

(1996) 08 MAD CK 0053

In the Madras High Court

Case No : Company Petition No. 89 of 1986

S. Seetharaman and others

APPELLANT

Vs

Stick Fast Chemicals Pvt. Ltd. and others

RESPONDENT

Date of Decision : 13-08-1996

Acts Referred:

Companies Act, 1956 — Section 155, 210, 397, 398, 399

Citation : (1998) 93 CompCas 507

Hon'ble Judges : K.A. Thanikkachalam, J

Bench : Single Bench

Judgement

K.A. Thanikkachalam, J.—This company petition was filed under sections 397, 398 and 399 of the Companies Act, 1956 and rule 88 of

the Companies (Court) Rules, 1959, (a) for the regulation of the conduct of the affairs of the company; (b) for the holding of a general body

meeting to determine the management of the company; (c) for the administration of the loan given by the sixth respondent to the first respondent;

(d) directing respondents Nos. 2 to 5 to pay the costs of this petition and for other reliefs, if any.

2. Stick Fast Chemicals Private Ltd was incorporated on October 18, 1985, under the provisions of the Companies Act, 1956. The registered

office of the company is situate at 1050, Neighbouring Scheme, Rajagopalapuram Post, Pudukottai. The nominal capital of the company is Rs.

20,00,000 divided into 20,000 equity shares of Rs. 100 each. The paid-up capital is Rs. 1,10,000. The objects for which the said company is

established are (a) to carry on the business of manufacturers, buyers, sellers, traders, dealers in and importers and exporters of all types of

chemicals used in the manufacture and processing of leather and leather goods;

(d) to carry on the business of manufacturers, buyers, sellers, traders, dealers in and importers and exporters of animal glue of various grades, technical gelatine, photographic grade gelatine, edible grade gelatine and other grades of gelatine and their by-products; (c) to buy, sell, manufacture, refine, treat, modify, import, export and deal in all substances, apparatus, machinery, tools, instruments and any such equipment or processes, technical data, knowhow and other information capable of being used in the manufacture or in any such business as aforesaid or required by any customers or persons dealing with the company;

(d) to buy, sell, import, export and deal in general in raw materials like bones, sinews, leather cuttings, finishing"s, lime acids and chemicals used in the manufacture or in any such business as aforesaid and refine, cook, crush, pulverise or subject them to any required further processes to make them capable of being used in the manufacture or in any such business aforesaid or required by any customers or persons dealing with the company; (e) to manufacture, buy, sell, export, import and deal in products made from animal glue and various grades of gelatine and their by-products like hard gelatine, soft gelatine capsules, sizing materials, gums, adhesives, finishing materials, food preparations, cosmetic preparations and such other items which are capable of being produced from the products aforesaid; (f) to carry on the business of dealers in hides and skins to buy raw, dried, semi-dried, semi-tanned, tanned and finished leathers, to tan, manufacture and finish leather and leather goods of all descriptions, etc.

3. The first petitioner is an engineer with specialised knowledge of the glue industry and has been associated with several companies and industries.

In the beginning of 1985 he decided to set up a factory for the manufacture of animal glue. Accordingly he got acquainted with respondents Nos. 2

to 5 and together they decided to embark on a joint venture. The first petitioner worked out the project and entered into an understanding with

respondents Nos. 2 to 5 as to the formation and management of the unit. Accordingly, the first respondent company was floated with the first

petitioner and respondents Nos. 2 to 5, being subscribers thereto, of one share each of a face value of Rs. 100. The authorised capital of the

company was Rs. 20,00,000 divided into 20,000 equity shares of Rs. 100 each.

Out of these shares, 2,800 shares were to be issued to the first petitioner for technical services.

4. At the first board meeting held on November 10, 1985, the first petitioner brought to the notice of the board the need for the promoters to bring in further capital. The second respondent expressed his inability to bring in further capital and respondents Nos. 3 to 5 agreed to bring in about Rs.

50,000, Rs. 10,000 and Rs. 70,000 respectively. The first petitioner requested the director to inform him definitely as to how much they could

bring in so that he could arrange to bring in the balance.

5. By the next board meeting held on November 28, 1985, the first petitioner had brought in cash of Rs. 1,24,500, the third respondent RS.

72,000, the fourth respondent Rs. 10,000, the fifth respondent Rs. 73,000. Associates of the first petitioner (petitioners Nos. 2 and 3 and

respondents Nos. 7 to 10), viz., S. Janaki Rs. 78,000 towards allotment of 2,000 shares; M. Nedunchezhiyan Rs. 45,000 towards allotment of

2,000 shares; M. Subbaiyan Rs. 12,000 towards allotment of 400 shares, D. V. Mohan Rs. 15,000 towards allotment of 400 shares; V. Raman

Rs. 5,000 towards allotment of 250 shares. Since the other promoters were unable to raise additional capital, the first petitioner was requested to

raise the same from his friends and relatives. Finally, at the meeting held on April 23, 1986 the board decided to allot to R. Seetharaman 2,000

shares, Nedunchezhiyan 500 shares, Subbaiyan 250 shares, Arumugham 500 shares, V. Mohan 300 shares, V. Raman 150 shares, Govindarajan

1,250 shares, Thiruvengadam 1,250 shares, Asraf Ali 1,250 shares and Swaminathan 1,250 shares for the amounts already received of Rs.

1,37,500, Rs. 78,000, Rs. 50,000, Rs. 17,000, Rs. 25,000, Rs. 25,000, Rs. 15,000, Rs. 73,094, Rs. 66,000, Rs. 73,000 and Rs. 100

respectively. The Board decided that the share money payable by Swaminathan would be adjusted against the price of the land that he would sell

to the company. The first petitioner was in addition entitled to 2,800 shares for technical services. Thus out of the shares allotted the petitioners

hold 300 shares, out of the 1,100 shares and are entitled to hold by December 31, 1986, 5,250 shares out of a total holding of 14,000 shares.

Associates of the first petitioner would be entitled to hold further 3,750 shares. Respondents Nos. 2 to 5 would be entitled to only 5,000 shares.

6. Although the full control of the company was to be with the first petitioner in view of the fact that the company's factory was situated in an area controlled by respondents Nos. 2 to 5 these respondents endeavoured to get control of the company. This became more and more evident as the prospect of obtaining a loan of over Rs. 50 lakhs from the sixth respondent to become more and more imminent. Although more than 50 per cent. of the capital of the company has been contributed by the petitioners and their associates, and although the entire administration, maintenance of the accounts and correspondence with the authorities, in particular the TIIC loan has been carried out by the first petitioner, respondents Nos. 2 to 5 are now endeavouring with the connivance of the sixth respondent to take control of the loan amounts to be received from the sixth respondent and utilise those funds for their own purposes and not for the benefit of the project.

7. The petitioners submit that the respondents are fraudulently and maliciously endeavouring to take away the assets of the company and secrete the same for their own benefit. The sixth respondent though apprised of all the facts in collusion with respondents Nos. 2 to 5 is actively assisting the latter to take the loan assistance from the TIIC and utilise it for a purpose not connected with the project for which it was granted. The first petitioner states that he has been maintaining books of account since the inception of the company. All receipts including moneys received from the founder directors and others shares allotted payment therefrom with proper supporting vouchers are in the possession of the petitioner. The petitioners state that the entire project was organised and implemented by the first petitioner who devoted his entire time and money for over two years in developing the project. The first petitioner spent Rs. 74,139.34 as preliminary expenses which the board and general body have approved. He organised and negotiated the purchase of machinery and the obtaining of a term loan from the sixth respondent. He organised the obtaining of share capital. It was only after he had achieved this level of organisation that respondents Nos. 2 to 5 decided to take over control and fraudulently appropriate the term loan obtained for their own purposes. The first petitioner respectfully states that taking advantage of the fact that the technical planning of the project implementation was by then already completed and further based on the fact that their group constituted a

majority in the board, respondents Nos. 2 to 5 set about, devising dubious ways and means to oust the petitioners from the management of the company and appropriate to themselves the loan amounts to be received from the TIIC.

8. The petitioners state that they intimidated the sixth respondent about the endeavours on the part of respondents Nos. 2 to 5 to oust them from the management and also to receive an appropriate term loan to be sanctioned to the company. At the request and directives of the TIIC, the petitioners submitted documentary evidence to establish their rights to be in charge of the affairs of the company. They also held discussions with the officials of the TIIC for grant of loan.

9. Having received all documentary evidence and also explanations offered in detail by the petitioner, the sixth respondent has chosen to take sides between the parties and a communication has been sent to the counsel of the petitioner stating that the board of directors of the sixth respondent had decided to disburse the loan to the company. The conduct of the sixth respondent in siding with respondents Nos. 2 to 5 is unbecoming of the stature of such a financial institution. Instead of protecting the rights of the company, the sixth respondent has chosen to collude with respondents Nos. 2 to 5 in their endeavour to oust the petitioner from the management of the company and misuse the funds given on term loan. This conduct on the part of the sixth respondent is unethical especially when it is fully aware that the petitioner was solely responsible for conceiving and bringing out this project and also the further fact that he himself and his group of persons had made substantial majority contribution towards the equity of the company. The conduct of respondents Nos. 2 to 5 amounts to an oppression and it is in the interests of justice that this Hon'ble Court intervenes in the administrative affairs of the company. The petitioners have advanced substantial monies to the company towards share allotment and they are deprived of their legitimate rights by respondents Nos. 2 to 5. According to the petitioners, the affairs of the company are being conducted in a manner prejudicial to public interest and in a manner oppressive to the petitioners and respondents Nos. 7 to 10 and it would be unfair to wind up the company as it would unfairly prejudice the members. The petitioners further submitted that the affairs of the company are

being conducted in a manner prejudicial to public interest and in a manner prejudicial to the interest of the company. The petitioners, therefore,

have come forward with this company petition with the prayers as stated above.

10. The second respondent filed a counter-statement stating as under :

The registered office of the company is situate at No. 1,050, Neighbouring Housing Scheme Rajagopalapuram Post, Pudukottai. The registered

office of the company was at all times and continues to be at No. 7, Alangudi Road, Pudukottai. The project report for the company was prepared

by a chartered engineer H. V. Patil at the instance of the respondents. The first petitioner who is closely related to the fourth respondent was

associated as a subscriber to the memorandum and articles of association. The first petitioner subscribed for one share of Rs. 100 and apart from

that he has not made any investment in the company. There was no agreement between respondents Nos. 2 to 5 and the first petitioner for allotting

2,800 shares to the first petitioner for his technical services. Neither the memorandum and articles of association nor the project report provide for

any such allotment of capital to the first petitioner. Even the applications made by the company to the sixth respondent for the financial assistance

do not indicate that any such allotment of shares to the extent of Rs. 2,80,000 was to be made to the first petitioner for his technical services.

11. It is incorrect to state that the first board meeting was held on November 10, 1985. The first board meeting was held on November 14, 1985,

after due notice in writing to all directors. The first petitioner did not attend the said meeting. The first board meeting of the company was held on

November 14, 1985, at the registered office at Alangudi Road, Pudukottai and it was attended by respondents Nos. 2 to 5 and the second

respondent acted as chairman of the said meeting and proceedings were recorded in the minutes book of the company. There was no meeting on

November 10, 1985, as alleged by the petitioners. The second respondent contributed a substantial sum of Rs. 2,75,940 which has been utilised

for the purpose of purchase of land to the extent of 30-66 acres for the factory premises and the recitals of the sale deeds for the company's land.

The second board meeting of the company was held on February 6, 1986 at the registered office of the company at Alangudi Road, Pudukottai.

Notice in writing was also given to all the directors and it was attended by

respondents Nos. 2 to 5. The first petitioner did not attend that meeting.

The proceedings of the second meeting were also entered in the minutes book of the company. The first petitioner never informed the company or

the other directors of the company to bring in further capital. The first petitioner created fictitious records as if large sums have been received from

his close relatives. The second petitioner is not in control of the company. The company has five directors, viz., respondents Nos. 2 to 5. Neither

petitioners Nos. 2 and 3 nor the seventh respondent or respondents Nos. 8 to 10 are shareholders of the company. No shares have been allotted

to them nor have their names been entered in the register of members of the company. Respondents Nos. 2 to 5 have an overwhelming majority

and as such they have a substantial stake in the proper running of the company.

12. The company had sought for financial assistance from the sixth respondent by way of term loan which has been sanctioned to the extent of Rs.

44.3 lakhs and at that stage when there was every prospect of the loan being sanctioned and the project being implemented, the first petitioner

who has no financial stake in the company and who is only a signatory to the memorandum of association for one share of Rs. 100 made a claim to

the sixth respondent that the loan should be disbursed only to the company under his management and not to the company under the control of

respondents Nos. 2 to 5. The sixth respondent called upon the first petitioner to substantiate his claim that he and his associates have a majority

shareholding in the company and in spite of repeated opportunities being given to him by the sixth respondent the first petitioner was not able to

produce any acceptable material to establish his contention. On the other hand, respondents Nos. 2 to 5 were able to satisfy the sixth respondent

that they are the persons having a majority both on the board as well as in the general body and as such they are vitally interested in the proper

functioning of the company. Only there after, the sixth respondent has sanctioned the disbursement against an equitable mortgage of personal

properties of respondents Nos. 2 to 5 in addition to a charge over the assets of the company. Finding that his efforts to block the progress of the

company under the management of respondents Nos. 2 to 5 were not successful, the first petitioner has resorted to the present proceedings and

obtained an ex parte injunction restraining the sixth respondent from disbursing

the term loan to the first respondent company. On an appeal preferred by the petitioners a Division Bench of this court appointed respondents Nos. 2 and 5 as directors in charge and the first petitioner as ad hoc director pending disposal of the company petition.

13. Prior to the incorporation of the company certain expenses have been incurred by respondents Nos. 2 and 5 by way of advances paid for purchase of boiler and purchase of land and for securing the project report. The vouchers relating to the above transactions which were kept at the registered office of the company were clandestinely removed by the first petitioner who had access to the same as director of the company. Those vouchers and records, if produced, would show that the remittances were made by respondents Nos. 2 to 5. The first petitioner informed the sixth respondent that as a paid employee he had no funds to invest in the company and wanted the sixth respondent to give him seed capital assistance as a technocrat. The first petitioner was not maintaining any books of account of the company. The day book and ledgers of the company are duly maintained with the assistance of auditors of the company by respondents Nos. 2 to 5. It is incorrect to state that the first petitioner devoted his entire time and money for organising and implementing the project. It is also not correct to state that the first petitioner has spent Rs. 74,139.34 as preliminary expenses which the board and general body meeting have approved. It is also not correct to say that the first petitioner organised and negotiated the purchase of machinery and obtained the term loan from the sixth respondent. In so far as the machinery is concerned, the fifth respondent has made the payment of over Rs. 2.4 lakhs for such purpose while the purchase of land for the factory has been effected from the funds advanced by the second respondent. In so far as the negotiations with the sixth respondent for getting term loan, etc., the board of directors of the company has expressly authorised the second respondent to carry on such negotiations and to comply with the requirements for obtaining the term loan and in fact the said loan has been sanctioned on the personal guarantees of this respondent and respondents Nos. 3 to 5 in addition to the equitable mortgage of the properties of respondents Nos. 2 to 5. No documentary evidence was furnished by the first petitioner to the sixth respondent to prove that he is entitled to and was in charge of the affairs of the

company. The company and respondents Nos. 2 to 5 were able to satisfy the sixth respondent by production of minutes books, register of members, share certificates, etc., that they are the persons in fact and in law entitled to manage the affairs of the company and it is only after satisfying itself, that the sixth respondent decided to disburse the loan to the company under the management of respondents Nos. 2 to 5 and that too against their personal guarantees and against the equitable mortgage of their properties and in addition to charge over the company's properties. It is incorrect to state that the first petitioner and his associates have advanced substantial moneys to the company towards share allotments. The first petitioner by failing to attend the consecutive meetings of the board, in spite of notices being given to him and without obtaining leave of absence has vacated his office as a director of the company and a statutory return to this effect has also been filed with the Registrar of Companies by the board after recording the fact of his vacating of the office at the meetings held on August 9, 1986. The sole object of the petitioner in filing this petition is to bring further progress to the company to a standstill and thereby compel respondents Nos. 2 to 5 who have invested substantial amounts in the company to concede his demand for payment of a large amount personally to him. The first petitioner who has virtually no stake in the company cannot claim that the respondents Nos. 2 to 5 would misuse and misapply the loan disbursement to be disbursed by the sixth respondent. The conditions set out in the loan agreement by the sixth respondent would ensure that such loan is applied for the purpose of the company and will not be diverted by those who are in control of the company. Since the company has not yet started its commercial activities and is only engaging in implementing its project, the question of mismanagement would not arise. The procurement of machinery, utilising the funds advanced by the TIIC will be audited by that institution and respondents Nos. 2 to 5 who have an overwhelming stake in the company and furnished their personal properties as security for the loan will not act against the interest of the company since that would result in prejudice to themselves. The petitioner who has been and continues to act against the interest of the company is not entitled to seek any discretionary relief from this court. It was, therefore, pleaded that this company petition is

liable to be dismissed.

14. Respondents Nos. 3 to 5 have adopted the counter statement filed by the second respondent. The sixth respondent submitted that the loan was sanctioned only to the first respondent company and it is not concerned with the internal dispute between the directors. The allegation levelled against the sixth respondent that they connived with the other respondents is baseless. The loan amounts are to be disbursed for the purpose of business of the first respondent only and not for the purpose of business of any of the respondents. The loan amount is both for construction of building and purchase of machinery and the loan will be disbursed directly to the machinery suppliers.

15. The first petitioner filed a reply statement stating that the documents filed by Asraf Ali and C. Swaminathan contain serious false statements and documents produced by them have been clearly fabricated for this case. The original minutes books and other records of the company are in his possession and they alone will set out the true facts relating to the company's affairs. No board meeting was held on November 14, 1985. The first board meeting was held on November 10, 1985 and it was attended by the first petitioner. In the alleged meeting of November 14, 1985, no common seal was produced since it was not even prepared. The common seal was prepared only at the board meeting of April 23, 1986. There is no mention of the appointment of the first petitioner as managing director in the alleged minutes filed by the respondents on November 14, 1985. No board meeting was held on February 6, 1986. The reference to sale deeds being exhibited to the directors at the meeting is an impossibility as the sale deeds were not in existence on that day. The address given in the documents of certificates of posting for the first petitioner is not the address of the first petitioner at the relevant period. The fifth respondent is not authorised to represent the first respondent company. H. V. Patil is not the author of the project report of the company. He was only consulted by me for carrying out some corrections in the drawings made by the petitioner towards finalising the project report and for taking ammonia prints of the same. There is no evidence on record to show that Swaminathan transferred the lands in favour of the company. There was a clear understanding that the first petitioner was to be allotted 2,800

shares for his technical services. The second respondent has not contributed a sum of Rs. 2,75,945. The documents of sale do not indicate any

payment by the second respondent. The statement of accounts enclosed with a letter dated December 9, 1985, by the fifth respondent disclosed

that amounts were received from the petitioner. The boilers were purchased after collecting the money from the directors including the petitioner.

There was no notice given to the first petitioner. There is enough evidence to prove that the first petitioner's shareholding together with his

associates is 9,000 shares amounting to majority shareholding. The statement of accounts submitted to the first petitioner by respondents Nos. 3

and 5 would prove the correct state of affairs of the company. The day book and ledgers maintained by respondents Nos. 2 to 5 are all false and

fabricated ones.

16. Before this court learned senior counsel appearing for the petitioners submitted as under :

The minutes books produced by the second respondent is a fabricated document. Notices for the general body meeting were wilfully sent to the

wrong address. The sale deed registered on April 4, 1986, was discussed in the board meeting held on February 6, 1986. The certificate of

posting disclose the address of the petitioner in which the first petitioner was not residing. The two notices exhibit P-37(a) and exhibit R-19 were

sent for the same board meeting held on May 27, 1987. They contained different agendas and sent on different dates in different letter-heads. The

petitioner attended this board meeting on May 27, 1987, which fact can be confirmed from the counter filed by the first respondent in C.A. No.

121 of 1988 in C.P. No. 89 of 1986. According to learned senior counsel, Swaminathan accepts during the cross-examination that the entire

work has been done by the petitioners. Out of 86 documents filed by Swaminathan, 72 were dated subsequent to the filing of this company

petition. After the disputes in May 1986 Swaminathan held a board meeting on August 9, 1986, and allotted 9,000 shares among the respondents

Nos. 2 to 5 without disclosing the consideration in the minutes recorded on August 9, 1986. In the register of members filed by Swaminathan, it

was shown as if they had paid cash on August 9, 1986 to the tune of Rs. 9,00,000. They did not make any payments on August 9, 1986. There is

no amount of Rs. 9 lakhs credited to the company's bank account on August 9, 1986. If such a huge amount was actually paid, it could have gone into the current account of the company opened by Swaminathan with the State Bank of India in the year 1985 with Rs. 1,000. This current account was inoperative till May 11, 1987. No documentary evidence has been furnished by respondents Nos. 2 to 5 to show that Rs. 9,00,000 was brought in. According to the petitioners, the balance-sheets prepared by Swaminathan are fabricated. The sixth respondent has not produced the documents before this court in spite of the letter dated August 28, 1989, by counsel for the petitioners. The sixth respondent is blindly supporting Swaminathan, a Congress MLA. The petitioner was appointed as managing director in the board meeting as well as in the general body meeting held on November 30, 1985. This was confirmed by the second respondent in his letter dated October 28, 1985, addressed to SBI and marked as exhibit P-30. This was also confirmed by the fourth respondent in his letter dated April 28, 1986, and marked as exhibit P-26. The petitioner and all the shareholders have been allotted 100 shares each. The board also decided to allot 12,900 shares before December 31, 1986. When the entire allotment process is completed the petitioners will be allotted 9,000 shares and respondents Nos. 2 to 5 will be allotted 5,000 shares. The allotment of shares have been done in a meeting prior to arising of disputes which was attended by all the directors except one. Even the fourth respondent who was not present has communicated his acceptance to the decision in writing which is marked as exhibit P-26. The board decided to allot 2,400 shares to the first petitioner for his technical services to the company. The petitioners and their associates would get 6,200 shares and respondents Nos. 2 to 5 would get 5,000 shares. As on date, the petitioners' group invested Rs. 3,47,500 while Swaminathan's group invested only Rs. 2,12,000. The petitioners' investment can be evidenced from exhibit P-16. An administrator may be appointed to take charge of the affairs of the company. All transactions done by the respondents Nos. 2 to 5 on behalf of the company should be set aside and an auditor may be appointed for maintaining proper books of account of the company and to render true and proper accounts of the company from the date of this company petition till date, including the loan amount received from the sixth respondent. According to the petitioners he and his

group may be declared to be the managing directors and shareholders of the company respectively after removing such of those

persons/respondents who have been allotted shares of the company for no consideration.

17. On the other hand, learned senior counsel appearing for the respondent submitted that there is no prayer in the main company petition for a

declaration that the alleged allotment of 9,000 shares in favour of respondents Nos. 2 to 5 are invalid. So also it was submitted that the direction to

issue to respondents Nos. 7 to 10 is not maintainable since there is no such prayer in the main company petition itself. The petitioner cannot

challenge re-allotment of shares in a petition filed under sections 397 and 398 of the Companies Act and he has to file a separate petition u/s 155

of the Act. The registered office of the company has been functioning at No. 7, Alangudi Road, Pudukottai, from the date of its incorporation.

Prior notices were sent on May 18, 1987, for the board meeting and general body meeting held on May 27, 1987, as per exhibit R-19 and exhibit

P-37(a). The first petitioner attended the board meeting and general body meeting but refused to sign the minutes of the meetings. The company

had allotted 9,000 shares on August 9, 1986, and thereafter only the balance-sheet has been filed with the sixth respondent showing that the

capital of the company is Rs. 9,05,500. Form No. II has been filed with the Registrar of Companies with regard to the allotment of 9,000 shares

as early as on August 9, 1986. There were five subscribers to the memorandum and each of them has taken one share each and all the five have

been issued shares. Thereafter in respect of the allotment made for 9,000 shares, share certificates have been issued with Nos. 5 to 9005. It is

incorrect to state that the balance-sheet of the company is a fabricated one and the same has been prepared with a view to mislead the statutory

authorities. Neither the petitioners nor respondents Nos. 7 to 10 have any money with the company as alleged. No allotment has been made on

April 23, 1986, as pleaded by the petitioner. No allotment has been made on May 14, 1985, and no board meeting has been held on that day.

Respondents Nos. 7 to 10 have no connection with the company and, therefore, they cannot seek the assistance of this court to allot shares. The

petitioners do not disclose any ground for invoking the jurisdiction of this court u/s 397 and/or 398 of the Companies Act. The company has just

been incorporated and it is in the stage of securing equipment and to set up its plant. The company has not started any commercial activities and it

is only engaged in implementing the project. The petitioners' main object is to prevent respondents Nos. 2 to 5 from getting the loan from the

TIIC. Respondents Nos. 2 to 5 have offered their personal properties as security. The first petitioner is having one equity share amounting to Rs.

100. Petitioners Nos. 2, 3 and respondents Nos. 7 to 10 are not shareholders. The first petitioner was removed from the directorship since he

failed to attend three consecutive board meetings as evidenced by the documents filed by the respondents. It was, therefore, pleaded that the

petition filed by the petitioner is misconceived and, therefore, it is liable to be dismissed.

18. I have heard the learned senior counsel appearing on both sides. I have also gone through the oral evidence given by the first petitioner as PW-

1 and the second respondent as R.W.-1.

19. This company petition was filed by three persons. The first petitioner alone has subscribed for one share in the company. Neither petitioners

Nos. 2 and 3 nor respondents Nos. 7 to 10 have contributed any money towards the capital of the company. In the petition, there is no prayer for

a declaration that the alleged allotment of 9,000 shares in favour of respondents Nos. 2 to 5 is invalid. So also a direction to be issued to allot

shares to the petitioners and respondents Nos. 7 to 10 is not maintainable since there is no such prayer in the main company petition itself. The

petitioners cannot challenge re-allotment of shares in a petition filed under sections 397 and 398 of the Companies Act and the petitioners have to

file a separate petition u/s 155 of the Act for this purpose. The paid-up capital of the company is Rs. 9,00,100 consisting of 9,001 equity shares of

Rs. 100 each. Respondents Nos. 2 to 5 hold 9,000 shares and the first petitioner holds only one share. According to the first petitioner, the

project report was prepared by him. But according to respondents Nos. 2 to 5, the project report for the first respondent was prepared by an

engineer at the instance of the respondent. The first petitioner is stated to be closely related to the fourth respondent and he was associated with

the company as subscriber to the memorandum and articles of association. There is no agreement in writing between the first petitioner and

respondents Nos. 2 to 5 that the first petitioner would be allotted 2,800 shares for his technical services to the company. Neither the memorandum

of association and articles of association of the company nor the project report of the company provides for such allotment of shares to the first

petitioner. Even the application made by the first respondent to the sixth respondent for loan facility does not mention about any such agreement.

Even according to the first petitioner all the shareholders have been allotted 100 shares each. The board also decided to allot 12,900 shares before

December 31, 1986. When the entire allotment process is completed the petitioner will hold 9,000 shares and respondents Nos. 2 to 5 will hold

5,000 shares. According to the first petitioner the allotment of shares has been done in a meeting prior to arising of disputes. Therefore, even

according to the first petitioner 2,800 shares were not allotted to the first petitioner and the first petitioner has not produced any document to show

that 2,800 shares were allotted to him and so also there is no documentary evidence to support the plea that the petitioners' group and

respondents Nos. 7 to 10 were allotted 6,200 shares.

20. It is admitted that the company has just been incorporated and is yet to commence its commercial activities. At this stage, the company

approached the sixth respondent for financial assistance to the extent of Rs. 44 lakhs. The sixth respondent agreed to advance the amount on the

security of the personal properties of respondents Nos. 2 to 5 and on their personal security. According to the first petitioner, if the term loan is

advanced by the sixth respondent to respondents Nos. 1 to 5, they would utilise the loan amount for their personal purposes and that would cause

hardship and prejudice to the interest of the petitioners' group. According to respondents Nos. 2 to 5 the conditions set out in the loan agreement

by the sixth respondent would ensure that such loan would be applied for the purpose of company and will not be diverted for other purposes. But

any how, the loan has not yet been advanced and before the loan is advanced, the contention of the petitioners that the loan amount would be

diverted for some other purposes by respondents Nos. 2 to 5 appears to be premature. On this score, the petitioners cannot say that there is

oppression by the majority shareholders against the minority shareholders. Apart from that, the company is still in the embryo stage and yet to

commence its commercial activities. Therefore, mismanagement of the affairs of the company cannot be contemplated at this stage. Therefore,

applying for the loan and sanctioning of the same on the security of respondents Nos. 2 to 5 would not in any way amount to cause oppression to

the petitioners and that would also not amount to any mismanagement of the affairs of the company.

21. According to respondents Nos. 2 to 5, the first petitioner was removed from the directorship since he failed to attend three board meetings

consecutively. In support of this contention, respondents Nos. 2 to 5 filed postal acknowledgments to show that notices were sent to the first

petitioner informing him about the board meetings. But according to the first petitioner such notices were deliberately sent to the wrong address.

Therefore, the meetings were convened and held without notice to him. The first meeting was said to have been conducted on November 14,

1985, at the company's registered office at Alangudi Road, Pudukottai. The said meeting was attended by respondents Nos. 2 to 5. The second

board meeting of the company was held on February 6, 1986, at the registered office of the company at Alangudi Road, Pudukottai, and not on

November 28, 1985, as alleged by the first petitioner. The said meeting was also attended by respondents Nos. 2 to 5. The meetings were

recorded in the minutes book of the company. The petitioners state that since the first petitioner was the managing director earlier, he is in

possession of the minutes books of the company. Therefore, according to the first petitioner the meetings were not held on the dates as stated by

respondents Nos. 2 to 5. According to respondents Nos. 2 to 5, the third board meeting was held on May 6, 1986, but according to the first

petitioner the third board meeting was held on April 23, 1986. Since the first petitioner failed to attend three board meetings consecutively in spite

of the notices sent to him, he ceased to be director of the company and the same has been recorded in the proceedings of the meeting held on

August 9, 1986. The sixth respondent was also informed on September 11, 1986 that the first petitioner ceased to be a director as he did not

attend three board meetings consecutively.

22. According to the petitioners, the first petitioner and his associates invested Rs. 3,47,500 while respondents Nos. 2 to 5 have invested Rs.

2,12,000. The petitioners' investment can be evidenced from exhibit P-16. According to exhibit P-2 and exhibit P-4, letters written by Asraf Ali,

various amounts were received from the first petitioner. Exhibit P-16 is the letter dated January 9, 1987, issued by the SBI, Udumalaipet branch

stating that Seetharaman, works manager, Gluegel India Pvt. Ltd., who had savings bank account, bearing account No. 9/1699 with the SBI had

issued cheques dated November 18, 1985, for Rs. 12,000 in favour of Madras Forgings and Allied Industries Ltd., which was paid on November

23, 1985. So also it is stated that he issued a cheque on November 18, 1985, for Rs. 39,000 in favour of Universal Heat Exchangers Ltd.,

Coimbatore, which was paid on November 22, 1985. From these letters this court is unable to understand as to how Seetharaman can say that he

paid the above said two sums for purchasing machinery to the company in question, which is called Stick Fast Chemicals Pvt. Ltd. Further,

Seetharaman had issued these cheques in his capacity as works manager of Gluegel India Pvt. Ltd., Udumalaipet. Further, it is also not known

whether the above said two items of machinery were purchased for the company in question.

23. Exhibit P-2(a) is the copy of the letter sent by Asraf Ali, dated December 9, 1985, to Seetharaman, which reads as under :

I am enclosing two statements. 1. In respect of Rs. 30,000 received by me in cash from you on August 18, 1985, for payment to Shaw Wallace

Gelatines Ltd., Jabalpur. There is a balance of Rs. 3,689. 2. In respect of Rs. 29,000 received by me in cash on October 11, 1985, for meeting

TIIC and company registration expenses. Of this Rs. 29,000, I received Rs. 5,000 in cash from you and the balance of Rs. 24,000 in cash from

Mr. C. Swaminathan. Mr. Swaminathan told me that he has received Rs. 25,000 in cash from you for handing over to me and that he has spent

Rs. 1,000 from out of that. So he gave me only Rs. 24,000 and not Rs. 25,000. You have to take from him the account for Rs. 1,000. There is a

balance of Rs. 1,233 with me on this account.

So the total amount lying with me is Rs. 4,922 (rupees four thousand nine hundred and twenty-two only).

24. Exhibit P-2(b) is the letter dated August 18, 1985, handwritten on the letterhead of Asraf Ali. This is also not signed by Asraf Ali. Similarly,

exhibit P-2(c) is also unsigned letter by Asraf Ali. Exhibit P-4 is the copy of the letter dated December 9, 1985, to have been written by Asraf Ali,

which reads as under :

I am enclosing a statement for Rs. 2,72,500 (Rupees two lakhs seventy-two thousand and five hundred). This was received by me in cash on

November 27, 1985, from the following persons towards expenditure on boiler. M. S. P. Govindarajan Rs. 46,000; R. Thiruvengadam Rs.

10,000; Myself (Asraf Ali) Rs. 65,000; M. Nedunchezhiyan Rs. 45,000; and Yourself (Seetharaman) Rs. 1,06,500. The entire money has been

spent. I am left with no balance. I had already given you Rs. 3,000 at Jabalpur, I had not issued any receipt to M. Nedunchezhiyan for his Rs.

45,000 (rupees forty-five thousand only). I have told Mr. M. Nedunchezhiyan that he would get shares for this.

25. On the basis of the above said documents, we cannot come to a definite conclusion that the petitioners have invested Rs. 3,40,500 as alleged

by the first petitioner. There is no documentary evidence for such payment or investment. According to the petitioners respondents Nos. 2 to 5

were requested to produce documents but they have not produced the documents. It is also stated that the accounts maintained by respondents

Nos. 2 to 5 were not produced in court. On that score, the petitioners cannot ask the court to believe that the petitioners have invested Rs.

3,47,500. According to the first petitioner, he was fully involved in the implementation of the project such as preparation of project report,

preparation of drawings, obtaining approval from Tamil Nadu Pollution Control Board, application to SIPCOT for land, etc. According to the first

petitioner, all the above works done by Seetharaman was confirmed by Swaminathan during cross-examination. According to the first petitioner, in

the general body meeting held on November 30, 1985, he was appointed as the managing director and his remuneration was decided. But in the

petition he did not state so. According to respondents Nos. 2 to 5, there was no record to show that a meeting was held on November 30, 1985.

There was also no record to show that remuneration was fixed to the first petitioner at Rs. 2,800 per month. There is no agreement between the

first petitioner and the company for obtaining the technical services of the first petitioner. Exhibit P-26 is the letter written by Thiruvengadam to the

first petitioner wherein it is stated that there was a resolution regarding the future allotment of 1,900 shares to the first petitioner, 3,600 shares to

Smt. Janaki and 1,150 shares to the friends and relatives of the first petitioner and 3,450 shares to Thiruvengadam. The said Thiruvengadam was

not examined as a witness. On the basis of this letter also, it is not possible to conclude that 1,900 shares were allotted to the first petitioner and

3,600 shares were allotted to Smt. Janaki and the friends and relatives of the first petitioner. According to the petitioners in the board meeting held

on April 24, 1986, it was unanimously decided that the allotment of balance shares will be completed before December 31, 1986. The decision as

to shifting of the registered office of the company from No. 7, Alangudi Road, to Neighbourhood Scheme was taken. According to Swaminathan,

a board meeting was held on August 9, 1986, in which the decision was taken to remove Mr. Seetharaman as a director of the company since he

has not paid even for qualifying shares and not attended three board meetings consecutively and in view of that he ceased to hold the office of the

director. On the same date the record shows that 9,000 shares were allotted as if a sum of Rs. 9,00,000 in cash was brought in on August 9,

1986. But according to the first petitioner, the board meeting was held on November 14, 1985. It shows as if Mr. Swaminathan was made

chairman of the company. According to the first petitioner, no chairman was appointed. According to the petitioners, Swaminathan and the co-

promoters have stated that the contributions were made by Seetharaman in accordance with various letters and statements during the cross-

examination of Swaminathan. Therefore, it remains to be seen that 2,800 shares were not allotted to the first petitioner as alleged by him. So also

petitioners Nos. 2 and 3 and respondents Nos. 7 to 10 were not allotted 6,200 shares.

26. The first petitioner raised a doubt with regard to the purchase of the land by the company. Exhibit P-46 is the sale deed. It was placed before

the board meeting on February 6, 1986. It is pointed out that stamp papers were purchased on April 1, 1986, and the registration of the document

took place on April 4, 1986. Therefore, there is no authenticity of the board meeting for the purchase of the land. It was further submitted that

Swaminathan has not contributed Rs. 2,75,000 towards the purchase of the land for the company. The vendors were the relatives of

Swaminathan. In the sale deed there is a recital that Swaminathan had advanced money to the said vendors for family purposes. Therefore,

according to the first petitioner there is no proof for payment of such money by Swaminathan. It is also stated by the first petitioner that the value of

the land was stated differently at different places. But it remains to be seen that the value of this land as stated in the sale deed alone would prevail.

Any how, the fact remains that the land was purchased for the company. According to the first petitioner, respondents Nos. 2 to 5 also have not

produced any documentary evidence to show as to how Rs. 9,00,000 was brought in. The petitioners also pointed out that there is some

discrepancy in the figures shown in the balance-sheet with regard to all civil works completed and the machinery purchased and erected and

tested. But the commercial production of the company has not yet been commenced. Therefore, the doubt with regard to the genuineness of the

figures in the balance-sheet was raised.

27. As per the minutes book of Swaminathan 30 board meetings were held. Mr. Madhavan is said to have been appointed chief executive of the

company in the 21st board meeting of the company, on the ground that he was the major shareholder with an investment of Rs. 8,00,000 and

holding 8,000 shares. According to the first petitioner, the said Madhavan was not attending any of the board meetings. According to the

petitioners, the said Madhavan is residing just one kilometre away from the residence of the second respondent during the period April, 1986, to

December, 1987. Deliberately and surreptitiously, Mr. Swaminathan in connivance with the other co-promoters had sent the notices to the

petitioners in respect of the first four board meetings to a wrong address in order to contend that Seetharaman had failed to attend the board

meetings and on that score had declared at the fifth board meeting that Seetharaman had vacated the office of the director. Postal receipts were

produced to show that notices were sent to Seetharaman. According to Seetharaman, the postal receipts are not genuine.

28. The point for consideration is whether all these acts and incidents would amount to oppression and mismanagement as contemplated under

sections 397 and 398 of the Companies Act, 1956.

29. In a petition filed u/s 397 of the Companies Act, the petition should contain

all material facts. In case of fraud, mismanagement oppressive conduct, etc., full and complete particulars must be alleged in the petition. Subsequent affidavits are not enough. The petitioner must plead all material facts necessary for granting the relief as prayed for. Facts arising subsequent to the filing of the petition cannot be relied upon. The validity of the petition will be judged on the facts alleged therein and existing at the time of its presentation. Lack of essential allegations in a petition cannot be made up by leading evidence. "Oppression" according to the dictionary meaning is any act exercised in a manner burdensome, harsh and wrongful. Oppression may take various forms like lack of probity and fair dealing in the affairs of the company to the prejudice of some portion of its members. The section confers wide power on the court to deal with such a situation in an equitable manner which it did not have in the case of a company prior to the passing of the Companies Act, 1948. To obtain any relief under this section a petition must show that the oppression arises from the way in which the affairs of the company are conducted or is attributable to an act or omission on the part of the company. Where a shareholder repaid a loan taken by the company from its bank without informing the company and took a transfer of the company security it was held not to be oppression as the shareholder had acted in a personal capacity and the conduct did not alter the position of the company. Relief may be granted u/s 397 of the Act only against the continuous acts on the part of the majority shareholders oppressive to the minority. Some isolated and illegal act do not amount to oppression. Denial of the right of inspection or other rights of a shareholder or failure to comply with formalities required in the matter of giving notice of a general body meeting or refusal to declare more than a moderate rate of dividend even though the profits earned justified a higher rate of dividend cannot taken by themselves amount to oppression. Denial to shareholders of access to the books is not oppression because there is adequate remedy against such denial in the Act. Merely because the petitioner who had a substantial shareholding was excluded from management, it cannot be said that there was oppression against a shareholder.

30. In a decision of the Court of Appeal in *Jermyn Street Turkish Baths Ltd., In re* [1971] 3 All ER 184 : [1971] 41 Comp Cas 999, where the

question arose whether directors having majority voting power and drawing high remuneration for themselves without the consent of the company

in general meeting, were conducting the affairs of the company in a manner oppressive to the minority shareholders, Buckley J., speaking for the

court, thus explained the position (page 1020 of 41 Comp Cas) :

In our judgment, oppression occurs when shareholders, having a dominant power in a company, either (1) exercise that power to procure that

something is done or not done in the conduct of the company's affairs or (2) procure by an express or implicit threat of an exercise of that power

that something is not done in the conduct of the company's affairs; and when such conduct is unfair or, to use the expression adopted by Viscount

Simonds in *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] 29 Comp Cas 1 (HL) : [1959] AC 324 "burdensome, harsh and

wrongful" to the other members of the company or some of them, and lacks that degree of probity which they are entitled to expect in the conduct

of the company's affairs. See also *H. R. Hanner Ltd., In re* [1959] 29 Comp Cas 305 (CA). We do not say that this is necessarily a

comprehensive definition of the meaning of the word "oppressive" in section 210, for the affairs of life are so diverse that it is dangerous to attempt

a universal definition. We think, however, that it may serve as a sufficient definition for the present purpose. Oppression must, we think, import that

the oppressed are being constrained to submit to something which is unfair to them as the result of some overbearing act or attitude on the part of

the oppressor. If a director of a company were to draw remuneration to which he was not legally entitled or in excess of the remuneration to which

he was legally entitled, this might no doubt found misfeasance proceedings or proceedings for some other kinds of relief, but it would not by itself

amount to oppression. Nor would the fact that the director was a majority shareholder in the company make any difference unless he had used his

majority voting powers to procure or retain the remuneration or to stifle proceedings by the company or other shareholders in relation to it.

31. It cannot be laid down as a matter of law or rule that in these matters under sections 397 and 398, the parties have an absolute right to prove

their respective pleas by filing documents or affidavits alone. It is, however, within the discretion of the court to allow them to prove any particular

fact/facts by filing affidavits of any witness for any good or sufficient reason. Even in that situation the court is to direct the contents of any of the deponents for the purpose of cross-examination at the instance of either party.

32. Section 398 is a complete code in itself. In exercising jurisdiction under this section the court can pass any order or lay down the procedure for implementing its order. The court still continues to have the power till its orders are fully implemented.

33. The court ought not to exercise the extraordinary and summary jurisdiction under sections 397 and 398 when an alternative remedy has

already been pursued. The court further held that mismanagement is like fraud particulars of which must be clearly set out in a petition under this

section. One kind of mismanagement cannot be pleaded and some other cannot be proved. It was further observed that serious and disputed

questions of title and controversies which were already the subject matter of the pending legal proceedings should not be adjudicated in summary

proceedings as envisaged by the section. If an action of the director is illegal or invalid or unlawful the shareholder may take appropriate action in a

court of law challenging the validity of such action, but a petition u/s 397 or 398 is not an appropriate remedy for that purpose (see *Hungerford*

Investment Trust Ltd. v. Turner Morrison and Co. Ltd. ILR [1972] Cal 286).

34. As already seen there is no agreement between Seetharaman and others authorising Seetharaman to do all preliminary works for setting up the

factory. There is no authenticated documentary evidence to show that Seetharaman would be allotted 2,800 shares for his technical services to the

company. In fact such allotment was not made. There is no direct documentary evidence on record to support the plea that a sum of Rs. 3,47,500

was advanced by the first petitioner and his group. Asraf Ali denied having written any letter to Seetharaman. He also denied his signature in the

letters produced by the said Seetharaman. Thiruvengadam and Asraf Ali were not examined. The lands were purchased for the company for which

the sale deed was produced. The land was stated to be purchased by Swaminathan from his relatives. There is a registered sale deed. But the

resolution for the purchase of the land was stated to be passed at a later stage. According to respondents Nos. 2 to 5, the first petitioner has not

brought in any capital. Service of notices for three board meetings and postal

receipts were produced. But the genuineness of the said documents were doubted by Seetharaman. The term loan was obtained to the extent of Rs. 44.30 lakhs. For obtaining the loan respondents Nos. 2 to 5 are said to have offered their properties as securities and also offered personal guarantee. In fact the first petitioner failed to attend three board meetings consecutively in spite of notices being given to him and a statutory return to this effect was filed with the Registrar of Companies. Respondents Nos. 2 to 5 also gave an undertaking to the sixth respondent-bank that the loan obtained would be utilised only for the purpose of the company and will not be diverted for their personal purposes. According to respondents Nos. 2 to 5, the company is maintaining all accounts with the assistance of the statutory auditors. The board of directors of the company is validly constituted. According to respondents Nos. 2 to 5, the records produced by the first petitioner in support of various averments cannot be relied on and they are self-serving statements made to his own advantage.

35. In the petition filed under sections 397, 398 and 399 of the Companies Act, the petitioners prayed for regulation of the conduct of the affairs of the company, for the holding of a general body meeting to determine the management of the company and for administration of the loan given by the sixth respondent to the first respondent-company. But during the course of the arguments it was pleaded that an administrator should be appointed to take charge of the affairs of the company; direction to cancel the allotment of shares made by the respondents fraudulently and without consideration since no money to the extent of Rs. 9 lakhs has gone into the accounts of the company and the allotment of such shares should be cancelled and the share capital of the company should be consequently reduced and reconstituted by allotting 2,800 shares to the first petitioner for his technical services; 6,200 shares to petitioners' group; 5,000 shares to respondents Nos. 2 to 5. According to the petitioners all transactions entered into by the respondents should be set aside and an auditor should be appointed to do fresh audit of the accounts of the company with the vouchers available and the respondents should be ordered to render a true and correct account of the affairs of the company from the date of this petition. The petitioners' group should be declared to be

the managing director and shareholders of the company respectively, after removing such of those respondents who had not paid any consideration for their shares.

36. All these prayers can be granted only if the petitioners prove that there is oppression and mismanagement as contemplated under sections 397

and 398 of the Companies Act. As already stated the first petitioner alone is a shareholder and the rest of the petitioners and respondents Nos. 6

to 10 are not shareholders. During the course of the arguments, the petitioners prayed for the reliefs which were not claimed in the original

company petition. But according to them, the court can mould the relief and grant the same in accordance with the facts available on record.

37. Such request cannot be granted since the original reliefs asked for by the petitioners were themselves not supported by cogent and convincing

evidence. On facts, the petitioners were unable to establish any oppression or mismanagement by the majority group of shareholders against the

minority group of shareholders. The company itself is in the stage of pre-production. Therefore, at this stage mismanagement cannot be alleged.

With regard to the other irregularities said to have been committed by the respondents, the petitioners have not filed any acceptable documentary

evidence to declare that there was oppression by the majority shareholders against the minority shareholders. Thus, on a careful consideration of

the facts arising in this case, the evidence both documentary and oral and the legal aspect on this issue arising in this case, I am of the opinion that

the petition filed by the petitioners under sections 397 and 398 of the Companies Act is not sustainable. Accordingly, the company petition is

dismissed. No costs.