal for the beer project and

the learned single judge has also elaborately dealt with the various contentions of the appellants. The licence for beer had been suspended by the

Central Government for a considerable period and it was available for licensing only in the year 1989. However, there was no letter of intent with

the company at the time when the partly convertible debentures issue was made by the company. The matter was pending consideration by the

Ministry of Industry. The company could not have any intention of manufacturing beer without a letter of intent. Since the Controller of Capital

Issues insisted upon appraisal of the project covered under the letter of offer, the ICICI, one of the premier financial institutions of the country and

who are the company's lead institution, had appraised the projects covered under the letter of offer and the company had also indicated this fact in

their application to the Controller of Capital Issues. Only based on the statement, consent was accorded. When the proposal for the beer project

came through, the company sought the permission of the shareholders for re-deployment of a part of the funds raised through the letter of offer for

the beer project and 94 per cent. of the shareholders voted in favour of the resolution.

31. While answering the contention of Mr. Mohan Prasaran that there has been diversion of funds for the beer project without the approval of the shareholders, Mr. Anil Diwan contended that the said contention is totally false. According to him, all monies spent for the beer project have been out of the company's own funds and debentures after obtaining the consent of the debenture-holders, and all the facts and materials relating to the beer project were furnished before the learned single judge. In fact, some of the representatives of the appellants have also spoke in the general meeting against resolution No. 10. Despite this, the resolution was passed with 94 per cent. of the votes polled. Therefore, as rightly point out by learned senior counsel for the respondents, the arguments of learned counsel for the appellants regarding the implementation of the beer project are totally irrelevant. In fact, it is stated in paragraph 7 of the common counter-affidavit filed on behalf of the respondents dated July 31, 1995, as to how the said resolution was passed by the shareholders in regard to the implementation of the beer project as well as the implementation and approval of the shareholders accorded for resolution No. 10, which is already in progress.

32. As already seen, resolution No. 10 of the notice dated August 5, 1994, accords the consent of the company for change in the purpose of utilisation of the proceeds from the issue of partly convertible debentures for certain projects, instead of as originally proposed in the letter of offer dated October 15, 1992. One of such projects for which change in the purpose of utilisation of the proceeds has been consented to overwhelmingly by the shareholders is the brewery project, for which a sum of Rs. 12.16 crores has been earmarked in the said resolution. The resolution was placed before the shareholders and the approval of the shareholders was sought for utilising a sum of Rs. 12.16 crores out of Rs. 18.28 crores, being the funds contributed by them by subscription to partly convertible debentures issued by the company in October, 1992, for the beer project as against certain other project originally envisaged in October, 1992, by the company. The board of directors of the company, after receiving the letter of intent for the beer project in April, 1993, decided to utilise the partly convertible debentures funds for the manufacture of beer instead of spending the same for the projects for which the partly convertible debentures funds were raised. Accordingly, a letter dated

August 19, 1993, was addressed to ICICI, which is the lead institution and also the debenture trustee, in terms of the loan arrangement, seeking its concurrence for change in the utilisation of funds by revising the earlier projects as follows :

- (a) Deferring the implementation of 10,080 spindle mills;
- (b) Implementation of granite tiles project;
- (c) Implementation of brewery project in Andhra Pradesh.

33. We have already noticed the letter addressed to ICICI. The board of directors have informed ICICI of the reasons for undergoing changes in

the priorities of implementation of the projects originally envisaged in the letter of offer. The company has also informed ICICI of the conditions

imposed in the letter of intent dated December 15, 1992, which include non-availing of loans from financial institutions and collection 20 per cent.

of the project cost of brewery, viz., Rs. 450 lakhs, from non-resident Indians, in foreign exchange. It is also not in dispute that the project originally

envisaged had to undergo a change in the opinion of the board of directors of the company in view of the developments subsequent to the issue of

letter of offer, which developments have been gone into by the lead institution, viz., ICICI, before according its approval to the company for the

revised utilisation of funds. We have already seen that the change in the utilisation of funds as envisaged in resolution No. 10 has been approved by

the lead institution, debenture holders, trustee of debenture holders and the shareholders of the company. As rightly pointed out by Mr. Anil

Diwan, it is the duty and responsibility of the company to implement the said resolution in the interests of those who had voted for it and in the

interests of the company as well. In our view, the appellants have no legal right to stand in the way of implementation of resolution No. 10.

34. In fact, the implementation of the project commenced immediately after the letter of intent was received by the company in April, 1993, and as

per the records placed before us, the company had incurred a total expenditure of Rs. 15.45 crores up to May 16, 1995, and a sum of Rs. 16.48

crores as on July 24, 1995, and steps had already been taken to implement the beer project and to utilise the funds raised from the debenture

holders. Out of the said expenditure of Rs. 16.48 crores as of July 24, 1995, a sum of Rs. 1.34 crores had been contributed from internal accruals

of the company and a sum of Rs. 9.97 crores has been borrowed from hire purchase and leasing companies by way of lease finance. A sum of Rs.

5.17 crores has been spent from the proceeds of partly convertible debentures, pursuant to the approval granted by ICICI by its letter dated

November 22, 1993. Under these circumstance, we are of the view that the implementation of the beer project as well as the implementation of

the approval of the shareholders accorded in resolution No. 10, which is already in progress, is, therefore, essential in the circumstance of the case.

35. Mr. Mohan Parasaran sought directions to keep the monies collected pursuant to the letter of offer dated October 15, 1992, in a separate

bank account. We are of the view that such a request is not sustainable either in law or on facts. In fact, the monies collected pursuant to the letter

of offer dated October 15, 1992, have been merged with the general funds of the company after the allotment of the partly convertible debentures

and as a result, the company's liabilities to its bankers in the cash credit account had decreased and the company is saving about 18.75 per cent.

interest on such decrease in cash credits borrowings, and if, as claimed by the appellants, the funds are kept separately in a bank account, it will

not fetch any interest more than 11 per cent. and such an action on the part of the company will be detrimental to the interest of the company as

well as its shareholders and debenture holders, who had reposed confidence in the management of the company.

36. Admittedly, the appellants have not contributed a single rupee to the funds of the company by way of subscription to partly convertible

debentures pursuant to the letter of offer dated October 15, 1992, and whatever subscriptions they have made pursuant to the said offer are lying

with their bankers to their own credit in stock invests yielding interest to the appellants. When the monies of the appellants are not at all with the

company, they have no locus stand to expect the company not to utilise the funds contributed by others and not by themselves, especially when

those who had contributed had given their approval. Mr. Anil Diwan, learned senior counsel, at the time of hearing, in fact, has offered to the

appellants to take back the amounts lying in the form of stock invests with their bankers if they are not inclined to approve the beer project. Mr.

Mohan Parasaran, learned counsel for the appellants, has not accepted the said offer. In fact, the appellants have rejected the offer of the

respondents, vide their letter dated October 10, 1994.

37. It is also not in dispute that certain developments took place politically in the State of Andhra Pradesh subsequent to August 5, 1994, and as a

result of the change in the political field, in December, 1994, an ordinance was issued prohibiting the consumption of liquor in the State of Andhra

Pradesh. This ordinance was the subject-matter of challenge before the Andhra Pradesh High Court, which finally held that manufacture of liquor

was not banned but only consumption of liquor was banned in the State. It is stated that the matter is in appeal before the Supreme Court and in

the meanwhile, the Andhra Pradesh Government had recently issued a fresh Ordinance banning even the manufacture of liquor in the State. As

rightly pointed out by Mr. Anil Diwan, these developments are beyond the control of the company and the company had to take steps, in the light

of these developments, for relocating its beer project in some other State. The company, in fact, took steps to obtain approval from the

Maharashtra Government for setting up the beer project in the State of Maharashtra, and from the Central Government for permission to relocate

the project. The Government of Maharashtra recommended to the Central Government the proposal of the company to shift the project from

Andhra Pradesh to Maharashtra, based on which the Central Government by its Letter No. LI : 560(92)/95-Amendment, dated July 28, 1995,

permitted the shifting of the location for setting up the brewery unit from Andhra Pradesh to Maharashtra.

38. Mr. Anil Diwan, learned senior counsel, submitted that out of the total expenditure of Rs. 16.48 crores incurred by the company on the beer

project so far, the expenditure on plant and machinery alone amount to Rs. 10.85 crores. This plant and machinery can be moved to the new

location immediately. This apart, the company had incurred an expenditure of Rs. 80 lakhs on the technical know-how paid to collaborators and

Rs. 75 lakhs on pre-operative expenses. The company had also incurred interest and lease rental amounting to Rs. 2.03 crores on leased items of

plant and machinery and has deposited a sum of about Rs. 10 lakhs with various authorities.

39. Mr. Mohan Parasaran contended that in view of the impossibility of putting up the beer project in the State of Andhra Pradesh, resolutions

Nos. 10 and 11 are to be stayed or not given effect to. We are unable to countenance the said request. In our opinion, the said request is most

unreasonable and unfair, as the beer project could be put up anywhere in India with the approval of the Central Government and the concerned

State Government. This situation had arisen to the company not because of the company's own fault or action but on account of political changes

taking place in the country developments consequent to which have to be considered by the company with a view to change its own plans and

business activities accordingly. As rightly urged by Mr. Anil Diwan, learned senior counsel, any commercial and business decisions are in the

absolute domain of the board of directors of the company and, therefore, the court would not interfere with such commercial decisions. We,

therefore, have no hesitation in rejecting the contention of Mr. Mohan Parasaran in regard to resolution No. 10 and upholding the contentions of

the respondents for the reasons stated superior.

40. As regards resolution No. 11, it was argued that the said resolution gives approval to the board of directors of the company 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 dated August 4, 1994, and such other amendments as may be made thereto in respect of calculation

of the premium on the shares and to offer such shares to non-resident Indian/overseas corporate bodies as the board in its absolute discretion may

decide. In this connection, our attention was drawn to the letter of the second respondent dated February 23, 1994, addressed to the chairman of

the Securities and Exchange Board of India, Bombay, and the reply received from the Securities and Exchange Board of India dated March 7,

1994. The letter dated March 7, 1994, was sent by the Division Chief, Primary Market Department, Securities and Exchange Board of India, to

the second respondent. In that letter it was proposed to collect a sum of Rs. 4.50 crores from non-resident Indians and overseas corporate bodies

and that the same was proposed to be done through private placements and by way of preferential allotments to identified non-resident Indians and

above overseas corporate bodies. The Securities and Exchange Board of India replied saying that the second respondent is free to do so and

determine the terms thereof including pricing after obtaining the consent of the shareholders under the Companies Act, as also subject to other

guidelines relating to the issue of shares to non-resident Indians and overseas corporate bodies.

41. Resolution No. 11 also further states that the said shares so allotted shall have a lock-in period of five years from the date of allotment and that

the number of shares, viz., 9,00,000 equity shares, mentioned in the resolution, have been calculated on the basis of an estimated premium of Rs.

40 per share, and the number of shares will vary based on the calculation of the premium in accordance with the Securities and Exchange Board of

India guidelines.

42. The learned single judge, while considering this aspect of the matter, has observed as follows (at p. 105 supra) :

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 non-resident Indians, but it should not be against law. When learned counsel contends that the issue of share could

not be against law and yet the first defendant proposed to issue shares in favour of non-resident Indians, it is for the plaintiffs to show how the issue

of debentures in favour of non-resident Indians is against law. There is no such evidence placed before the court.

43. At the time of hearing, it is stated that after the judgment of the learned single judge permitting the implementation of resolution No. 11, the

board of directors had issued and allotted 6,60,598 equity shares of Rs. 10 each at premium of Rs. 58.12 per share to an overseas corporate

body and the company had issued the allotment letter to the said allotment letter to the said allottee on June 20, 1995. A return in Form No. 2

prescribed under the Companies Act in respect of this allotment was filed with the Registrar of Companies, Madras, on June 21, 1995. It is stated

that the value of this allotment works out to Rs. 450 lakhs, which is 20 per cent. of the original cost of the beer project, viz., Rs. 22.50 crores,

which the company had to raise from abroad in foreign exchange as per the terms and conditions of the letter of intent for the beer project issued

to the company, which details have been fully gone into by ICICI, the lead institution and the debenture trustee.

44. It is contended by Mr. Anil Diwan that the issue of preferential shares to non-resident Indians has fetched more foreign exchange to the country. It is not in dispute that the shares have been purchased by non-resident Indians at a very high price of Rs. 68.12 per share when the price of share of the first respondent-company in the secondary market was less than Rs. 40, by which, undisputedly, the company and in turn, its members would be much benefited. The appellants, in our view, have no case in so far as resolution No. 11 is concerned since the said resolution has already been implemented. We also see merit in the contention of learned senior counsel for the respondents and, therefore, we reject the contention of the appellants in this regard.

45. In reply to the arguments of Mr. Mohan Parasaran on resolution No. 12, Mr. Anil Diwan, learned senior counsel, submitted that the notice empowers the board of directors of the company 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. The resolution also states that the investment of the promoters group in the said shares shall not exceed a limit of 51 per cent. of the equity capital of the company. It is not disputed that resolution No. 12 was approved overwhelmingly by the shareholders of the company on March 20, 1995, i.e., at the adjourned annual general meeting. After the judgment of the learned single judge delivered on May 16, 1995, the company had issued and allotted an aggregate of 24,74,569 shares of Rs. 10 each at a premium of Rs. 53.27 per share to the second respondent and his group and after this issue and allotment to the promoters group, the total number of shares held by the promoters group in the share capital of the company amounts to 26 per cent. We are, therefore, of the view that the resolution, as passed by the shareholders, was fully implemented and the promoters group today holds 26 per cent. in the equity capital of the company which is well within the norms/guidelines applicable for such investment and issued by the Securities and Exchange Board of India and others.

46. This apart, the financial institution holding about 34 per cent. in the capital of the company had specifically approved the said issue and allotment. They had also voted in favour of resolution No. 12 at the adjourned

meeting held on March 20, 1995, which shows their faith in the good management of the first respondent/company. The company had complied with the guidelines issued by the financial institutions even through such guidelines are not statutory or mandatory in nature, as they are not issued under any law in force. A return in Form No. 2, prescribed under the Companies Act in respect of this allotment, was filed with the Register of Companies on May 16, 1995, under cash receipt No. 5934 issued by the Register of Companies. Learned senior counsel appearing for the respondents denied the allegation of the appellants that resolution No. 12 was brought with an ulterior motive. He said that the promoters have been permitted to increase their shareholding up to 51 per cent. and it was pursuance of this policy, resolution No. 12 was proposed. The very fact that 94 per cent. of the shareholders voted in favour of this resolution at the meeting is sufficient rebuttal of the various allegations of the appellants.

47. Mr. Mohan Parasaran contended that the original adjournment of the meeting for consideration of item No. 12 itself was clearly illegal and invalid in view of the fact that the adjournment of the meeting for consideration thereof was done without there having been any proposal or seconding of the said proposal and that the resolutions for adjournment have not been put to vote. In reply to this contention, Mr. Anil Diwan contended that the appellants and associates did demand a poll on certain resolutions but never asked for a poll on the question of adjournment when the matter was put up to the meeting. Having not raised a demand for poll on the question of adjournment, the appellants cannot raise this point of the adjournment not being legal, before this court.

48. It is contended by Mr. Anil Diwan, learned senior counsel, that the proceedings of the meeting were duly recorded and a copy of the minutes was also given to the appellants and the appellants admittedly at no point of time questioned the minutes. Therefore, as rightly urged by learned senior counsel for the respondents, it is too late in the day for the appellants to raise to raise this point before the appellate court. It is not in dispute that the minutes being authenticated documents under the provisions of the Companies Act, no adverse view is possible. The learned single judge himself has held that the oral submission made by the appellants in this regard has no basis.

49. In this regard, learned senior counsel for the respondents invited our attention to articles 76 and 78 of the memorandum and articles of

association of the first respondent-company, which read as follows :

76. The Chairman, if any, of the board of directors, shall preside as chairman at every general meeting of the company.

78. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn that meeting

from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the

meeting from which adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given

as nearly as may be as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the

business to be transacted at an adjourned meeting.

50. In fact, on the adjourned meeting held on March 20, 1995, poll was taken and two scrutineers were also appointed. In fact, the second

respondent did not preside over that meeting and one Mr. P. G. Daftary presided over the meeting. Our attention was drawn to the minutes of the

annual general meeting held on September 12, 1994, at 10.30 a.m. at the Music Academy, Madras. No objection was taken to the second

respondent presiding over that meeting. No poll was also demanded. Regarding item No. 12, it is seen from the minutes of the meeting dated

September 12, 1994, that the chairman (Pradip D. Kothari) informed the members that the financial investment institutions, viz., the Life Insurance

Corporation of India, the General Insurance Corporation of India and the Unit Trust of India holding substantial equity shares in the company had,

by their letter of UTI No. UT/D01/10-36/3219/93-94, dated March 18, 1994, countersigned by LIC and GIC, permitted the company to make a

preferential offer to the promoters to increase their equity stake to 51 per cent. It is also seen from the said minutes the poll was demanded for

other items.

51. The minutes of the adjourned 25th annual general meeting held on March 20, 1995, at 10 a.m. at Music Academy, Madras, is available at

page 181 of the typed set volume 3. The chairman of the company Pradip D. Kothari welcomed the members and informed that since he was

personally interested in the proposed resolution, he would not chair the meeting and requested the members to elect a chairman for the meeting.

Thereupon, Mr. V. Thirupathi, nominee director of the Industrial Credit and Investment Corporation of India, a shareholder of the company,

proposed the name of P. G. Daftary, director as chairman for the meeting, which was seconded by Mr. Halasyam, a shareholder. The proposal

was put to vote and Mr. P. G. Daftary was elected unanimously to chair the meeting. Thereupon, Pradip D. Kothari vacated the chair and Mr. P.

G. Daftary occupied the chair.

52. In the meeting, Mr. T. V. Padmanabhan, legal adviser of the company, informed the members that the High Court had permitted the company

to convene the meeting to consider resolution No. 12 of the notice dated August 5, 1994, and therefore, the resolution could be considered. The

representative of the Skylab Detergents (P.) Ltd. mentioned that the court had only ordered the meeting to be held on March 20, 1995, and the

contents of the resolution were not approved by the court. Further, he also said that there was material change in the resolution already circulated,

in that, as per the institutional guidelines, the promoters could subscribe only up to 26 per cent. and not 51 per cent. as per the resolution

circulated. He also contended that as there was a material change, the original resolution could not be considered at the adjourned meeting, and a

fresh meeting had to be convened for the purpose. He also point out that the original proxies lodged for the annual general meeting held on

September 12, 1994, would be used for the adjourned meeting. A fresh meeting, in his view, was required to be convened.

53. The chairman of the meeting, thereupon requested the legal adviser of the company, who was present on invitation, to clarify the points raised

by the members. After some discussion, Mr. Janakiram, a shareholders said that he did not want a poll to be conducted since the resolution could

be passed by show of hands as the shareholders had complete confidence in the management. Mr. Pradip D. Kothari, while thanking him for the

sentiments expressed, advised that the poll was required to be conducted since in terms of the orders of the High Court, the result should not be

declared but had to be submitted to the High Court in a sealed envelope. Thereupon, the chairman appointed two persons as scrutineers of the

poll. The chairman asked the company secretary to arrange for distribution of ballot papers and then the scrutineers took charge of the poll. The

chairman of the meeting mentioned that since the result of the poll could not be announced at the end of the meeting in view of the court's order,

the meeting would stand terminated as soon as the results of the poll were received by him in a sealed cover from the scrutineers. The chairman

declared the polling as closed at 1 p.m. The chairman received a sealed cover from the scrutineers at 9.15 p.m., and informed the members that he

would arrange to file the same with the High Court. The meeting thereafter terminated with the vote of thanks to the chair.

54. In fact, article 79 of the memorandum and articles of association of the first respondent-company provides that a resolution put to the vote of

the meeting shall be decided on a show of hands, unless a poll is demanded in accordance with the provisions of section 179 of the Companies

Act. Unless a poll is to be demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried unanimously or by a

particular majority or lost and an entry to that effect in the books of the proceedings of the company shall be conclusive evidence of the fact

without proof of the number or proportion of the votes recorded in favour of or against that resolution.

55. The further argument of Mr. Mohan Parasaran in regard to calling for fresh proxies is also baseless for the simple reasons that fresh proxies

ought to be called for as it is a matter of right to the shareholders to change their respective proxies for the adjourned meetings and for the new

shareholders to give their own proxies for the adjourned meeting. It is also stated that in order to enable the shareholders to exercise their rights,

the notice of the adjourned meeting was enclosed with the proxy form. We are unable to understand as to how it could be categorised as an

unlawful act on the part of the first respondent-company. It is suffice to state that the adjourned meeting shall transact only the business left

untouched in the original meeting and no new business could be transacted. In accordance with this principle, resolutions No. 12 alone was to be

transacted and, therefore, the notice of the meeting was issued with the same wording as that of the previous notice of meeting dated August 5,

1994.

56. The further argument of Mr. Mohan Parasaran, learned counsel for the appellants, that there is a material change in the resolution as it was proposing for 26 per cent. in the place of 51 per cent. and that it is a new resolution altogether, has no basis. The learned single judge has considered this point also in his order. The original resolution envisages for an increase of promoters stake up to 51 per cent. and the proposal to increase up to 26 per cent. is within the arithmetic figure of 51 per cent. and as such, there is no deviation from the original resolution. Therefore, we are of the view, that the various reasons cited by Mr. Mohan Prasaran to contend that the adjournment was not valid have no basis at all. Further, the fact that the overwhelming majority of the shareholders voted for this resolution also shows that the shareholders were in full agreement with the resolution. The reference to the guidelines issued by the Central Government is not correct and the appellants were not able to produce any such guidelines before this court. As contended by learned senior counsel for the respondents, it is for the shareholders to decide these issue and they have decisively and overwhelmingly approved the resolution. Merely because a shareholder acting as a proxy has alleged mismanagement, it cannot be contended that these resolutions cannot be voted upon by the shareholders.

57. In regard to the argument of Mr. Mohan Parasaran that investigation had been ordered under the Companies Act by the Central Government, the respondents have specifically denied the same. They also further said that the Central Government has not addressed any letter to the respondents in this regard. According to learned senior counsel for the respondents, it is only an investigation and the Central Government is entitled to investigate into the matter pertaining to any company.

58. Section 176 of the Companies Act deals with proxies. Articles 88, 89 and 90 of the articles of association of the first respondent-company, which deal with proxies, read as follows :

88. On a poll, votes may be given either personally or by proxy. A company or other body corporate entitled to vote may vote in accordance with the provision of section 187 the Act.

89. (a) The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or if the

appointer is a corporation either under the common seal or under the hand of an officer, or attorney so authorised. Any person may act as proxy

whether he is a member or not.

(b) A corporate body (whether a company within the meaning of the Act or not) may, if it is a member or a creditor or a debenture holder of the

company by the resolution of its board of directors or other governing body, authorise such person as it thinks fit to act as its representative at any

meeting of the company or at any meeting of any class of members of the company or at any meeting of any creditors of the company held in

pursuance of the Companies Act or any rules made thereunder or in pursuance of the provisions contained in any debenture or trust deed, as the

case may be. The person so authorised by resolution as aforesaid shall be entitled to exercise the same rights and powers including the right to vote

by proxy on behalf of the body corporate which he represents as he could exercise if he were a member, creditor or holder of debentures of the

company.

(c) So long as an authorisation under sub-clause (b) above is in force, the power to appoint a proxy shall be exercised only by the person so

appointed as representative.

90. The instrument appointing a proxy had the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of

that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the

meeting or adjourned meeting at which the person named in the instrument proposed to vote in the case of poll, not less than twenty-four hours

before the time appointed for the taking of the poll and in default, the instrument of proxy shall not be treated be valid.

59. Therefore, we reject the contention of Mr. Mohan Parasaran in regard to calling for fresh proxies since it is a matter of right given to the share-

holders to give their own proxies for the adjourned meeting, as has been held by us in paragraphs supra.

60. Mr. Mohan Prasaran finally requested this court at least to maintain status quo till the disposal of the suit with regard to resolution No. 12. In

reply to the said argument, it was vehemently contended by learned senior counsel appearing for the respondents that the appellants made attempts

to convince the other shareholder to vote against the resolution and in spite of such opposition, the shareholders overwhelmingly approved the resolution rejecting the plea of the appellants at the meeting, and having failed in their attempt to defeat the resolution at the meeting, the appellants have now come to this court to oppose the implementation of the said resolution. We are of the view that the appellants having participated in the meeting actively and intensively, it does not lie in their mouth to say that the meeting were illegal. As pointed out by learned senior counsel for the respondents, such allegation against the resolutions and the meetings are only lame excuses to enable the appellants to continue the proxy litigation in courts. The appellants, in our view, have no case at all, leave alone a prima facie case, for the grant of injunction. The learned single judge had appreciated all the materials placed before him before deciding the issue involved. It is incorrect on the part of the appellants to state that the learned judge has not appreciated the facts placed before him while coming to the conclusion that resolutions Nos. 10 to 12 are implementable. A perusal of the judgment of the learned single judge would go to show that the learned judge has gone through the entire evidence and records placed before him before deciding the issues involved and has held that each and every institution and authority, both governmental and financial institutions, have approved the proposal for the beer project, and has also elaborately dealt with the various contention of the appellants.

61. We are also unable to appreciate the contention of Mr. Mohan Parasaran that the implementation of the resolution should be stayed since the proceedings u/s 397 and 398 of the Companies Act are pending before the Company Law Board. We are of the view that the pendency of the proceedings before the Company Law Board cannot be relied on a to stall the implementation of the resolutions. The Company Law Board will make appropriate enquiries and decide the petitions on their own merits. In fact, it is brought to our notice that the Company Law Board has refused to stay the consideration of the resolutions by the shareholders.

62. On a consideration of the entire evidence on record and the arguments of learned counsel appearing on either side, we are of the view, that the adjourned meeting for consideration of resolution No. 12 was valid and proper. This apart, this court alone had permitted the meeting to take

place on March 20, 1995, and the appellants had also participated in that meeting and voted against the resolution. It is, therefore, not now open

to the appellants to contest the same. Since the resolution have been passed by the shareholders in an overwhelming majority, it is not for this court

to interfere with the decision of the shareholders. It so far as resolution No. 12 is concerned, the same has been implemented and shares to the

extent of 26 per cent. have already been allotted to Pradip D. Kothari and others and thus, the said resolution had been implemented. Therefore,

we are of the view, that the present application for injunction to restrain the implementation No. 12 is liable to be rejected.

63. The company has already commenced implementation of its projects and is continuing. Substantial sums of money had already been invested in

the beer project and it will not be in the company's interest or in public interest not to proceed with the project by diverting part of the funds as

approved by resolution No. 10. There is no obligation on the part of the company to keep the money in a separate account and there can never be

such an obligation after the listing of partly convertible debentures by stock exchanges. The appellants have not made out any case for the grant of

interim orders. In our considered view, the order passed by the learned single judge is correct.

64. This court, in the decision in Vivek Goenka v. Manoj Sonathalia [1995] 83 Comp Cas 897, 908 rendered by one of us, viz., AR.

Lakshmanan J., held as follows :

It is the duty of this court to recognise the corporate democracy of a company in managing its affairs. It is not for this court to restrict the powers

of the board of directors. The board of directors in various resolutions have appointed the sixth defendant as executive director, managing editor

and chairman. It will not be open to this court to interdict the functions of the board-managed company. As rightly contended by Mr. P.

Chidamabaram, the learned senior advocate, it will not be open to this court to interfere with the day-to-day functions, management and

administration of a company unless it is established that the decisions taken by the board are ultra vires the Act or the articles of association of the

company. At this interlocutory state this court is concerned only with the prima facie case and balance of convenience as disclosed by the

documents produced by both parties. It is for the plaintiff to let in oral evidence at the time of trial and establish his case.

65. We have considered all the contentions urged by the parties on a prima facie view. It is not necessary for us to deal with each and every

contention urged by the parties as most of them relate to the merits of the suit. Both sides cited a number of decisions in support of their respective

contentions. We do not think it is necessary for us to refer to all of them as we have decided these appeals on the facts and circumstances of the

case. Therefore, we confine ourselves only to one decision of this court which is directly on point. None of the grounds raised and argued by the

appellants merit any consideration.

66. For the foregoing reasons we hold that all the appeals fail and are dismissed. However, there will be no order as to costs.