
(1977) 01 OHC CK 0010
In the Orissa High Court
Case No : Company Act Case No. 5 of 1975

N.R. Murty

APPELLANT

Vs

Industrial Development Corporation of Orissa Ltd. and Others

RESPONDENT

Date of Decision : 07-01-1977

Acts Referred:

Companies Act, 1956 — Section 284, 284(4), 397, 397(1), 398

Citation : (1977) 47 CompCas 389

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : R. Mohanty, R.C. Patnaik, S.S. Das, K. Patnaik, C.R. Misra and A.K. Tripathy, for the Appellant; G. Rath, R.K. Rath, G.S. Rath, P. Palit, J. Patnaik, S. Gajendra, K.C. Jagadeb Ray, S.C. Mohapatra, H.G. Panda, B.K. Mohanti, R.K. Kar and Meera Das, for the Respondent

Judgement

R.N. Misra, J.—This is an application under Sections 397 and 398 of the Companies Act of 1956 (hereinafter referred to as "the Act") by a shareholder of a public limited company--M/s. East Coast Breweries & Distilleries Ltd.--having its registered office at Cuttack.

2. The short facts relevant for the adjudication of the dispute as pleaded are these: One Sri Nitya Kishore Mohapatra (hereafter referred to as " the promoter " or " the managing director " as required in the context) conceived of a project for setting up of a brewery and distillery as early as 1967. A feasibility report of the project was prepared by Messrs. Engineers (India) Ltd.--a Government of India undertaking--and in due course a public limited company by name East Coast Breweries & Distilleries Ltd. (opposite party No. 2 herein) was proposed to be formed. The Government of India issued the Letter of Intent on February 11, 1969. The company was incorporated by the Registrar of Companies, Orissa, on 15th of April, 1969. The promoter had in the meantime purchased certain lands off the Paradeep Port with his own funds for the purpose of setting up the factory. The company was to have a share capital of Rs. 75 lakhs divided into,

seven lakh fifty thousand equity shares of ten rupees each. The promoter, his friends and relations purchased shares of the face value of seven and a half lakhs which were fully paid up. He started contacting financial institutions like the United Commercial Bank (opposite party No. 3--hereafter referred to as " the UCO Bank ") and the Industrial Development Bank of India (opposite party No. 4-- hereafter referred to as "the IDBI") and was assured of their financial participation in the project. He also turned to the State Government of Orissa and the Industrial Development Corporation of Orissa Ltd. (opposite party No. 1-- hereafter referred to as " the Corporation"). On May 13, 1969, the company requested the Corporation to underwrite shares. On June 19, 1969, the Corporation informed the company that the State Government was prepared to participate in the equity. In the course of negotiation, on February 7, 1970, the company intimated the Corporation of its willingness to buy back the shares within nine years of the company going into production at the rate of Rs. 7 lakhs per year and requested the Corporation to underwrite. On August 10, 1970, the company requested for early completion of steps for underwriting on the ground that others were coming into the field of production and the company would have to face competition adversely in the market if there was further delay in the setting up of the factory and commencement of production. In August, 1970, the company impressed again upon the Corporation the need for quickly finalising matters, but, in October, 1970, the Corporation asked for a fresh feasibility report from Messrs, Engineers (India) Ltd. and early in January, 1971, the said report came. On February 17, 1971, the Corporation decided to underwrite shares to the tune of rupees twenty-four lakhs, but it is claimed that this decision was never communicated to the company. The company approached the State Government for State aid under the Bihar and Orissa State Aid to Industries Act of 1923 by application dated March 23, 1971, On 27th April, 1971, the State Government informed the Director of Industries of its decision to participate in the shares of the company and indicated the terms on which such participation was envisaged. On August 19, 1971, the Corporation's board of directors agreed to underwrite shares of the face value of Rs. 24 lakhs and on December 28, 1971, the State Government agreed to invest Rs. 38 lakhs as indicated in their earlier letter to the Director of Industries ; but Rs. 33 lakhs was to be under the Bihar and Orissa State Aid to Industries Act and Rs. 5 lakhs was to be processed through the Corporation. On January 4, 1972, the Corporation informed the company of its agreement to participate in the equity to the tune of the aforesaid Rs. 5 lakhs. On April 3, 1972, the underwriting agreement was concluded by offer and acceptance of the terms between the Corporation and the company. During the months of May and June, 1972, the public issues were made. It had been expressly understood and agreed to by and between the parties that in the event of the failure of the public to subscribe to the issue, the Corporation as underwriter would hold the shares as trustees and transfer the same to the promoter, his associates, friends and nominees within a period of five years from the date the factory goes into production. Due to adverse financial circumstances and slump in the share market when the public issue was made, public

subscription was not up to expectation and the Corporation came to hold the equity shares worth rupees twenty-four lakhs as underwriter. Under the underwriting contract, the Corporation was obliged to pay the full value of the shares within the time stipulated. The Corporation, however, committed long defaults in the payments of the calls.

3. The estimated cost of the project had been put at Rs. 180 lakhs out of which it had been envisaged that Rs. 105 lakhs would be secured by loans. The IDBI agreed by their Letter of Intent dated November 2, 1973, to grant a term loan of Rs. 55 lakhs, the rate of interest being two per cent, above their normal lending rate per annum. The UCO Bank agreed to advance a term loan of Rs. 50 lakhs and a working capital finance to the tune of Rs. 16.4 lakhs on condition that the company obtains the term loan from the IDBI subject to the execution of a personal guarantee by the promoter. A sum of Rs. 50 lakhs has already been borrowed from the UCO Bank and the promoter has also offered personal guarantee for it. The company by resolution dated 10th of November, 1973, accepted the terms and conditions of the loan from the IDBI. The Corporation, however, delayed the matter and failed to execute the undertaking as a result of which the term loan from the IDBI was not available. The net effect was that the completion of the project was grossly delayed mainly for want of funds.

4. The loan from the IDBI was to carry interest of 12 per cent, per annum while the rate of interest in respect of the loan from the UCO Bank was 18 per cent, per annum. The loan from the UCO Bank, therefore, worked out considerable financial strain on the company. On account of the term loan from the IDBI not being available, the company was again forced to borrow a further bridging loan of Rs. 25 lakhs from the UCO Bank till the loan from the IDBI was available. The bridging loan also carried a higher rate of interest. The promoter arranged loans from Messrs. Vijaya Bank Ltd. on a deferred payment guarantee basis for purchase of plant and machinery, but as under the existing agreement of the company with the IDBI such loan was to be obtained upon prior approval of the IDBI, the promoter pressed upon the Corporation to complete the agreement with the IDBI and obtain IDBI's consent for the arrangement with the Vijaya Bank Ltd. The Corporation paid no heed to such requests and, to meet the financial stringency, arranged a loan of Rs. 18 lakhs to the company as a short-term loan at 18 per cent. interest per annum.

5. The Corporation was not in a position to pay the calls and the promoter called upon it that some reputed commercial houses of Calcutta and Bombay who were willing to take over the entire shares may be offered the same. The State Government informed the company that the financial position of the Corporation was in a bad shape and it would be a relief to the Corporation if the shares were taken over by some parties. In April, 1973, the Corporation wrote to the company drawing its attention to the Government communication and requested that negotiations may be carried on for disposal of the shares held by it. The Corporation maintained that its object was to promote industries by giving

technical and financial assistance and not to take over shares and hold them. In January, 1974, the company informed the Corporation that three persons were willing to buy the shares. The Corporation did not, however, communicate its willingness and consent for more than ten months and in the meantime the Government of India prohibited advances against shares by banks as a consequence of which the intending buyers receded from effecting the proposed arrangement.

6. In the report of the statutory auditors as incorporated in the annual report of the company for the year 1974, the following note appeared :

".....It is observed during audit that due to non-furnishing of guarantee by the Industrial Development Corporation of Orissa Ltd. to the Industrial Development Bank of India who are to finance the project the company could not obtain the loan from them in time. This unnecessary delay has boosted up the cost of the project in the form of pre-production expenses and interest on term loan availed from United Commercial Bank."

7. On 14th of April, 1974, the term of office of the managing director was due to expire. , The company's board of directors at its meeting on 13th of March, 1974, resolved:

" Having regard to the valuable services rendered by Mr. Mohapatra (promoter) during the past years as managing director of the company the board considered that reappointment of Mr. Mohapatra as managing director of the company, with effect from 15th April, 1974, would be to the interest of the company, specially for the reasons that by virtue of his long association with the affairs of the company, Mr. Mohapatra became well acquainted with both technical and managerial problems relating to the growth and development of the business of the company"

and the promoter was appointed as managing director for a further term of five years from April 15, 1974. The board's resolution was approved by the general body of the company on August 31, 1974, and a formal agreement was executed between the company and the managing director.

8. The Corporation once in May, 1974, and again in February, 1975, advertised in the newspapers that it desired to dispose of its shares in the company, in breach of the understanding as underwriter.

9. While matters were going this way, events appeared to take a sudden turn when on 9th of July, 1975, the secretary of the Corporation wrote to the managing director to convene an emergent meeting of the company's board of directors for the purpose of fixation of an extraordinary general meeting to take a decision on the following matters :

(i) to discuss the issue arising out of making alternate arrangement for the post of managing director of the company as required u/s 284 ;

- (ii) to shift the registered office of the company from Cuttack to Bhubaneswar ;
- (iii) to alter the articles of association u/s 31 of the Companies Act in the matter of appointment of managing director ; and
- (iv) to delegate the power including the signing of cheques etcetera in favour of the chairman of the company.

10. On 13th of July, 1975, Shri S. N. Das Mohapatra, nominee of the Corporation in the board of directors and chairman of the company, wrote to the managing director thus :

" I would request you to please refrain yourself from taking any decision and issuing any instructions or incur any expenditure in respect of the brewery with immediate effect.

I will take necessary steps on all matters relating to the brewery.

I hope, you will find the same in order.

As regards your points, I will be writing to the Government soon and on receipt of the decision, I will communicate to you.

In the meantime, you may, however, call a meeting of the board of directors."

11. On 28th of August, 1975, one Shri N. Padhi, a nominee-director of the Corporation on the company's board, purported to convene the 40th meeting of the company's board of directors to--

" Discuss the notice given by I.D.C. of Orissa Ltd. (Corporation) to fix up a date and call for an extraordinary general meeting of the company for passing a resolution in the said extraordinary general meeting u/s 284 of the Companies Act, 1956."

12. This notice was cancelled on 30th of August, 1975, and the same Shri Padhi on 18th of September, 1975, purported to call another meeting of the board of directors to discuss the old term as also the proposal for delegation of powers in favour of the chairman of the board of directors of the company in the matter of day-to-day management. The meeting was convened on 22nd September, 1975. Two out-station directors objected on the ground of shortness of notice, but the meeting was held contrary to the articles of association. Shri Padhi gave notice on November 19, 1975, calling the 41st meeting of the board of directors and the meeting was scheduled to be held on 21st of November. Notice of the meeting had not been served on all the directors. On November 25, 1975, the minutes of the said purported meeting were circulated wherein it had been stated :

" The very character and position of the company has changed because of heavy investment made by the I.D.C. and the State Government. In the larger interest of the concern and in the larger interest of two major shareholders, a decision has been taken to restructure at the corporate level of the company "

13. It was further stated in the minutes with reference to the requirement of prior permission of the IDBI for change of managing director as contended by the minority directors :

" In regard to the permission from the IDBI, he (chairman) said that this point has been taken up with the IDBI and there will be no difficulty in getting the permission "

14. It was further noted in the minutes:

" As regards fixing up a date for the general body meeting and issue of notice, this may be kept pending for seven days, up to 28th instant, by which time the question of Mr. Mohapatra's resignation or his removal is finalised "

Notice" was then issued calling the extraordinary general meeting of the company at its registered office on December 26, 1975, at 3 p.m. to transact the business of restructuring the company by removing the managing director. This application was filed on December 15, 1975, asking for a direction to the Corporation to conclude the formal agreement and give necessary undertaking to the IDBI ; to quash the resolutions purported to have been passed at the 40th and 41st meetings of the board of directors in connection with the removal of the managing director and withdrawal of his powers ; to restrain the company and its directors from holding the proposed extraordinary general meeting fixed for December 26, 1975, and/ or in the alternative to direct the company to buy the shares held by the petitioner, his friends and associates at par with interest from the date of investment till payment and for several interim directions.

15. On 24th of December, 1975, after hearing both sides, this court permitted the company to hold the extraordinary general meeting as scheduled, but any decision taken in such meeting was not to be implemented without leave of the court.

16. The Corporation, which is virtually the main and only contestant in the proceeding, filed its counter. The company also filed a counter separately. The UCO Bank and the IDBI in spite of notice did not enter contest. Both parties without any restriction kept on filing affidavits and counter-affidavits and when it was found that unless their conduct was regulated, the proceeding could not be taken up for hearing, a direction was given fixing a date beyond which no further papers were to be received. The Corporation denied most of the allegations referred to above and supported its stand that the company required a restructuring. It was pleaded that allegations did not make out a case that the affairs of the company are being managed in a way which calls for winding up of the company on just and equitable grounds and when no case for winding up on just and equitable grounds had been made out, the application was liable to be rejected in limine. It was next contended that " oppression " referred to in Section 397 must relate to the manner in which the affairs of the company were being conducted and the conduct complained of must be such as to oppress the

minority of the shareholders qua shareholders. Even assuming but not admitting that the decision of the board in the matter of removing the managing director or conferment of financial powers on the chairman of the company who was one of the members of the board of directors was illegal or erroneous, the same would not constitute any oppression of the minority shareholders as proprietors of their shares. The removal of the managing director in breach of the contract may amount to an actionable wrong but that decision did not interfere with the managing director's right qua shareholder. The proposal for restructuring the company as alleged in the winding-up application related to only a change in the managing directorship. There was no proposal even to remove him from his membership of the board of directors. Such a matter did not come within the purview of sections 397 and 398 of the Act. The State of Orissa was a necessary party to the application and in the absence of and behind the State, the matter cannot be appropriately adjudicated. In paragraph 35 of the counter-affidavit, it was alleged :

"...The petitioner's alternative prayer that the shares held by the petitioner and his friends and associates be purchased at par with interest is most unreasonable and unfair. The IDC and the State Government are agreeable to purchase the shares held by Shri N. K. Mohapatra, Shri Murty and their friends at their true value and have no objection if the hon'ble court issues necessary direction to determine the value of the shares as on date and on such determination this opposite party is agreeable to take necessary steps for purchase of such shares. The claim for interest is most untenable as the company never obtained any loan from the shareholders. The claim for payment of damages to Shri N. K. Mohapatra is outside the scope of the application under sections 397 and 398 of the Companies Act, 1956. Since the managing director, Shri Mohapatra, is agreeable to retire from managing directorship, provided the damages pursuant to the agreement are paid to him, it is open to him to pursue his remedies against the company for breach of the agreement in appropriate court of law and not in this proceeding..."

17. The company had initially appeared through the managing director, but an application was made by the chairman of the company to ignore that appearance and in a counter, the stand of the Corporation was supported.

18. In answer to the notice issued to the Central Government, the Registrar of Companies informed the Registrar of the court by a letter dated March 30, 1976, that it had been decided that no representation would be made to the court in this proceeding.

19. After the hearing of the application had been almost complete, it was found out that the notice had not been appropriately served on the two financial institutions--the UCO Bank and the IDBI. Since both of them had a stake in the matter, it was considered appropriate to issue further notice to them. The UCO Bank appeared and filed an affidavit on October 11, 1976, pointing out that the company had already defaulted in discharge of its obligations in regard to

repayments and wanted to file a further affidavit with reference to facts and produce documents, but nothing more has been done.

20. The IDBI filed an affidavit on October 25, 1976, wherein reference was made to the negotiation of the company through its managing director for grant of a term loan and about its sanction subject to terms. It was further averred that the application under sections 397 and 398 of the Act was not maintainable and the IDBI against whom no relief has been claimed has been unnecessarily impleaded and dragged to the court.

21. On the pleadings of the parties, the following issues arise for determination :

1. Is the application under sections 397 and 398 of the Act maintainable ?
2. Whether the affairs of the company are being conducted in a manner prejudicial to public interest ?
3. Whether the affairs of the company are being conducted in a manner harsh, burdensome, unjust and lacking probity amounting to oppression to the minority ?
4. (a) Are the 40th and 41st meetings of the board of directors of the company legal and valid ?
(b) Whether the extraordinary general meeting of 26th December, 1975, is a valid one ?
5. What is the relief to which the petitioner representing the minority group of shareholders entitled ?

22. Both the contesting parties have made long pleadings and have produced many documents. No oral evidence has been led by the parties. At one stage during the hearing, I had suggested to the parties to mark the documents as exhibits as done in a suit but counsel for the parties chose to refer to them as annexures to their respective affidavits. I propose to refer to them as such and when necessary. Issue No. 1.

23. This issue has three facets, namely :

- (i) The application is not maintainable for non-compliance of Section 399 of the Act;
 - (ii) In the absence of the State Government, the proceeding is bad ; and
 - (iii) No case u/s 397 or 398 of the Act had been made out.
- (i) As already indicated, the share capital of the company is Rs. 75 lakhs with 349 shareholders in all. The State of Orissa and the Corporation together as shareholders and underwriters hold the share of Rs. 62 lakhs and the balance of Rs. 13 lakhs is either held by the promoter and his friends and associates or members of the public. Section 399 of the Act provides that in the case of a

company having a share capital, a member or members holding not less than one-tenth of the issued share capital of the company shall have the right to apply u/s 397 or 398. Under Sub-section (3) of that section, one shareholder having obtained the consent in writing of the requisite number of shareholders may make the application on behalf, and for the benefit, of all of them. In the instant case, shareholders having the requisite number of shares have given their consent authorising the petitioner to present and prosecute the application. The application, therefore, does not suffer from the technical defect with reference to Section 399 of the Act.

(ii) Maintainability of the application was also challenged on the ground of the absence of the State of Orissa as a party to the petition. It was contended that the State, apart from being the largest single member shareholder, was in the group constituting the majority from whom oppression was alleged. In answer to this objection, counsel for the petitioner pointed out that there was no requirement in the Act to implead any particular party in an application like the present one and the court rules which prescribe the forms (see Forms 43 and 44) for making of applications under the respective sections do not provide for impleading parties as such. The scheme of the Act and the Rules seem to suggest that public notice has to be given of the application and persons interested are required to appear and place their representations in the court. This submission on behalf of the petitioner receives support from the decision in the case of *In re Bradford Navigation Company* [1870] 5 Ch App 600.

(iii) Learned counsel for the Corporation has strenuously contended that the petition as initially filed made out no ground at all to support an application for winding up. Objection was raised on this score by the Corporation in the preliminary counter-affidavit filed on December 22, 1975, whereafter by way of amendment certain averments were made in paragraph 5 of the application. It is contended that as no ground was made out in the original application, it should have been rejected and no opportunity to amend the application should have been made. On the other hand, reliance has been placed on a Bench decision of the Calcutta High Court in the case of *Ramashankar Prosad and Others Vs. Sindri Iron Foundry (P) Ltd. and Others*, for the proposition that the court has to take the entire matter as placed before it into consideration in dealing with a case of this type. Learned counsel for the Corporation maintains that even upon these new averments, no case for winding up on just and equitable grounds is made out. According to him, as long as a case for winding up on appropriate grounds is not made out, no other relief is possible to be granted and the only way in which the case can be dealt with is by its rejection.

24. Chapter VI of Part VI of the Act makes provision for prevention of oppression and mismanagement. This Chapter is divided into two parts. Sections 397 to 407 deal with powers of the court while sections 408 and 409 deal with powers of the Central Government. As far as relevant, sections 397 and 398 provide:

" 397. (1) Any members of a company who complain that the affairs of the

company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the court for an order under this section.....

(2) If, on any application under Sub-section (1), the court is of opinion--

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

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

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

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

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

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

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

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

25. The power of the court under these two sections can be invoked in different circumstances. So far as Section 397 is concerned, unless facts justify the making of a winding-up order, jurisdiction cannot be exercised. No such facts, however, are necessary to be proved for an application u/s 398. It is enough if the affairs of the company are conducted in a manner prejudicial to the interests of the company or in a manner prejudicial to public interest to vest power in the court to make an order in terms of the statutory provision.

26. In Section 402, the powers of the court on an application made u/s 397 or, u/s 398 of the Act have been enumerated. It has been indicated by the Supreme Court in the case of Shanti Prasad Jain Vs. Kalinga Tubes Ltd., that the powers conferred on the court to grant remedy in an appropriate case appeared to envisage a reasonably wide discretion vested in the court in relation to the order sought by a complainer as the appropriate equitable alternative to a winding-up order. Subject to what is yet to be said on the connected issues, this issue must be disposed of in favour of the petitioner. Issue No. 2.

27. The words " in a manner prejudicial to public interest" were added to the statute by Central Act 53 of 1963 by way of amendment. The expression is an elusive abstraction meaning general social welfare or regard for social good and predicated interest of the general public in matters where a regard for the social good is of the first moment. As was once pointed out by Frankfurter J. of the United States Supreme Court, the idea of public interest is a vague, impalpable, but all-controlling consideration. Common good or general welfare of the community is conducive to public interest. A thing is said to be in public interest where it is or can be made to appear to be contributive to the general welfare. Mahajan C.J., in the case of The State of Bihar Vs. Sir Kameshwar Singh, indicated that the expression is not capable of a precise definition and has not a rigid meaning and is elastic and takes its colours from the statute in which it occurs, the concept varying with the time and state of society and its needs. Thus, what is public interest to-day may not be so considered a decade later. In any case, the expression cannot be considered in vacua, but must be decided on the facts and circumstances. In the case of a company intended to operate in a modern welfare State, the concept of public interest takes the company outside the conventional sphere of being a concern in which the shareholders alone are interested. It emphasizes the idea of the company functioning for the public good or general welfare of the community, at any rate, not in a manner detrimental to the public good.

28. It is the policy of the State to-day that the corporate sector must work with efficiency. The companies which face stalemate should be helped to overcome the same so that they may get into production and production may be on the increase. With more of industrial and commercial activity, the scope for employment would be on the increase. The company in question has already taken a sizeable loan from financial institutions and it is in the public interest that the said capital is put to appropriate use without loss of time and optimum return is received. One of the main considerations of locating the factory at Paradeep was to facilitate export of its products. In fact, there is sufficient material on record to show that if the company had gone into production, it would have by now been working as an earner of foreign exchange. That certainly would have had its contribution to streamline the foreign trade of the country. As originally envisaged, the company was to go into production in the first quarter of 1973. This was delayed on account of non-availability of funds at the right time and as would appear from the directors' report for the year ending 31st of December,

1974, the plant was expected to go into production latest by end of October, 1975. This has been unduly delayed mostly on account of disputes raised over the right to manage the affairs of the company. In these circumstances, I would accept Mr. Mohanty's contention that the company's affairs have been conducted in a manner prejudicial to public interest. As would be shown later, the affairs of the company are also being conducted in a manner prejudicial to the company.

29. No order u/s 397 of the Act, however, can be made merely on the aforesaid finding because in terms of Sub-section (2)(b) of Section 397 of the Act, unless it be found that winding up would be appropriate on just and equitable grounds, relief under that provision cannot be granted.

30. The position in regard to Section 398 of the Act is, however, different. In order to grant relief, it is not necessary to come to a finding that circumstances establish that it was just and equitable that the company should be wound up. Issue No. 3.

31. As already indicated, an application u/s 397 of the Act can be maintained when the affairs of the company are conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members and relief under the section can be granted when the court comes to further find that to wind up the company would unfairly prejudice the petitioning members, though the facts justify the making up of a winding-up order on the ground that it is just and equitable to do so. What exactly would constitute "oppression" is available in the classic language of Viscount Simonds in the case of *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] 29 Comp Cas 18 (HL). The Law Lord spoke thus :

" My Lords, upon the facts as I have outlined them and as they appear in greater detail in the judgments of their Lordships of the First Division, it appears to me incontrovertible that the society have behaved to the minority shareholders of the company in a manner which can justly be described as oppressive. They had the majority power and they exercised their authority in a manner "burdensome, harsh and wrongful "--I take the dictionary meaning of the word."

32. In the case of *In re H. R. Harmer Ltd.* [1959] 29 Comp Cas 305 (CA) the Court of Appeal gave the same meaning to the term. The Supreme Court in *Shanti Prasad Jain Vs. Kalinga Tubes Ltd.*, referred to four English decisions in the cases of *Elder v. Elder and Watson Ltd.* [1952] SC 49, *George Meyer v. Scottish Co-operative Wholesale Society Ltd.* [1954] SC 381, *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] 29 Comp Cas 18 (HL) and *In re H. R. Harmer Ltd.* [1959] 29 Comp Cas 305 (CA) and accepted the meaning of "oppressive" to be burdensome, harsh and wrongful. The Court of Appeal in the case of *In re Jermyn Street Turkish Baths Ltd.* [1971] 41 Comp Cas 999 (CA) accepted the same meaning for the term "oppressive".

33. Dealing with the scope of Section 397, the Supreme Court observed : " We

shall first take up the case u/s 397 of the Act and proceed on the assumption that a case has been made out to wind up the company on just and equitable grounds. This is a new provision which came for the first time in the Indian Companies Act, 1913, as Section 153C. That section was based on Section 210 of the English Companies Act, 1948, which was introduced therein for the first time. The purpose of introducing Section 210 in the English Companies Act was to give an alternative remedy to winding up in case of mismanagement or oppression. The law always provided for winding up, in case it was just and equitable to wind up a company. However, it was being felt for some time that though it might be just and equitable in view of the manner in which the affairs of a company were conducted to wind it up, it was not fair that the company should always be wound up for that reason, particularly when it was otherwise solvent. That is why Section 210 was introduced in the English Act to provide an alternative remedy where it was felt that though a case had been made out on the ground of just and equitable to wind up a company, it was not in the interest of the shareholders that the company should be wound up and that it would be better if the company was allowed to continue under such directions as the court may consider proper to give. That is the genesis of the introduction of Section 153C in the 1913 Act and Section 397 in the Act. "

34. It is difficult to define what would be " oppressive " because oppression under the section may take various forms. In fact, it has often been pointed out by courts that laying down a general guideline would be difficult because in varying facts proved before the court, the question of oppressiveness has got to be determined.

35. I may now briefly turn to the course of events on which the allegation of oppression is based. Admittedly, the project which took shape in the form of the company had been conceived of by the promoter and it was only when the promoter felt the want of capital that he had turned to the Corporation as also the State Government. It was with the consent of the State Government that a scheme of participation was worked out and after some amount of delay, the underwriting agreement was signed and the Government and the Corporation together came to hold about 82 per cent. of the total share capital. By the end of 1974 that was the position. As a result of the underwriting agreement, the Corporation got its representation on the company's board and the managing director of the Corporation became chairman of the board of directors of the company. The annual general meeting of the company was held on 31st of July, 1975, where the chairman presented the report of the board of directors for the year 1974. In that report, it was indicated :

" Because of delay in concluding the loan agreement with the IDBI, the completion of the project consequently was also delayed resulting in escalation in the price of building materials. In addition, few new machineries were found to be absolutely necessary for installation, which were earlier not included in the original project estimate. All these have resulted in an over-run of about Rs. 45

lakhs. Your directors have already taken steps in arranging this loan from scheduled banks.

36. The term loan agreement with IDBI would be concluded soon and on receipt of the sanctioned amount, the bridging loan will be paid back and other pending works will be completed.

37. Although there has been some delay due to circumstances beyond the control of the management, the construction of the plant is nearing completion and we hope the plant will go into production latest by the end of October, 1975.

38. One of the conditions imposed by IDBI for release of the loan was furnishing of guarantee/undertaking by IDCOL, which IDCOL in their meeting held on May 3, 1975, have agreed to comply with the above formalities of IDBI and resolutions to this effect have been passed. IDCOL has intimated IDBI of their decision which is being followed up by the -managing director of your company and your directors are hopeful that by the middle of July, 1975, the loan will be disbursed. " In the audit report, it was further mentioned:

" It was envisaged that the company was to go into production during October, 1974. But till date the company has not gone into production due to delay in completion of the plant. It is observed during audit that due to non-furnishing of guarantee by the Industrial Development Corporation of Orissa Ltd. to the Industrial Development Bank of India, who are to finance the project, the company could not obtain the loan from them in time. This unnecessary delay has boosted up the cost of the project in the form of pre-production expenses and interest on term loan availed from the United Commercial Bank. "

39. Counsel for the petitioner has claimed that the facts stated in these reports placed before the general body meeting should be accepted as reflecting the true position. I am inclined to agree with the submission, because the report of the board was approved by the company's board of which the managing director of the opposite party-Corporation is the chairman. The auditors' report has also been processed in accordance with law. These documents were prepared at a time when the dispute had not indeed started. While renewing the managing director's term, the board had indicated its satisfaction over his working and in fact he had been praised for discharging his duties in a proper way.

40. In the counter-affidavit, the Corporation has taken a different stand. Attempts have been made to place the responsibility for every wrong thing in the matter on the managing director and, contrary to what had been stated by the auditors or by the chairman in their respective reports, allegations have been made against him. So far as the period covered by the reports is concerned, I am not prepared to accept the changed version reflected in the counter-affidavit. On the other hand, the allegations made by the petitioner seem to be true as they are in accord with the undisputed material. The Corporation persuaded the company not to make the calls and at one time had clearly indicated that it was

undergoing financial strain and was not in a position to meet the demand of calls if made then. The interests of the company were not kept in view and the Corporation was anxious to maintain its own position even at the cost of the company. If the money had been paid in good time, it is reasonable to conclude that there would not have been a set back in the installation of the machinery and the initial target for going into production may not have been disturbed. Again, the Corporation at one stage was anxious to unload its shares and had even requested the managing director of the company to arrange for their disposal. Though I am prepared to accept the contention of the learned counsel for the Corporation that no distinction in law exists in regard to the rights of a shareholder and holder of shares under an underwriting agreement, there is scope to accept the contention of the petitioner's counsel that the shares in this case had been taken with a view to extending a helping hand and the true intention was that the shares would be unloaded in due course. The several correspondences on the point do support the petitioner's contention. I may refer only to three documents to support my conclusion on this score. On April 11, 1973, the Corporation's managing director (company chairman) wrote to the company's managing director (vide annexure M/a, at page 344 of the paper book-II):

" One of our objects is to promote industries by giving technical and financial assistance. If, in this case, the parties are interested to take part in the investment of the East Coast Breweries and Distilleries Limited, we will be very happy to unload our shares."

41. On January 5, 1974, the Corporation wrote a letter to the IDBI (vide annexure J/a, at page 240 of the paper book) :

" These (terms of loan) were discussed by our board of directors in their 106th meeting held on 14th December, 1973, and it was decided to request the IDBI to delete both the clauses, since the role of the Corporation is in promoting an industry and after promotion, to unload its shares in order to take up another such industry for promotion. It has already been decided to unload the entire holding of the Corporation amounting to Rs. 29 lakhs in that company to a suitable party "

42. A letter of the Government of India dated December 24, 1975, addressed to the Chief Secretaries of all State Governments has been produced (at page 377), which indicates :

" With a view to facilitating State Industrial Development Corporations to rotate their funds in the interest of further industrial development, instructions were issued on 15th February, 1975, to the effect that the State Industrial Development Corporations could dispose of their holdings subject to certain conditions such as sale of shares being effected only after the project has gone into full commercial production, sale of such shares being in favour of members of the public

Where the project has been established and gone into commercial production, the SIDC may disinvest its shareholding as per instruction issued on February 15, 1975....."

43. A reference to the memorandum of association of the Corporation also shows that such promotion is one of the objectives. (See Clauses 3, 4 and 5). It is true that there are other clauses which support the stand of the Corporation as pleaded in this case--that the Corporation is entitled to hold shares in other companies (See Clauses 15, 16 and 18) but, in this case, the Corporation on its own showing has joined the company to assist it to overcome an impasse and to unload the shareholding in due course.

44. As already indicated, shares held by the State Government and the Corporation together were to the tune of 82 per cent, and that ratio did not change in 1975, when the Corporation started its move to restructure the company on the footing that as a result of the amendment of the Companies Act in 1974, such restructuring became necessary. The direction of the chairman that the managing director shall not exercise his powers long before the board's resolution accepting the move, the posting of an employee of the Corporation as the assistant secretary of the company, the hasty moves to call urgent meetings of the board of directors for an extraordinary meeting of the general body, the attempt to remove the managing director as also the attempt to change the registered office of the company from Cuttack to Bhubaneswar where the Corporation was located, do represent a course of conduct for which there does not seem to be any justification. In the counter-affidavit, the Corporation has at several places indicated that all these or most of these became necessary in the light of amendments made in the Companies Act, When asked to justify this stand during the hearing of the case, there has been, however, no acceptable answer. As I find, the amending Act of 1974 added a proviso to Section 619(5) and inserted two sections being 619A and 619B to the Act. In terms of Section 619B(e) of the Act which has been pointed out in support, the provisions of Section 619 of the Act became applicable to the company by deeming it to be a Government company. These changes, however, required no restructuring and, relying on this plea, the Corporation had no justification to embark upon a hasty move to dislocate the activities of the company by creating an atmosphere of confusion.

45. Admittedly, the company was still in its formative period and on account of various reasons some of which are attributable to the inaction of the Corporation from time to time, the company had yet not come to a stage of going into production. It was still struggling hard for want of finance and even after the belated clearance came from the Corporation, no attempt was made to finalise the contract with the IDBI. As a result of this situation, the term loan has not been forthcoming and the company was being made to pay higher rate of interest to the UCO Bank in respect of the bridging loan as also to the Corporation for the loan arranged by it for the company.

46. I have already indicated that the blame placed on the shoulders of the managing director for all that had gone wrong with the situation was unwarranted and, therefore, there was indeed no justification to turn out the managing director.

47. Learned counsel for the Corporation has placed reliance on the observations of the Supreme Court in *Shanti Prasad Jain Vs. Kalinga Tubes Ltd.*, , where, after quoting from *Harmer's case* [1959] 29 Comp Cas 305 (CA), the court summarised thus :

" It must further 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 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 the 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."

48. It is contended that removal of the managing director is a matter within the competence of the company and removal from office of managing director is not a matter concerning proprietary rights qua shareholder either of the managing director himself or for the matter of that for any other shareholder. Reliance has also been placed on the ratio in the case of *In re Lundie Brothers Ltd.* [1965] 35 Comp Cas 827(Ch D), where *Plowman J.*, sitting in the Chancery Division, observed :

" His main grievance is, as he admitted in the witness box, that he has been ousted as a working director. That, it seems to me, has nothing to do with his status as a shareholder in the company at all. The same thing is equally true in regard to his complaint that his remuneration as a director of the company has been reduced. That relates to his status as a director of the company, and not to his status as a shareholder of the company."

49. On these findings relief in that case was withheld. In *Shanti Prasad Jain Vs. Kalinga Tubes Ltd.*, the complaint lodged before the court was that when new shares were being allotted, the petitioning group had been kept away from the benefit of acquiring any out of them and thereby they were reduced to a majority. While dealing with a case of that type, the court observed that in not allowing the minority shareholders to participate in the additional equity shares, their existing rights qua shareholders had not at all been affected. The position here is somewhat different. It was pointed out in *Harmer's case* [1959] 29 Comp Cas 305 : [1958] 3 All ER 689 (CA) by *Jenkins L.J.* :

" The oppression must, no doubt, be oppression of members as such, but it does not follow that the fact that the oppressed members are also directors is a disqualifying circumstance when the question of relief u/s 210 arises. I think that there may well be oppression from the point of view of member-directors where a majority shareholder (that is to say, a shareholder with a preponderance of voting power) proceeds, on the strength of his control, to act contrary to the decisions of, or without the authority of, the duly constituted board of directors of the company.....If there is oppression, it remains oppression even though the oppression is due simply to the controlling shareholder's overwhelming desire for power and control, and not with a view to his own pecuniary advantage. The result rather than the motive is the material thing."

50. In the same case, Willmer L.J., at page 708 of the report, observed ([1959] 29 Comp Cas 305 : [1958] 3 All ER 689 (CA)) :

" In my judgment, it is quite impossible to lay down a priori certain categories of conduct which in all circumstances either are or are not capable in law of amounting to conduct which is oppressive within the meaning of ,the section ; in other words, each case has to be examined in the light of its own particular facts and, I would venture to add, in the light of the personality of the individual persons concerned."

51. It has already been indicated that the promoter-managing director and his friends and associates had brought the company into existence and in the managing director, the board as also the general body, had full confidence until some time before the changed attitude of the Corporation came. The appointment of the promoter for a second term as managing director valid up to the year 1979 had already been approved by the general body and with the concurrence of the appropriate authority, the agreement had been entered. The petitioner and his associates, or, for the matter of that, the group of shareholders supporting the managing director who admittedly are in the minority in the company were being represented in the board by two directors including the managing director and for good and proper reasons the term of appointment as managing director stood renewed up to 1979. Without any rhyme or reason and on untenable grounds, and with a motive to grab the management of the company by excluding the managing director, the chairman of the Corporation started a systematic campaign to oust the managing director from office. The petitioner has contended that the chairman had no authority--and at the hearing I have not been shown any by counsel for the Corporation to the contrary--acting all by himself to ask the managing director not to discharge his normal functions. The manner in which an employee of the Corporation was posted as the assistant secretary of the company and the manner in which another nominee director of the Corporation on the company's board was directed to call meetings of the board without common consent of the members of the board clearly give an impression that the chairman of the board was out to grab power by driving out the managing director. Another event has rightly been emphasised by

petitioner's counsel in support of the stand that the Corporation was out to usurp the control and even treat the company as a subsidiary of the Corporation. Annexure 27 (at page 551) is a letter signed by Shri Padhi on May 19, 1976 (during the pendency of this case) where the letter-head reads :

"EAST COAST BREWERIES & DISTILLERIES LIMITED (A GOVT. OF ORISSA UNDERTAKING) Regd. Office : 12, Cantonment Road, Cuttack-1, (Orissa)"

52. The company, admittedly, is not a Government of Orissa undertaking and is no subsidiary of the Corporation.

53. Having given my anxious thought to the arguments advanced on behalf of the Corporation, I have not been able to satisfy myself as to where lay the hurry not to give appropriate notice for the meetings of the board. It was known to the convener of the meeting of the board of directors (Shri Padhi) that some of the directors were ordinarily residing outside the State and they required reasonable notice. In the absence of any justification for the hurry, I am inclined to accept the contention on behalf of the petitioner that the meetings had been convened in a hush-hush manner and obviously with a pre-conceived plan to throw out the managing director. The meetings of the board ordinarily were held in the registred office of the company at Cuttack, but the notice dated 28th of August, 1975, for the 40th meeting of the board given by Shri Padhi on behalf of the company fixed the site in the Corporation's conference hall at Bhubaneswar and the subject-matter was :

" To discuss the notice given by IDC of Orissa Limited to fix up a date and call for an extraordinary general meeting of the company for passing a resolution in the said extraordinary general meeting u/s 284 of the Companies Act, 1956."

54. As already indicated, Shri Padhi was a nominee director of the Corporation and the notice was for processing the decision of the Corporation for changing the management of the company. Undoubtedly, the company's managing director and the secretary were available and Shri Padhi was not the director who normally convened meetings of the board. As already noted, as early as 13th of July, 1975 (annexure 21), the chairman had put an embargo on the managing director's powers and to give an ex-post-facto approval to his action on 18th September, 1975 (vide annexure 25), Shri Padhi gave notice for the adjourned meeting for the 40th board meeting on 22nd September in the conference hall of the Corporation where in addition to the earlier item, delegation of power in favour of the chairman of the board of directors of the company for day to day management was scheduled as an item for discussion. Many directors had protested to the shortness of notice ; a director, Shri K. K. Dutta, living at Calcutta had protested to the holding of the meeting with such a short notice. But in the resolution of the 40th meeting of the board leave of absence had been granted to the absentee-directors without their request for it. The manner in which the company's affairs started being carried on from July up to November, 1975, do reflect a course of events which can be considered as a part of a

consecutive story as indicated by Lord President Cooper in *Mayer v. Scottish Co-operative Wholesale Society* [1954] SC 381 (at page 392) and I am of the view that, in the facts of this case, this course of conduct of the chairman representing the majority shareholders did amount to oppressive conduct within the meaning of Section 397 of the Act. As already noted and as indicated by Lord President Cooper in *Elder v. Elder & Watson Ltd.* [1952] SC 49 (at page 55):

" ...On such a petition the court can only act under the section on being satisfied of three matters :

(i) that the company's affairs are being conducted in a manner oppressive to some part of the members (including the petitioner) ;

(ii) that to wind up the company would unfairly prejudice that part of the members ; and

(iii) that otherwise the facts would justify the making of a winding-up order under the just and equitable " clause." In the very decision, it was further indicated :

" ...The decisions indicated that conduct which is technically legal and correct may nevertheless be such as to justify the application of the just and equitable jurisdiction, and, conversely, that conduct involving illegality and contravention of the Act may not suffice to warrant the remedy of winding up, especially where alternative remedies are available. Where the just and equitable jurisdiction has been applied in cases of this type, the circumstances have always, I think, been such as to warrant the inference that there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy..."

55. As already indicated, the company was struggling hard to come to a stage of completing its set up and go into production. At that stage the maximum of co-operation from all quarters and real internal co-ordination were necessary. The loan from the UCO Bank had been taken on the guarantee of the managing director and the IDBI had agreed to advance loan on personal guarantee of the managing director and the Corporation acting together. Raising finance for purposes of capital was the greatest need of the day and any one interested in the real welfare of the company could not lose sight of this fact. If the managing director was kept away from the picture, it was not difficult to visualise that the company would have a set back in its allround move for raising of funds. There was absolutely no justification at such a juncture to make an attempt for restructuring of the company on a wholly untenable ground. I have no doubt, in the circumstances, that the move lacked bona fides and was an act against the interests of the company. It has already been indicated that the actions of the managing director until the end of December, 1974, had been approved as late as July of 1975, when the general body meeting was held. Nothing has been shown to justify a change of attitude within a few days after the annual general

meeting was over and, therefore, I have no option but to hold that the entire thing that followed was a device manipulated by the chairman and his associates. My conclusion, therefore, is that the company's affairs were conducted in a manner oppressive to some part of the members including the petitioner as also against the interest of the company and, on the facts, winding-up order under the just and equitable clause should ordinarily have been made. I am, however, of the view, taking into consideration the fact that the factory is almost complete and with some more investment, the company can go into production and finance was possible to be raised from the arranged sources (the IDBI) and it would neither be in public interest nor in the interests of the parties to wind up the company at this stage, and that to wind up the company would unfairly prejudice the petitioner and his group. Issue No. 4

56. This issue relates to the legality of the two meetings of the board of directors and the extraordinary meeting of the general body. Notice was given on the 28th of August, 1976, fixing the 40th meeting of the board on 2nd September, 1975. This notice was, however, cancelled on the 30th of August and a fresh notice was given on September 18, 1975, for the selfsame meeting to be held on 22nd September, 1975. The notice of this meeting had not been served on all the directors and protest on account of shortness of time was raised. The meeting was, however, held in which five of the nominated directors only attended, namely, Sarvasri S. N. Das Mohapatra, chairman, B. Venkata Raman, director, R. N. Das, N. Padhi and N. Das, directors. It has already been noted that the notice for the meeting on both the occasions had been given by Shri N. Padhi, the director nominated by the Corporation. Sarvasri K. K. Dutt, F. R. Bhasania and B. C. Singh Deo, directors, had asked for adjournment of the meeting on account of shortness of notice. The following is the minutes of the meeting as recorded :

" Leave of absence was granted to M/s. K. C. Gantayat, B. C. Singh Deo, K. K. Dutt, F. R. Bhasania, S.T. P.S. Acharyulu, directors, and Shri N. K. Mohapatra, managing director.

At the outset telegrams received from Shri K. K. Dutt, Shri F. R. Bhasania and Shri B. C. Singh Deo, directors, suggesting postponement of the meeting and to give another notice to discuss items coming u/s 284 of the Companies Act for removal of the director was considered. After deliberation, it was decided to postpone this item.

In regard to delegation of power in favour of the chairman, for which the company was requested earlier, the item was discussed by the board. The members felt that in the interest of the organisation it would be appropriate to delegate sufficient administrative and financial powers in favour of the chairman in the day-to-day affairs of the company. After deliberation, the directors decided as follows :

(1) That the powers already delegated by the board of directors of the company in favour of Shri N. K. Mohapatra, managing director, be and are hereby also

delegated to Shri S. N. Das Mohapatra, chairman of the board of directors of the company ;

(2) That the managing director, Shri N. K. Mohapatra, to whom the board of directors have delegated powers earlier could exercise such delegated powers with the supervision of the chairman."

57. Some of the directors objected to the proceedings as would appear from annexures 31 and 32 to the application.

58. Notice for the 41st meeting was given on November 19, 1975, also by Shri Padhi and the meeting was fixed to November 21, 1975. Notice for the 40th meeting was given on 18th September and the meeting was scheduled on 22nd September. Though there was a clear gap of three days, objection had been raised on account of shortness of notice. Without any rhyme or reason on this occasion, notice was given on 19th fixing the meeting on the day following a single intervening day and, in fact, the agenda and the explanatory notes for the subjects of discussion at the meeting were not despatched until the 20th September, 1975, as would appear from annexure 34. Important matters were kept for consideration. Yet, the meeting was scheduled with such haste. On this occasion, apart from the Government directors, Shri B. C. Singh Deo as also the managing director had joined the meeting and both of them had raised objections to the agenda. The discussion as per the minutes in annexure 35 would show that the Government directors had reached their own conclusions earlier on the points which were listed for discussion and the meeting of the board was more for ratification of decisions taken earlier than for a free discussion with open mind to devise ways and means for the matters.

59. Under Article 104 of the articles of association of the company :

" Subject to the provisions of Section 285 of the Companies Act, 1956, the board of directors may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit"

and Section 225 required that the board of directors of every company should hold at least one meeting in every three months and at least four such meetings in a year. It is true that there is no prescription for the period of notice for a meeting, but members of the board are entitled to reasonable notice, In the facts of the case, notice for both the meetings cannot be said to be reasonable on account of shortness of time. Again, there was no justification for Shri Padhi to issue the notices, particularly in the absence of any acceptable material that the managing director or the secretary of the company who was issuing the notices under the orders of the board was not prepared to issue the notices though instructed. A contention had been advanced on behalf of the petitioner that it was not open to Shri Padhi who was an interested director to issue the notice, but I refrain from examining the matter as the manner in which the meetings have been held leaves no doubt in my mind that these were not regular meetings of the board and cannot be taken as valid.

60. The notice for the extraordinary general meeting was given by Shri Padhi on December 2, 1975, fixing the meeting to 26th of December, 1975. This extraordinary general meeting had been called to ratify the proposal of restructuring of the company and the main items for consideration were removal of the managing director and shifting of the registered office from Cuttack to Bhubaneswar. I have already found that the 41st meeting which decided to call the extraordinary general meeting on the 26th December was not a valid one. There is force in the contention that the requirements of Section 284(4) of the Act have not been complied with. It may be noticed here that the meeting was held as scheduled, but its decisions have not become operative on account of this court's order made on 24th December, 1975. This issue has, therefore, to be decided in favour of the petitioner. Here I must note that notwithstanding clear allegations against the chairman of the company (who at the relevant time was the managing director of the Corporation) no counter-affidavit has been filed by him to clarify the position. Issue No. 5.

61. Now comes the consideration of reliefs to which the petitioner is entitled. I have already decided that it would not be appropriate to wind up the company, but alternatively directions to remove the oppressive treatment should be given. There is no need for restructuring of the company ; at least there is no mandate of the law as claimed by the Corporation. The allegations on which attempt was made to remove the managing director from his office have been found to be baseless. On my findings on the earlier issues, the proceedings of the 40th and the 41st meetings of the board as also of the extraordinary general body meeting of the company held on the 26th of December, 1975, must be annulled. The project was conceived by the managing director and he had put in his personal efforts all throughout to make the project work. He had gone out of his way to furnish personal undertakings for raising funds from financing institutions and had even agreed to give a personal undertaking to the IDBI along with the Corporation for a loan to the tune of Rs. 65 lakhs. Until 1974, the performance of the managing director had been found to be conducive to the company even by the board of directors including the chairman. The general body had ratified the reappointment of the managing director for a term of five years. In these circumstances, there is no justification for removal of the managing director. There is no justification in the circumstances for restructuring the company only by removing him and shifting the registered office. The Corporation must co-operate with the management of the company and without further delay the agreement with the IDBI should be executed, so that funds would be available for completing the remaining work of the factory and commissioning it without further loss of time. Undoubtedly, one of the purposes for which the Corporation has been set up is to sponsor and help corporate activity in the State and if at any point of time the Corporation is not interested in continuing in the company, it is open to the Corporation to unload its shares either in the open market or in favour of the managing director and his group. This, however, should not be done in a manner to prejudice the company. The Corporation must not lose sight of

the fact that it is a Government Corporation and it is its duty to co-operate with the State Government in fulfilling the well laid-out policies of the State. There can be no two opinions about the fact that the State Government does not want the company to disrupt. I must note that the State Government has not chosen to appear in spite of public notice on the petition.

62. I have not examined the alternative claim for sale of the shares in view of the nature of the order I have passed.

63. I would accordingly allow the application in the manner and to the extent indicated above. Ordinarily, the petitioner would have been entitled to costs, but, in view of the nature of the order passed in the petition, I think it appropriate to require parties to bear their own costs.

64. Before I part with the case, I would like to place on record that counsel for the petitioner as also for the Corporation ably assisted me at the hearing of the case.