

(1982) 03 AP CK 0018

In the Andhra Pradesh High Court

Case No : Original Side Appeal No's. 5 and 6 of 1981

Nagavarapu Krishna Prasad and Another

APPELLANT

Vs

Andhra Bank Ltd.

RESPONDENT

Date of Decision : 19-03-1982

Acts Referred:

Banking Regulation Act, 1949 — Section 2, 5A, 6, 6(1), 6(2)
Companies Act, 1956 — Section 173, 188(4), 379(2), 397, 397(2)

Citation : (1983) 53 CompCas 73

Hon'ble Judges : Alladi Kuppaswami, C.J.; A. Seetharam Reddy, J

Bench : Division Bench

Judgement

Alladi Kuppaswami, C.J.

1. These appeals are directed against the judgment of our learned brother, Chennakesav Reddy J., dismissing Company Petitions Nos. 10 and 12 of 1980.

2. C.P. No. 10/1980 was filed by two shareholders of the Andhra Bank Ltd. under ss. 433 and 439 of the Companies Act, 1956, praying for the winding-up of the company and for other consequential reliefs. C.P. No. 12/1980 is a petition filed under ss. 397 and 398 of the Companies Act on the ground that the affairs of the company are being conducted in a manner oppressive to some of the members of the company including the petitioners and other members set out in the schedule to the petition, and on the ground that the company was being mismanaged. They prayed that this court might regulate the conduct of the company's affairs by reconstituting the board of directors and providing safeguards for the future, and for other reliefs, or in the alternative to direct a payment of Rs. 610 per share to the dissenting shareholders including the petitioners with interest in accordance with s. 6 of the Central Ordinance No. 3 of 1980.

3. The Andhra Bank Ltd., the respondent in these appeals, is a premier banking concern in the State of Andhra Pradesh. It was incorporated in November, 1923, under the Indian Companies Act, 1913, as a public limited company. Its

registered office is at Hyderabad. The nominal capital of the company is Rs. 2,00,00,000 divided into two lakhs shares of Rs. 100 each. The company was formed with the object of carrying on the business of banking and to transact all matters and things incidental thereto. Though the memorandum of association also contains several objects unconnected with the banking business, the company has been carrying on the business of banking only. After the coming into force of the Banking Regulation Act, 1949, under s. 6 of the said Act, it was permitted only to engage in any one or more of the forms of business referred to in s. 6(1) of the said Act in addition to the business of banking. Under s. 6(2) of the said Act, it was prohibited from engaging in any form of business other than those referred to in sub-s. (1). In 1980, the Banking Companies (Acquisition and Transfer of undertakings) Ordinance, 1980, referred to in this judgment as the Banking Acquisition Ordinance of 1980 was promulgated. It provided for the acquisition and transfer of six banking companies referred to in the First Schedule to the Ordinance including the Andhra Bank Ltd., called the existing banks. Six corresponding new banks were constituted with the same name as the above banks and it was provided that the undertaking of every existing bank shall be transferred to and shall vest in the corresponding new bank. Under s. 6 of the Ordinance, every existing bank was given compensation specified in the Second Schedule. Under the said Schedule, compensation for the Andhra Bank Ltd. was fixed at Rs. 610 lakhs. under s. 6(2) of the ordinance, option was given to the existing banks either to receive the compensation amount in cash in three equal annual instalments or in saleable or other transferable promissory notes of the Central Govt. or partly in cash and partly in such securities. Under s. 6(6), it was provided that the existing bank may make an application for an interim payment of an amount equal to seventy-five per cent. of the paid capital of such bank, immediately before the commencement of the Ordinance, indicating therein whether the payment was desired in cash or in securities or in both. The board of directors passed a resolution to receive seventy-five lakhs of rupees in cash and the balance in securities repayable at par in 1990 at 6% interest.

4. Thereafter, the board of directors issued a notice dated July 24, 1980, that the annual general body meeting of the bank would be held on August 28, 1980. In this notice, resolutions Nos. 5 to 9 were mentioned as special resolutions. Special resolution No. 5 was to accord approval to the company to commence and carry on all or any of the businesses set out in sub-cl. 3, 4, 6, 7, 8, 11, 12, 15, 16, 17, 18 and 19 of clause III of the company's memorandum of association. Special resolution No. 6 was to changed the name of the company to "Lakshmi Finance & Industrial Corporation Ltd." Special resolution No. 7 was to amend clause I of the memorandum of association, by substituting the said name for the existing name of the company; and resolution No. 8 was to amend clause III of the memorandum of association, by adding the further objects mentioned therein as sub-cl. 19(a) to 19(m) after clause 19. Special resolution No. 9 was for amending the articles of association in several respects as mentioned in the said resolution.

5. After receiving these notices, 106 shareholders of the bank gave a notice that they intended to move a special resolution at the meeting on August 18, 1980, to the effect that the Andhra Bank Ltd. may be wound up as the main objects for which it had been formed, had been vitiated or changed as per the restrictions imposed by the Reserve Bank by not allowing it to do any banking business, and that the shareholders may be paid in cash or in securities from the compensation received by it from the Government. Thereupon the board of directors issued a circular dated August 14, 1980, stating that though they were of the view that the requisition signed by the 106 shareholders did not satisfy the requirements of s. 188(4) of the Companies Act, and the company, therefore, was not bound to circulate the resolution for the consideration of the annual general meeting, yet they considered that the general body should not be denied an opportunity to consider the said special resolution and it was, therefore, circulating it for information to the shareholders.

6. On August 26, 1980 i.e., two days before the general meeting, the two shareholders (petitioners) filed C.P. No. 5/1980 praying for a winding-up of the company under ss. 433 and 439 of the Companies Act. In the petition they alleged that though the memorandum of association of the Andhra Bank Ltd. contained several objects unconnected with the banking business, yet the main business of the company had been, from its inception, banking business. After the coming into force of the Banking Regulation Act, 1949, by virtue of ss. 5A and 6 of the Act, the provisions in the memorandum of association, which did not relate to the banking business became void. When the company was nationalised under the Ordinance of 1980, the predominant and paramount object of the company, was banking business and the company was banking company, as defined by the provisions of the Banking (Regulation) Act, 1949. The result of the Ordinance was that from April 15, 1980, the company was entitled only to a payment of 610 lakhs of rupees towards compensation. The substratum of the company, viz., "the banking business" disappeared on nationalisation, and it was, therefore, just and equitable that the company should be wound up. It was averred that the board of directors had acted contrary to the interests of the shareholders in receiving only seventy-five lakhs of rupees in cash and the balance in long-term securities. The petitioners apprehended that the board of directors were about to start an entirely new venture to be carried on by a new company and that Sri K. L. N. Prasad, who was at present acting as the chairman of the meeting of the board of directors, was likely to gain control over the company after the transformation of the company into Lakshmi Finance & Industrial Corporation Ltd. On a prior occasion, when the Hindustan Ideal Insurance Company was nationalised, he formed Lakshmi Porcelains Ltd. and, instead of paying compensation to the shareholders, he offered share certificates in the new company, whose monetary value was very little, and Sri K. L. N. Prasad was intending to do something similar with this bank also.

7. The petitioners also filed Company Application No. 53/1980 praying for the postponement of the consideration of the special resolutions passed in the

meeting held on August 28, 1980. The learned single judge granted interim stay as prayed for. On appeal, a Division Bench of this court by an order dated August 27, 1980, suspended the operation of the said order but directed that resolution No. 6, if passed, would not be acted upon until further orders of the court. In view of this order, the meeting was held as scheduled on August 28, 1980. The special resolutions referred to in the notice issued by the board of directors were passed by a large majority where the resolution for winding-up moved by some of the shareholders was defeated by a large majority. The meeting was attended by 159 shareholders (130 in person and 29 by proxy). On a show of hands, it was found that a large majority of shareholders were against the special resolutions proposed by the board of directors but on a poll being demanded and conducted, the resolutions were carried by a large majority.

8. A counter-affidavit to the application for winding-up was filed in October, 1980, after the meeting was held. In the counter-affidavit, it was denied that the substratum of the company had disappeared as a result of the acquisition and that it was just and equitable to wind up the company. It was contended that the memorandum of association empowered the company to carry on various business unconnected with the banking business. The effect of ss. 5A and 6 of the Banking (Regulation) Act was only that so long as the company was a banking company carrying on the business of a bank under the licence duly granted by the Reserve Bank of India, the company cannot engage in any business other than what was permitted under s. 6(1) of the Act. The other objects contained in the memorandum were in no way affected and continued to remain in full force and effect, and they did not become void. On the acquisition of the company by the Ordinance, the licence granted to it, to engage in any banking business, stood revoked, with the result that the company could not engage in any banking business and ceased to be a banking company from the date of the Ordinance. Consequently, the restrictions contained in s. 6 of the Banking (Regulation) Act would no longer apply. It was further denied that the receipt of seventy-five lakhs of rupees out of the compensation in cash, and the balance in long-term securities, was not prejudicial to the company and the board of directors acted in the interests of the company. Reference was also made to the result of the meeting which was held in the meanwhile, and it was submitted that the special resolution had been carried by an overwhelming majority which clearly established that it was not just and equitable to wind up the company especially at the instance of two petitioners who held only 254 shares out of the capital of one lakh shares.

9. On November 5, 1980, the two shareholders filed C.P. No. 12/1980 under ss. 397 and 398 of the Companies Act, Several instances regarding the conduct of Sri K. L. N. Prasad, chairman of the board of directors of the bank, in regard to other companies, like the Hindustan Ideal Insurance Company Ltd., Lakshmi Porcelains Ltd., Andhra Printers Ltd., Sahayak Finance & Investment Corporation Ltd., were given to show that he had no entrepreneurial capacity and that he was anxious to have ultimately the real control of the bank. It was submitted that the

various irregularities and illegalities would show that the affairs of the company were conducted in a manner oppressive to some of the members including the petitioners and other members listed in the Schedule, and it would further show that the company was being mismanaged. It was, therefore, prayed that the High Court be pleased to regulate the conduct of the company by reconstituting the board of directors and providing safeguards for the future; or in the alternative to pay Rs. 613 per share to the dissenting shareholders. This petition was also opposed and it was contended that there was no oppression or mismanagement.

10. An additional counter-affidavit was filed in which it was stated that the letters of consent said to have been obtained from the other shareholders, did not disclose that the members concerned had applied their minds before subscribing their signatures and that what was given was a blank paper sent for filing a petition on their behalf under ss. 397 and 398 of the Act. As the letters of consent did not disclose that the members concerned had knowledge of the nature of the action to be taken, the relief to be prayed for, and the grounds urged in support of the relief prayed for, such a consent was not a valid one in the eye of law and the requirements of s. 399(3) of the Act were not satisfied and the petition was liable to be dismissed as not maintainable.

11. Evidence was duly recorded and ultimately a common judgment was pronounced by our learned brother, Chennakesav Reddi J., dismissing the said petitions. He observed that the basic and real question that fell for consideration in C.P. No. 10/1980 was whether the substratum of the company had gone with the acquisition and taking over of the banking business of the company under the Ordinance, furnishing a just and equitable ground for an order of winding-up under s. 433 of the Companies Act. He held that as the memorandum of association also contained objects not covered by the banking business, vide paras. 8, 16 and 19 of clause III of the memorandum of association, the company could continue the said objects after the acquisition. On a construction of the memorandum of association, he held that the object in each paragraph was an independent object, and, therefore, it was not possible to hold that "banking" was the main or primary object of the company. When the business was taken over, while it was prohibited from engaging in the business of banking, it was entitled to engage in other forms of business. With reference to the effect of the Banking Regulation Act, he held that the objects in the memorandum, which related to the business other than banking, had been eclipsed by s. 6(2) of the Banking Regulation Act. The moment the banking business of the company was taken over by the Acquisition Act, the shadow was removed and the objects mentioned in the memorandum began to operate *proprio vigore* from the date of such taking over of the company. He rejected the contention raised during the course of the argument, that the memorandum of association was in the nature of a contract, and that there was a frustration when the undertaking was taken over. In the result he held that there was no case made out for a winding-up of the company, and dismissed the petition, C.P. No. 10/1980. Dealing with the

contentions raised in C.P. No. 12/1980, he rejected the preliminary objection raised on behalf of the company that the petition was not maintainable as there was no proper consent under s. 399(3) of the Act. He, however, held that the petitioners had not made out oppression or mismanagement so as to justify the applicability of s. 397 or 398 of the Act. In the result, he dismissed C.P. No. 12/1980 also.

12. The petitioners have preferred these two appeals against the common judgment in the two petitions.

13. Dealing with Company Petition No. 10/1980 in the first instance, the sole question for consideration is whether the petitioners have made out a case for a winding-up of the company. Section 433 of the Companies Act sets out the circumstances in which the company may be wound up by a court. After setting out some of the circumstances in cls. (a) to (e), it is provided in clause (f) that the company may be wound up by the court if the court was of opinion that it was just and equitable to do so. It is now well settled by a catena of decisions in India as well as in England that the words "Just and equitable" are not to be read ejusdem generis with the preceding clauses. These words also occur in s. 44(g) of the Indian Partnership Act, 1932, as a ground for the dissolution of a partnership. It is unnecessary to refer to all the decisions on this aspect in view of the recent decision of the Supreme Court in *Hind Overseas Private Limited Vs. Raghunath Prasad Jhunhunwalla and Another*, in which it was observed that the principle of "just and equitable" clause baffled a precise definition and it must rest with the judicial discretion of the court depending upon the facts and circumstances of each case. It was also observed that the just and equitable clause was not to be read as ejusdem generis with the preceding five clauses. While the five earlier clauses prescribe definite conditions to be fulfilled for the one or the other to be attracted in a given case, the just and equitable clause left the entire matter to the wide and wise judicial discretion of the court. The only limitations were the force and content of the words themselves, "just and equitable". Since, however, the matter cannot be left so uncertain and indefinite, the courts in England for long had developed a rule derived from the history and extent of the equity jurisdiction itself and also born out of recognition of equitable considerations generally. This is particularly so as s. 35(6) of the Partnership Act, 1890(of UK) also contains, inter alia, an analogous provision for the dissolution of a partnership by the court. Section 44(g) of the Indian Partnership Act also contains the words "just and equitable". Under the "just and equitable" clause, the discretion of the court is wide and has been exercised on a variety of grounds. One of the grounds is that the substratum of the company has disappeared. This view was first enunciated in *In re Suburban Hotel Company* [1867] 2 Ch App 737. In that case, the objects of the company were very general, viz., to buy lands within 20 miles of the General Post Office to erect and work hotels, etc. The company had bought land in the neighbourhood of London and erected a hotel; it did not pay, but the majority of the shareholders wished to go on. Lord Cairns held that the court could not interfere; but he

observed (pp. 743, 750) :

"A case might occur where the court would be willing to give, under the Act, to a minority of shareholders the species of relief that sometimes is given in cases of ordinary partnership where it becomes impossible to carry on business any longer if it were shown to the court that the whole substratum of the partnership, the whole of the business which the company was incorporated to carry on, has become impossible, I apprehend that the court might, either under the Act of Parliament, or on general principles, order the company to be wound up."

13. It is now well settled that under the just and equitable clause, the court will order a winding-up if the substratum of the company is gone. But if the court has not found it easy to decide in a given case where the substratum of the company has disappeared or not, it has been held that the substratum of the company must be deemed to be gone when the subject-matter of the company has disappeared or the object for which it was incorporated had substantially failed or it was found impossible to carry on the business of the company except at a loss. But the result of an examination of all the cases would appear to indicate that each case has to be decided on its own facts. However, it may be useful to refer to some of the leading cases which were cited at the bar on either side in order to appreciate the scope of the "just and equitable" clause and consider the decisions laid down in different cases to decide whether the substratum has disappeared.

14. In *In re Haven Gold Mining Company* [1881] 20 Ch D 151, the company was established for working a gold mine in New Zealand. It turned out that the company had no title to the mine, and had no prospect of obtaining possession of it, except as to a small portion for a few months. A winding-up order was made by the court although there were general words in the memorandum of association enabling the company to purchase and work other mines in New Zealand, and a large majority of the shareholders wished to continue the company. Lindley L.J. observed (pp. 167, 168) :

"The company was formed for the purpose of acquiring and working this mine, and upon the representation that they could acquire this upon certain terms. Neither the company nor their officers have had possession of this alleged mine, and they could not work the mine in the manner in which it was intended. The minority, therefore, were entitled to say to the majority : "The undertaking in which we all embarked is proved to be impossible to carry out; we decline to enter into any further speculation, or to join you in trying to get this property from other people and upon other terms"."

15. In other words, the minority were entitled to say that they were insisting upon a winding-up.

16. In *In re German Date Coffee Company* [1882] 20 Ch D 169 the memorandum of association of a company stated that it was formed for working

a German patent which had been or would be granted for manufacturing coffee from dates, and also for obtaining other patents for improvements and extensions of the said inventions or any modifications thereof or incidental thereto; and to acquire or purchase any other inventions for similar purposes. The intended German patent was never granted, but the company purchased a Swedish patent, and also established works in Hamburg, where they made and sold coffee made from dates without a patent. It was held that the substratum of the company had failed, and it was impossible to carry out the objects for which it was formed and, therefore, it was "just and equitable that the company should be wound up" Lindley L.J. observed (p. 188) :

"In construing this memorandum of association, or any other memorandum of association in which there are general words, care must be taken to construe those general words so as not to make them a trap for unwary people. General words construed literally may mean anything; but they must be taken in connection with what are shown by the context to be the dominant or main objects. It will not do under general words to turn a company for manufacturing one thing into a company for importing something else, however general the words are."

17. He observed that the real object of the company was to manufacture a substitute for coffee in Germany under a patent, valid according to law. The words were general, but that was the thing for which the people subscribed their money. He, therefore, held that there was a case for winding-up, which had been made out.

18. In *In re Red Rock Gold Mining Company Ltd.* [1889] 61 LT 785, a company was formed with the object of purchasing and working a mine called Red Rock Mine. There were further objects mentioned in the memorandum, namely, to purchase and otherwise acquire mines and other properties in the colony of New South Wales and elsewhere, and generally to carry on the business of milling and mining in all its branches. It was found that the mine was a failure. The majority of the shareholders passed a resolution requesting the directors to use their best endeavours in obtaining some suitable property to invest the said assets. At the instance of the minority, the court directed a winding-up of the company holding that the main object of it had failed and though there were large subsidiary powers in the memorandum of association, there must be a winding-up order. It was observed :

"The principle of this court is, that where an association is formed for a particular purpose, it does not matter that it has large powers in addition to that particular purpose; if that particular purpose fails, any shareholder has a right to say, "put an end to it, pay me my money"."

19. In *Lawang Tahang Vs. Goenka Commercial Bank Ltd.*, a company was incorporated in 1945 with banking as its primary object. The company ceased to carry on its business. It was held that the company should be wound up both on

the ground that the substratum of the company was gone as well as on the broader ground that it was just and equitable that the company should not be allowed to continue, and the fact that some of the other clauses gave power to the company to carry on business, which non-banking companies could transact, did not affect the fact that the main and primary object for which the company was established was banking. Any business transacted by the company other than those included in the first three clauses, would not be ultra vires if they fell within any one of the other clauses, but with the disappearance of the banking business, the substratum of the company disappeared.

20. Again in *In Re: Hindusthan Co-operative Insurance Society Ltd.*, company was incorporated with the main object of carrying on all forms of insurance. On the promulgation of the Life Insurance Ordinance of 1956, the management of the life insurance business which was the company's only business became vested in the Central Govt. The company received a compensation of about rupees thirty-six lakhs. It was held that the principal object of the company was insurance and all others were ancillary to it. The principal business was the business which was actually carried on by the company. The only business carried on by the company was life insurance business which was, therefore, the principal business of the company. The principal business having gone, the very substratum of the company also disappeared and that alone would justify the winding up of the company under the just and equitable rule.

21. Relying on these decisions it was contended on behalf of the petitioners that the main and paramount object of the company was to carry on the business of banking and in view of the Acquisition Act, it can no longer carry on that business. The substratum of the company had disappeared and, therefore, an order for winding-up should be made. On the other hand Sri Anil Diwan, learned advocate for the company, submitted that on a proper construction of the memorandum of association, it cannot be said that the main object of the company was to carry on banking business and it was entitled to carry on several other businesses. He drew our attention, in particular, to several clauses like (5), (7), (8), (11), (12), (15), (16), (17) and (18), etc., and in particular to clause (19) of the memorandum of association which authorises the bank to acquire and hold or dispose of any interest in any railways, tramways, ships, canals, etc., and in addition any carrying, transporting, trading, industrial, agricultural, financial or manufacturing works, concerns, or business of any description and to carry on the same. He submitted that these businesses are independent of and unconnected with the banking business and, therefore, it cannot be said that the main object is to carry on the banking business. He also drew our attention to the following provisions :

"The objects specified in each paragraph of this clause shall, except where otherwise expressed in such paragraph, be in no-wise limited or restricted by reference to or inference from the terms of any other paragraph or the name of the company."

22. In view of the clear terms of this clause (which will hereafter be referred to as the "Independent Objects Clause"), he submitted that all the objects mentioned are independent of each other and the company could carry on all or any of the businesses referred to in the various clauses. He relied on the decision in *Cotman v. Brougham* [1918] AC 514 in which the House of Lords had to deal with the memorandum of association of a company containing a similar clause. It was held that the company was entitled to carry on all the businesses mentioned in all the clauses. The learned counsel for the company placed strong reliance on the decision in *Re Kitson & Co. Ltd.* [1946] 1 All ER 435. In that case, in the memorandum of association, the objects of the company were stated in wide terms to be as follows :

"(i) to acquire and take over as a going concern a business, carried on elsewhere, under the style of K. & Co.; (ii) to carry on the business of general engineering."

23. The business of K. & Company was sold and it was contended that as the substratum of the company had failed, it was just and equitable to wind it up. On a proper construction of the memorandum of association, it was held that the main and paramount object of the company was to carry on an engineering business of a general nature and the disposal of the business of K. & Company did not amount to a destruction of the substratum of the appellant-company.

24. In *A.P. Pothen Vs. Hindustan Trading Corporation Private Ltd. and Others*, it was held that even where the sole undertaking of a company had been actually sold, it could not be said that its substratum had disappeared so long as there was some other business which it could carry on, coming within the objects stated in its memorandum.

25. In *In Re: Bilasrai Juharmal and Another*, it was stated that the objects for which the company was established were to carry on the business and undertaking of an electric energy supply company in all its branches and departments including all industries primary or subsidiary to the said business and to work with the previous consent of the Government of the Central Provinces, the Akola Electric Licence granted by the Government of the Central Provinces and any other like electric licence which the company might be entitled to work thereafter and to carry on any other business (whether manufacturing or otherwise) which might seem to the company capable of being conveniently carried on in connection with the aforesaid business. It was also stated that without prejudice to the generality of the preceding objects, the company's objects would include the following, and twelve objects were included in this category. Since its incorporation the company was carrying on only the business of supplying electricity to the residents of Akola. On the termination of this licence the State Electricity Board took up this work. It was held on the construction of the objects clause of the memorandum that the working of the Akola electric licence was not the main or principal object of the company, and that the main or principal object was to carry on the business and undertaking of

electric supply.

26. In *Mohanlal Dhanjibhai Mehta Vs. Chunilal B. Mehta and Others*, , there is an elaborate discussion on the question as to when the substratum of a company is said to be gone in the case of a company having several objects and there is an independent objects clause in the memorandum of association. After referring to a number of decisions of the courts in England and in India, the learned judge observed, that the "main objects" rule of construction cannot apply to the case in question. The independent objects clause in the memorandum expressed clearly the intention that the "main objects" rule should not be applied and that the object set out in any particular paragraph of the memorandum, was not the main or primary object or that the other paragraphs must be read as ancillary to such main or primary objects. It must be held that the company was established as much for the objects set out in all the paragraphs as for the objects set out in any one or more of the paragraphs. All the objects were independent objects and the company might carry out any one or more of such objects to the exclusion of the rest. There was thus no main or primary object or, to put it differently, all the objects set out in the various paragraphs of clause 3 of the memorandum were main or primary objects.

27. *Mohan Lal and Another Vs. Grain Chamber Ltd., Muzaffarnagar and Others*, , the company was carrying on extensive business in "futures" in gur. The Supreme Court held that the company was formed not with the object of carrying on the business in "futures" in gur alone but in several other commodities as well. The substratum of the company is said to have disappeared when the object for which it was incorporated has substantially failed, or when it is impossible to carry on the business of the company except at a loss, or the existing and possible assets are insufficient to meet the existing liabilities. In the present case the object for which the company was incorporated has not substantially failed and it cannot be said that the company could not carry on its business except at a loss, nor that its asset were insufficient to meet its liabilities.

28. Relying on these decisions, it was contended that having regard to the independent objects clause in the memorandum of association, on a proper construction of the said memorandum, the company can carry on all the businesses mentioned in the various clauses and it cannot be said that the banking business alone was the main object of the company. It was, therefore, submitted that when the Acquisition Act was passed, it cannot be said that the substratum of the company had disappeared as it was open to the company to carry on the other businesses mentioned in the memorandum with the aid of the considerable amount of compensation received by the company.

29. In answer to this, it was pointed out by the learned counsel for the petitioners that even assuming that under the memorandum of association, the company was entitled to carry on several businesses, it was precluded from doing so by s. 6 of the Banking Regulation Act. Under s. 6(1) of the Act, in addition to the business of banking, a banking company is permitted to engage

in any one or more of the businesses referred to in cls. (a) to (o) of that sub-section. Section 6(2), however, prohibits the banking company from engaging in any form of business other than those referred to in sub-s. (1). It was, therefore, argued by the petitioners that this company which was a banking company could not carry on any business other than those referred to in s. 6(1) of the Act. Reference was also made to s. 5A(b) of the Act which provides that "any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be". It was, therefore, contended that all the several clauses which permitted the company to carry on the businesses other than the banking business and the businesses referred to in s. 6(1) of the Act, must be treated as void. It is, however, to be noted that this prohibition is only in relation to a banking company which is defined under s. 2(c) of the Act as a company which transacts the business of a bank in India. When the Acquisition Act was passed and the respondent-company was prohibited from doing the business of banking in India, it could not thereafter be treated to be a banking company within the meaning of the Banking Regulation Act on and from that date. We are of the view that neither s. 5A nor the prohibition contained in s. 6(2) of the Act, would apply to this company. We, therefore, agree with our learned brother, Chennakesav Reddi J., that after the Acquisition Act, there is nothing preventing the petitioner-company from carrying on the business other than the banking business.

30. But in our view, this does not solve the main question, viz., whether the substratum of the company has disappeared on the passing of the Acquisition Act. It is true that the memorandum of association contains several clauses authorising the company to carry on several businesses. It is also true that there is an independent objects clause. In our view, it does not, however, follow that the banking business is not the main object of the company. In this connection, one cannot overlook the fact that the company was named as The Andhra Bank Limited. Ever since its incorporation in 1923, it did not carry on any business other than banking. No doubt, after the Banking Regulation Act, it could not have carried on any other business except banking and the businesses referred to in s. 6(1) of the Act. But even until 1949, i.e., for about 26 years after its incorporation it did not carry on any business other than banking. We have no doubt that the main object of the company was to carry on the business of banking. In this connection a clear distinction has to be borne in mind between cases where the question arises whether an act of the board of directors is ultra vires the memorandum of association and the cases where the question arises whether the company has to be wound up because the substratum has gone. In the first case, as long as the memorandum of objects permits a company to carry on the business, the act complained of would not be ultra vires if it comes within the meaning of any one of its objects and it is immaterial whether any particular object is the main object or not. On the other hand in considering the question whether the substratum of the company has disappeared and it is just and

equitable to wind up the company, it is possible for the court to come to the conclusion that though the memorandum mentions several objects and the company is authorised to carry on several businesses, the main object is to carry on one or more businesses only. *Cotman v. Brougham* [1918] AC 514, this distinction is clearly pointed out by Lord Wrenbury at p. 522. He observed that :

"The purpose (of the memorandum of association) is two fold. The first is that the intending corporator who contemplates the investment of his capital shall know within what field it is to be put at risk. The second is that any one who shall deal with the company shall know without reasonable doubt whether the contractual relation into which he contemplates entering with the company is one relating to a matter within its corporate objects."

31. In that case, the question was whether it was *intra vires* of the company to enter into a particular transaction and it was observed having regard to the independent objects clause and clause 30 of the memorandum which dealt with multitude of object and powers that the transaction was *intra vires*. We are unable to find anything in the judgment which supports the contention that, if there are a number of objects mentioned in the memorandum of association, and there is an independent objects clause, that circumstance precludes the court from holding that one or other of its objects is the main object. While we agree with the ultimate conclusion in the decision in *Mohanlal Dhanjibhai Mehta v. Chunilal B. Mehta* [1962] 32 Comp Cas 970 (Guj), with great respect, we are unable to agree with the proposition laid down that when there is an independent objects clause, there is no main or primary object or to put it differently all the objects set out in the memorandum are main or primary objects. The learned counsel for the respondents also relied upon an unreported decision of a Division Bench of this court in O.S. Appeal No. 7/1970, dated January 28, 1974, (*Narasaraopet Electric Corporation Ltd. v. A. Ramachandran* [since reported in [1983] 53 Comp Cas 100 (infra) (Appendix)] reversing the decision of a single judge, which (latter) is reported in *A. Ramachandran and Another Vs. Narasaraopet Electric Corporation Ltd. and Another*, In that case the Narasaraopet Electric Corporation was acquired by the Government of Madras. The learned judges held that the memorandum of association catalogued as many as 32 items, one of which was to supply electrical energy to Narasaraopet which was taken over by the Government and it was open to the company to carry on other businesses in order to achieve one or more objects of the company. There is no proper discussion of the question as to whether the substratum of the company had disappeared as the main object could not be carried on in view of the acquisition of the undertaking by the Government.

32. In *Gore-Browne on Companies*, 42nd Edn., at p. 49, it is stated as follows :

"Moreover, a winding-up order may be made even though the new activity is technically within the scope of an express power. Even if the memorandum provides that each of the powers conferred by the objects clause shall be a main object, the court may still find that the company has abandoned the real

purposes for which it was founded."

33. In Gower's Principles of Modern Company Law, 4th Edn., at p. 663, it is stated as follows :

"Where, for example, a company has sold its business or divested itself of its major assets, then even though the majority may wish to keep the company in existence and invest the proceeds under some valid power to do so, a dissenting shareholder may be entitled to say : "put an end to it, pay me my money"."

34. In support of this, reference is made to *Re Red Rock Gold Mining Co. Ltd.* [1888] 61 LT 785 and *In re Haven Gold Mining Co.* [1881] 20 Ch D 151 (CA), etc., which have already been referred to by us.

35. For the above reasons, we are of the view, as the main object of the company was banking business and as it is no longer entitled to carry on the said business in view of the Acquisition Act, it must be held that the substratum has disappeared even though, according to the memorandum of association construed in the light of the independent objects clause, it was authorised to carry on other businesses also.

36. Even assuming that we are not right in our view that the main object of the company is banking business and that as it is not able to carry on that object in view of the Acquisition Act, the substratum of the company must be held to have disappeared, we are of the view that having regard to the facts and circumstances of the case, it is just and equitable to wind up the company within the meaning of s. 433(f) of the Companies Act. While considering the just and equitable clause, it has no doubt been settled in a series of decisions that if the substratum of the company is gone, it would be just and equitable to wind up the company. But it does not follow that that is the only ground on which the court can come to the conclusion that it is just and equitable that the company should be wound up. The expression "just and equitable" is of the widest import and this clause has been used in a wide variety of situations. In the leading case of *Loch v. John Blackwood Ltd.* [1924] AC 783 , Lord Shaw of Dunfermline quoted with approval the following observations of Justice Neville, in *In re Bleriot Manufacturing Aircraft company* [1916] 32 TLR 253, while making an order for winding up on the ground that the substratum of the company was gone (p. 701 of [1924] AC) :

"The words, "just and equitable" are words of the widest significance and do not limit the jurisdiction of the court to any case. It is a question of fact, and each case must depend on its own circumstances"

37. In *Davis & Co. Ltd. v. Brunswick (Australia) Ltd.* [1936] 1 All ER 299; [1936] 6 Comp Cas 227 (PC) it was observed by Lord Maugham at p. 309 after referring to *Loch v. John Blackwood Ltd.* [1924] AC 783 (see also p. 239 of 6 Comp Cas) :

"Nor, on the other hand, can any general rule be laid down as to the nature of the circumstances which have to be borne in mind in considering whether the

case comes within the phrase."

38. In the recent decision of the House of Lords in *Ebrahimi v. Westbourne Galleries Ltd.* [1973] AC 360, Lord Wilberforce observed (p. 379) :

"The foundation of it all lies in the words, "just and equitable" and if there is any respect in which some of the cases may be open to criticism it is that the courts may sometimes have been too timorous in giving them full force."

39. In *Gore-Browne on Companies*, 42nd Edn., at p. 905, dealing with the just and equitable clause, it is stated as follows :

"The power of the court to wind up a company whenever it considers that it is just and equitable to do so is a power not restricted to grounds of the same class as those specified in the preceding paragraphs of the section. In one case (*Re Yenidje Tobacco Co.* [1916] 2 Ch 426 (CA)) Cozens-Hardy M.R., said : "It has been urged upon us that although it is admitted that the "just and equitable" clause is not to be limited to cases ejusdem generis, it has nevertheless been held, according to the authorities, not to apply except where the substratum of the company has gone or where there is a complete deadlock. Those are two instances which are given, but I should be very sorry, so far as my individual opinion goes, to hold that they are strictly the limits of the "just and equitable" clause as found in the Companies Act."

40. This view has been affirmed by the Judicial Committee of the Privy Council in *Loch v. John Blackwood Ltd.* [1924] AC 783 . It is clear, therefore, from the authorities above cited that the scope of the just and equitable clause is not confined merely to a case where the substratum of the company is gone. Even if the substratum has not disappeared, if circumstances are such that the court comes to the conclusion that it is just and equitable to wind up the company, it may make an order to that effect. In this case, *Andhra Bank Ltd.*, was incorporated in 1923. It has been carrying on only banking business and other business permitted under s. 6(1) of the Banking Regulation Act, 1949, till today. Under the Acquisition Act, substantial compensation of 610 lakhs has been paid to the company. As may as 500 shareholders holding shares of the value of Rs. 13 lakhs are insisting that they should be paid the compensation amount which would roughly work up to Rs. 610 per share of Rs. 100 and they are content with that amount. It is no doubt true that they constitute a minority in terms of the value of the shares, but their number is fairly substantial and even the shareholding is not insignificant. It is not just or fair that, against their wishes amounts they would like to have in cash should also be utilised contrary to their wishes by the majority shareholders for the purpose of forming a new company. Even today, it has not been disclosed by the majority shareholders as to the exact nature of the business that is going to be carried on by the new company. The amendment proposed to the memorandum of association and articles of association referred to several objects. It is rightly pointed out by the petitioners that when persons became owners of the shares of the Andhra Bank Ltd., either

by purchase or otherwise, they did so because the company was carrying on the business of banking. It cannot be doubted that having regard to the various safeguards imposed by the Acts and Regulations dealing with banking business like the Banking Companies Act, Banking Regulations, etc., and the directions given by the Reserve Bank from time to time, any shareholder would consider it safe to invest in a company dealing with banking business. Such safeguards will not be available with regard to any other form of business that the company intends to carry on with the compensation amount. The majority shareholders are at perfect liberty when the company is wound up to carry on such business as they like with the amount of compensation which falls to their share. But to us it appears wholly unfair to compel the minority shareholders also, who, as we said, are not an insignificant minority, to contribute their share of compensation in the starting of a new venture which is completely different from the business which the company has been carrying on all these years and for which there are no adequate safeguards as in the case of banking business.

41. The petitioners have also sought to let in some evidence to show that this is an attempt by Sri K. L. N. Prasad, who, between himself and the members of his family, holds a large bulk of the shares to utilise the compensation in such manner as to benefit himself and his group to the detriment of the other shareholders by forming another company. Instances have been cited with reference to his conduct regarding the Hindustan Ideal Insurance Company which was taken over and the compensation was utilised for starting another company called Lakshmi Porcelain company which is doing very badly. Reference is also made to his dealings with regard to Andhra Printers Ltd., Sahayak Finance Company, etc. We do not consider it necessary or desirable to go into these questions, as we consider it sufficient to base our decision on the fact that it is not fair to permit the majority shareholders to launch upon an entirely new business or set up businesses, without safeguards, with the aid of compensation money that has been paid by the Government. In these circumstances, we consider that, apart from any question of the substratum of the company disappearing, it is also just and equitable, having regard to the circumstances of the case, that there should be an order of winding-up of the company.

42. It was submitted that an order for winding-up is an extreme step and ought not to be resorted to and the court should explore the possibility of safeguarding the interests of the minority shareholders without an order for winding up. The learned counsel for the petitioners drew our attention to the fact that a number of banks had been nationalised earlier and in all cases where they were not wound up, the minority shareholders were paid roughly about 80 per cent of the break up value. He submitted that even in this case the minority shareholders would be satisfied if they are paid a reasonable amount from the compensation in respect of their share. The learned counsel for the company, however, did not inform us of the company's acceptance to such a course. On the other hand, he submitted that this will involve a reduction of share capital and further steps under the Companies Act to get the share capital reduced. In the circumstances,

we are constrained to direct the winding-up of the company.

43. We now turn to Company Petition No. 12 of 1980 under ss. 397 and 398 of the Companies Act. Having regard to our conclusion that it is just and equitable to pass an order of winding-up, it is really unnecessary to consider Application No. 12 of 1980 in detail. However, as elaborate arguments have been addressed on both sides, we propose to deal with them briefly.

44. At the outset, we may point out that the application under s. 397 deserves to be dismissed to limine for the following reason. Under s. 397(2), the court may make such an order as it thinks fit, if it is of the opinion :

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

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

45. Thus, it is clear from s. 397(2)(b) that the court must, firstly, come to the conclusion that the facts would justify the making of a winding-up order under the just and equitable clause and, secondly, the court must also be of the opinion that to wind up the company would unfairly prejudice the applicant-member or members. In this case no doubt we have come to the conclusion that it is just and equitable to wind up the company but even according to the petitioners a winding-up of the company is in their interest. It is not their case that a winding-up would unfairly prejudice them. Their case is that it is much more advantageous to them to get the compensation amount for their shares. The second condition laid down in s. 397(2) is not satisfied. Therefore, it is not open to the petitioners to pray for an order under s. 397.

46. Further, even on merits we do not think a case is made out for making an order under either s. 397 or s. 398 of the Companies Act. Before dealing with the merits, we may consider the objection as to the maintainability of the petition. It is contended on behalf of the company that under s. 399(3) of the Act, it is provided that where any members of a company are entitled to make an application by virtue of sub-s. (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

47. The application is filed by two shareholders, the first petitioner holding 164 shares and the second petitioner 90 shares. In the schedule to the petition a list of members of the company who have given letters of consent to the petitioners for filing the petition under ss. 397 and 398 is furnished. The consent letter is in the following terms :

"I s/o w/o resident of district of do hereby give my consent to the PRESENTATION OF A COMPANY petition u/s 397 and section 398

of the Companies Act, 1956, by Nagavarapu Krishna Prasad, s/o Chenaiah and Noone Panduranga Vittal Mohan Kumar, s/o Venkataswamy, residents of Chirala of Prakasam District, on my behalf and for my behalf.

I am a shareholder in the Andhra Bank Limited and hold shares my share certificate No./Share Nos./Ledger Folio No./being signed this day of 1980 at after having got it read over and interpreted in Telugu.

WITNESS

Signature of shareholder."

48. It is contended on behalf of the company that this consent is a blanket consent. The shareholders did not give consent for any particular relief based on any particular allegation. They were not aware of the nature of the action to be taken by the petitioners. Hence, it is not a valid consent within the meaning of s. 399(3). Reliance was placed on the decision of the Madras High Court in *M. C. Duraiswamy v. Sakthi Sugars Ltd.* [1980] 50 Comp Cas 154, where it was held that there cannot be a blanket consent and the consent must be to the finding of a particular petition with a particular allegation for a particular relief. It is significant to note that this contention was not raised in the counter-affidavit filed in the first instance but was raised in an additional counter-affidavit. The shareholders who gave evidence were not cross-examined on this aspect. Even R.W. 1 did not depose that the consent was no consent under law. We, therefore, agree with our learned brother, Chennakesav Reddi J., that in the absence of any evidence, it cannot be said that the consent was a blanket consent and did not satisfy the requirements of s. 399(3) and, therefore, the petition is not maintainable.

49. We now proceed to deal with the merits of the application under s. 397 of the Act. In order that the said provision is applicable, the court must be of the opinion that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members.

50. In *Shanti Prasad Jain v. Kalinga Tubes Ltd.* [1965] 35 Comp Cas 351, the Supreme Court observed that :

"It must be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of the petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of a company's affairs, and such oppression must involve at

least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder."

51. In the light of these principles, it has to be considered whether a case has been made out for an order being made under s. 397 of the Companies Act. In the petition, it is alleged that the board of directors had applied for payment of cash of seventy-five lakhs of rupees as interim payment under s. 6(6) and to receive the balance in long term securities. The board of directors ought to have called for a general body meeting and placed before the shareholders various options open to the company. In view of the rising inflationary tendencies the board of directors ought to have opted for cash payments instead of locking up the compensation in long term govt. securities. Thus they had acted contrary to the interests of the shareholders. The petitioners apprehend that the board of directors may indulge in financial jugglery so as to damage the interests of the shareholders. Secondly it is stated that the entire proceedings of the general body meeting held on 28th and 29th August, 1980 were totally illegal and void for the reasons mentioned in para. 16 of the petition. Further, during the course of the general body meeting, it had been amply demonstrated that the minority shareholders had been subjected to harsh, burdensome and wrongful exercise of authority. Whenever vote was taken by show of hands, every one of the resolutions was defeated, except item No. 9 in the notice dated 24th July, 1980. This was circumvented by asking for a poll in getting the resolutions passed. The petitioners further give various instances to show that Sri K. L. N. Prasad and his coterie consisting of his close relatives and nominees are attempting to gain control over the company to be formed, by giving instances of his past conduct. It is stated that when Hindustan Ideal Insurance Company Ltd. was taken over under the General Insurance Business Nationalisation Act, he managed to get an authorisation from the shareholders to receive the compensation amount, and though he received it very early, it was only on the 21st May, 1980, that the shareholders were informed that M/s. Lakshmi Porcelain Ltd. was incorporated and the shareholders of the Hindustan Ideal Insurance Company Ltd. were allotted new shares in the new company. For nearly eight years, the shareholders did not know what happened to the compensation amount. In another company called the Andhra Printers Ltd. he and his associates are having control. For the past 20 years, no dividend was declared and the company is perpetually running at a loss. In regard to another company called, The Sahayak Finance and Investment Corporation Ltd., the shares of the face value of Rs. 10 are quoted at Rs. 2. It is, therefore, stated that it is apprehended that the ultimate transformation of the present company will closely resemble the other companies in which Shri K. L. N. Prasad and his group are having entire control.

52. From the pleadings, it is clear that there is no allegation of any mismanagement or oppression of the company at any time during the period prior to the taking over of the company under the Acquisition Act. The bank has been doing extraordinarily well and the very fact that a compensation of 610 lakhs of rupees has been awarded to it and the case of the petitioners is that

each shareholder may ultimately get a sum of about Rs. 600 as against a share value of Rs. 100, shows that the bank was in good shape.

53. The first complaint is that the board of directors acted to the prejudice of the company in opting for cash only to the extent of seventy-five lakhs of rupees and the balance in long term securities. It has, however, been brought to our notice that all the other banks which were nationalised previously have exercised a similar option. There is also no force in the contention that the board of directors ought not to have exercised the option but ought to have placed it before the general body meeting. Under art. 117 of articles of association, the entire management is vested in the directors. Apart from this, in the memorandum of procedure to be followed in connection with the payment of compensation amount, it is clearly laid down in para. 2 that, the decision regarding the exercise of the option has to be taken by the board of directors, who should pass a resolution in Form E annexed or in a form as near thereto as possible for that purpose. It is not denied that such a resolution was passed. Further it is also brought to our notice that the company did not suffer any loss by opting for the long term securities as they were sold for a very substantial amount. We do not, therefore, consider that there is any substance in the complaint regarding the exercise of the option.

54. In regard to the invalidity of the proceedings of the general body meeting held on 28th/29th August, 1980, even assuming for a moment that the resolutions were not valid for the reasons stated in the petition, we do not consider that such a conduct on the part of the directors would constitute oppression within the meaning of s. 397. It was, however, argued that the way in which the meeting was conducted indicated that Sri K. L. N. Prasad and his group had absolute control and would continue to exercise the same even in regard to the company which was to be proposed to be formed. In our view, the oppression referred to must be with reference to the company with which we are concerned, viz., the Andhra Bank. A mere apprehension that the minorities will be oppressed in the conduct of a company that is to be formed in future, cannot be a sufficient ground for invoking s. 397 of the Companies Act. It was pointed out that Sri K. L. N. Prasad and his group began to acquire large number of shares in order to gain control and they increased their holdings suddenly from two lakhs of rupees to twelve lakhs of rupees. Even assuming that this is true, it has been repeatedly held that the mere fact that the minority shareholders are being outvoted or that there is an attempt to acquire control of the company's business by purchasing large blocks of shares, will not constitute acts of oppression, vide for example, *Mohta Bros. (P.) Ltd. and Others Vs. Calcutta Landing and Shipping Co. Ltd. and Others*, and *Babulal Choukhani Vs. Western India Theatres Ltd. and Another*, .

55. It was also argued that there was a violation of s. 173 of the Companies Act which required that in the case of a special resolution, there shall be annexed to the notice of meeting a statement setting out all material facts concerning each

such item of business including in particular the nature of the concern or interest if any therein of every director and the manager if any. It was submitted that no particulars at all were given as to the nature of the business that was proposed to be carried on by the new company to be formed. It was merely stated that as the company cannot engage itself in banking activities, the expression "bank" should be deleted from its name and the name should be changed to Lakshmi Financial Industrial Corporation. It was also stated that the board of directors were examining various alternatives for profitably employing the funds of the company. No concrete scheme was put before the shareholders and hence the material facts were not placed to enable the shareholders to come to a decision. Reference was made to *Sheth Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd.* [1964] 34 Comp Cas 777 (Guj), in which it was observed that the object of enacting s. 173 is to secure that all facts which have a bearing on the question on which the shareholders have to form their judgment are brought to the notice of the shareholders so that the shareholders can exercise an intelligent judgment. It was also observed that s. 173 is mandatory and not directory and any disobedience to its requirement must lead to the nullification of the action taken. As we have already pointed out, in dealing with the question relating to oppression, it is not merely sufficient to point out that any resolution passed at a meeting was illegal because of the non-compliance with the provisions of the Companies Act. In such a case, there are adequate remedies available.

56. Lastly it is contended that Sri K. L. N. Prasad and his group have assumed complete control of other companies and have acted to the prejudice of the shareholders of that company. It is stated that when the Hindustan Ideal Insurance Company was taken over, he obtained an authorisation from the shareholders to receive compensation and after having received it, took nearly eight years to form a company called Lakshmi Porcelain Ltd., and allotted shares to the shareholders of Hindustan Ideal Insurance Company in the latter company. Reference was also made to several acts in connection with Andhra Printers Ltd. to show that he was exercising control over the company and acting to the detriment of the shareholders. It was sought to be elicited in his cross-examination that he had sites belonging to the company sold at a low value to his wife. Again it is said that in regard to Sahayak Finance and Investment Corporation, the company's shares of the value of Rs. 10 were selling at Rs. 2 in the open market. But our learned brother has held that there is no acceptable evidence to establish the involvement of Sri K. L. N. Prasad or any of his family members in the management of Sahayak Finance and Investment Corporation. Regarding his conduct with regard to Andhra Printers Ltd., and Lakshmi Porcelain Ltd., we do not think that they are of any relevance in considering whether there is oppression of the minority shareholders so far as the Andhra Bank is concerned. This court in this application, cannot be converted into a forum for enquiring into the affairs of other companies. Our learned brother has given elaborate reasons for coming to the conclusion that no case is made out for

taking any action under s. 397 of the Act and we agree with his reasons and conclusion.

57. It is next argued that there has been mismanagement in the conduct of the affairs of the company which would justify action being taken by the court under s. 398 of the Companies Act. Again, we have to point out that there is no allegation of mismanagement up to the date of taking over of the bank under the Acquisition Act. The various other acts referred to in the petition, do not, in our opinion, amount to mismanagement of the company with which we are concerned though even assuming that there might have been some cause for complaint in regard to the conduct of the affairs of other companies regarding which it is not necessary or desirable for us to express any opinion in this appeal. For all the reasons above stated, O.S.A. No. 6/1981 has to be dismissed and it is accordingly dismissed. No costs.

58. O.S.A. No. 5/1981, is allowed without costs and C.P. No. 10/1980, is ordered, and there shall be a direction that the company should be wound up.

O.S.A. No. 5 of 1981 :

59. An oral application for leave to appeal to the Supreme Court is prayed for against the judgment in O.S.A. No. 5 of 1981, allowing the said appeal.

60. We consider this is a fit case for granting leave to appeal as the following substantial questions of law of general importance are involved which require consideration by the Supreme Court :

"(1) Whether the main object of the company is banking business and whether in view of the fact that it is no longer able to carry on the said object can it be said that the substratum of the company has disappeared in order to justify winding-up order u/s 433(f) of the Companies Act ?

(2) Even if the substratum cannot be said to have disappeared whether it is otherwise just and equitable to wind up the company u/s 433(f) of the Companies Act ?"

61. An oral application for suspension of the operation of the judgment is made on behalf of the respondent.

62. We consider it, in the circumstances, just and proper that there should be a suspension of the operation of the judgment for a period of three months in order to enable the respondent to obtain suitable orders from the Supreme Court. Ordered accordingly.