

(1988) 12 DEL CK 0017

In the Delhi High Court

Shakuntala Rajpal and others

APPELLANT

Vs

Mckenzie Philep (India) P. Ltd. and others

RESPONDENT

Date of Decision : 05-12-1988

Acts Referred:

Citation : (1988) 64 CompCas 585

Hon'ble Judges : S. Ranganathan, J

Bench : Single Bench

Judgement

Ranganathan, J.—This is a petition u/s 433 and 439 of the Companies Act, 1956, parrying that M/s.Mckenzie Philip (India) Pvt. Ltd. (respondent No.1) (hereinafter reefer to as "the company") be wound up. The petitioners are the wife (petitioner No.1, who has since died), the sons (petitioner Nos.2 to 4) and daughters (petitioner Nos.5 and 6) of one Som parkash Rajapal (hereinafter referred to as "S.P."). The circumstance in which the petitioner seek the winding up of the company may be briefly touched upon.

2. The company was fated in 1951 by S .P. and one of his brother, Kapil Munni. By 1966, the shareholders were S.P., his other mother and four brothers who held the 1,000 shares of the company (of Rs. 100 each) in the following proportion:

-----	Name	No. of
shares -----		1. Smt.
Krishna 272	2. S.P. 167	3. Kapil Munni 166
4. Chander Muni 167	5. Shanti 127	6. Anand 100 -----
1,000		

3. S.P. was the chairman, Kapil Muni, the managing direction, and the other three brother, the directors of the company. The company"s business was that of manufacture of radios, transistors and top- recorders at its factory at Kishan Ganj, Delhi.

4. S.P. died on March 16, 1968. After his death, between 1968 and 1973, there were some changes in the shareholdings and the directorship which are not in, at

present, relevant. It is sufficient to mention two facts. One is that the company acquired, for purposes of its factory and some time during the lifetime of S.P. a plot of land measuring 5,216 yard in Mayapuri Industrial Area for Rs. 1.98 lakhs, the market value of which has gone up tremendously in the pass few years. The second is that a group of Agarwals s (now respondents Nos.3 to 5) acquired a good number of shares in the company. According to the petitioner, the entire shareholding of the Rajpal other than S. P. have been transferred to the Agarwals with the result that the company has, for all practical purposes, gone into the hands of the Agarwals group. The wife and children of S.P. experience d difficulties in having their names registered in the place of S.P. in respect of the letter's shares which got transmitted to them on his death. They allege further that the respondents mismanaged the affairs of the company and diverted its fund. According to them, the business of the company had been closed down as early as in 1970 and the respondents, having no intention of resuming the business, were in fact attempting to cash in on the increased in the value of land and machinery and diverting the proceeds to their own pockets. The validity of transfer of shares to the Agarwal groups as well as of the admitted issue of further shares to varies person without making any offer to the petitioners is challenged. In this state of their grievances, the petitioners have filed this petition prying for the winding up of company. In paragraph 6 of the petition, it is stated:

"That lead Shri Some Parkash Rajpal, father of petitioners Nos.2 to 6 and husband of petitioner No.1 died on March 16, 1968, at Delhi. The present petition for winding up is being filed by the petitioners as legal representatives of the deceased, Shri Some Parkash Rajpal. The other legal representatives, however, have surrendered their interest in favor of petitioner No.1, who is their monitor and secession certificated was ses copy of the succession certificates enclosed herewith and collectively makes as annexure "A"."

5. The prayer in the petition is:

"That the petitioners have no other remedy for securing redress of their grievances except to seek compulsory winding up of the company. In the first places, in spite of best efforts, the name of petitioner No.1 or of the other petitioners has not even been put on the register of members. The proceedings for brings the name of petitioner No.1 or the petitioners on the register of member is fond to take some time in view of the opposition by the respondents. As the petitioners are minority shareholders and the respondents are bent upon selling the principal assets of the company and have no intention to run to same, there s no other alternative by to wind up the company. However, if for any reason, this Hon"ble Court come to the conclusion that any relief u/s 397/398, be given to the petitioner, the petitioners may be granted the sid relief instant of winding up. Without prejudicial to the said summation, the petitioners reiterate the the fact and circumstances of the case only justify the winding up of the company which can provide adequate relief to the petitioner. The petitioners have

no other alternative remedy/relief equally efficacious. The petitioners, Therefore, pray as under:

(a) that the company, Makenzie Philip (India) P.Ltd., C-97, Mayapuri, Phase II, New Delhi, may be wound up under the provision of Companies Act, 1956; and/or

(b) such other order may be made in the premises as shall be just."

6. The petition was filed on May 6, 1981, and came for admission the next day, when notice was issued to the respondents to show cause why the petition should not be admitted. On July 15, 1981, the parties and their counsel appear to have agreed to settlement by which the respondents should purchase the 167 shares of S .P. Rajpal at a value to be determined by a valuer appointed by the court. However, a question seems to have arisen as to whether their valuation should proceed, as claimed by the petitioners, on the basis that the total number of shares was only 1,000 (as it was when S .P. Rajpal died) or on the basis of the latest number of shares which was 3,347. Counsel for the respondents appears to have urged that further shares had been issued against cash consideration and that as the new shareholders had pumped in a lot of money into the concern, the valuation should be made on the basis of 167/3,347. The matter was, Therefore, adjourned by one day to enable the respondents to establish that the shares issued after the death of S.P. Rajpal were against cash consideration. However, on July 16, 1981, counsel for the petitioners stated that his clients are prepared to sell the shares only if the issued shares of the company are taken at 1,000, irrespective of whether any further shares had been issued or not. This stand of the petitioners ruled out any possibility of compromise between the parties, reply, etc. When the petition came up next on August 19, 1981, Kirpal J. recorded the following order:

"Mr. S. Khanna states that he confines his relief in the petition to the sale of the petitioners' shares to the respondents after taking into account the averments made in the pleadings and the evidence led by the parties. The petitioners give up their claim for winding up. The petition is admitted to the limited extent as to what is the sale price to be paid by the contesting respondents to the petitioners in terms of Mr. Khanna's statement recorded above. Mr. Mehra disputes the number of shares which are stated to be owned by the petitioners. It is further clarified that any further allotment which may be made by the respondent company will have no effect on the valuation of the shares. These shares will be valued as on the date of the filing of the petition. The parties to lead evidence on the question as to the number of shares owned by the petitioners as well as the value thereof. Case to come up for evidence on October 29, 1981. The petitioners may summon their witnesses for that date.

Delay in filing the rejoinder to the petitions is conditioned. The rejoinder is taken on oath."

7. The petition was, thereafter, adjourned from time to time. When it came up again on January 27, 1982, there was a change in counsel for the respondents

and what happened, as the learned judge recorded it, was this:

"Mr. mittal today is raising a contention to the effect that the petition is not maintainable because the petitioners are not registered shareholders. It obviously means that he is going back on the commitment which had been made by his processor. Mrs. Kheterpal, in order to avoid any complication arising in future ,wants time to move an appropriate application u/s 155 of the Companies Act for rectification of the register of members. On her request adjourned to February 2, 1982."

8. As mentioned above, the petitioners filed a petition u/s 155 of the Act, viz, C.P.No.25 of 1982, and the present petition was adjourned to await the outcome of that petition. Khanna J. disposed of the said petition on March 22, 1984, holding (a) that the 167 shares of S.P. should be transmitted to petitioners Nos.2 to 6 here (who were also petitioners Nos.2 to 6 in C.P.No.25 of 1982, i.e., the children of S.P., petitioner No.1 the widow, having died on February 8, 1982; and (b) that the said petitioners be allotted further shares as directed in para 29 of the judgment, against payments. This order is, however, the subject-matter of an appeal by the respondents which is pending. After C.P.No.25 of 1982 was disposed, C.P.No.35 of 1981 was listed before that court and notice was issued to the respondents' counsel. At these stage, the petitioners sought to contend that there was an order of revival of the petition to the extent it sought winding up of the company. The court directed the petitioners to verify if this was so and, if necessary, move an application for such restoration. Such an application was made (C.P.No.499 of 1984) and ordered on October 26, 1984. Subsequently, C.P.No.35 of 1981 was listed twice for admission. But these proceedings were apparently purposeless for, as pointed out earlier, C.P.No.35 of 1981 had only been adjourned sine die pending disposal of C.P.No.25 of 1982 and had automatically to be listed for hearing after such disposal without any order for revival. It had to be resumed at the stage at which it had been left earlier, i.e., after admission, and the question of hearing the petition for admission could not arise again. This was cleared by Anand J. in his order dated March 22, 1985. The learned judge observed:

"I have heard counsel for the parties. The petition at one time had been admitted for the limited purpose of determination of value of the shares and the price to be paid for the holding of the petitioner. Relief of winding up was given up by the petitioner at this stage. Subsequently, the matter was raised u/s 155 with regard to the additional entitlement to shares and the decision of the learned single judge is in favor of the petitioner in relation to 398 additional shares. This decision is currently the subject-matter of an appeal.

Having regard to all the circumstances, I would restore the order admitting the petition only to the extent as to the true value of the shares of the petitioner. In the peculiar circumstances, there would be no citation at this stage.

The company would be entitled to file affidavits in opposition and any documents in support of the affidavit. Affidavits in opposition may be filed within two weeks. The petitioner may file affidavits in reply within two weeks thereafter. List for further direction on May 1,1985."

9. Affidavits as directed have been filed and the petition now comes up for arguments.

10. At this stage, Sri S. P. Mittal, for the respondents, raises two contentions which are in the nature of preliminary objection and which, if accepted, would result in the dismissal of the C.P. in limine without the merits being gone into.

11. The first contention raised by Sri Mittal is an elaboration of the point raised by him earlier on January 27,1982, and is based on the language of section 439(4) of the Act. This section, in so far as it is relevant, reads:

"439(4). A contributory shall not be entitled to present a petition for winding up a company unless—...

(b) the shares in respect of which he is a contributory or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up, or have devolved on him through the death of a former holder."

12. There can be no doubt (though counsel for the company seemed to dispute it) that petitioners No.2 to 6 are contributories even though the shares on the basis of which the petition has been filed are fully paid up shares and even though they stand in SP's name, the petitioners' names not having been placed on the company's register. This is abundantly clear on a joint reading of section 426, 428 and 430 of the Act. The argument, however, is that the petition is that the petition is not maintainable for two reasons: one is that the shares have not been held by these petitioners and registered in their names for at least six months out of the eighteen months immediately before the commencement of the winding up (i.e., before the presentation of this petition as per section 441). This condition, according to counsel, is applicable also to the case where the contributory who seeks winding up is a person on whom the shares have devolved "through the death of a former holder". The second is that on the death of SP, his shares had, according to para 6 of the petition, devolved only on his wife, petitioner No.1. Petitioner No.1 is now dead and petitioners Nos. 2 to 6 can claim only as legal representatives of petitioner No.1. But the shares have devolved on them on the death of petitioner No.1 who cannot claim to be a "former holder" of the shares. Hence, petitioners Nos.2 to 6 are not competent to continue the petition for winding up.

13. In support of the first of these contentions, reliance is placed on the decision in *In re H.L. Bolton Engineering Co. Ltd.* [1956] 1 ALL ER 799; [1957] 27 Com Cas 202 and on a decision of the Madras High Court in *B. Nagalakshmi Vs.*

Mannargudi Transports (Pvt.) Ltd. and Others, , which, no doubt, directly supports the above contention. Ramaprasade Rao J. (as she then was) observed (at pages 151 and 152 of 38 Comp Cas):

"Section 439(4) prescribes certain mandates before a petition for winding up by a contributory can be entertained. For our purposes, it is enough if reference is made to clause (b) of section 439(4) which runs thus:

`A contributory shall not be entitled to present a petition for winding up a company unless.... (b) the share's in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the 18 months immediately before the commencement of the winding up, or have devolved on him through the death of a former holder."

Prima facie it appears that a contributory whose name appears in the register for at list six months during the 18 months immediately before the commencement of the winding up can file a petition; such a prescription as to time limit does not seem to apply; in case the petitioner is a legal representative on whom share have devolved through the death of a former holder. In my view, I do not think that such an invidious distinction was ever contemplated by the Legislature. There is no such intendment or reason for such intendment. Exception for the arrangement of the text of the sub-section which lend *prima facie* support V.K. Thiruvengkatachariar to such a conclusion, such an obvious discriminatory treatment as between a member and a legal representative of the member and a legal representative of the member cannot be easily counted. There should be a great and compelling reason to encourage such a market distinction resulting in discrimination. To accept the text as it is would mean that what a member on the register cannot do, can be done by the legal representative of a former member.

The language used in section 439(4) is plain; but while working out the dates prescribed therein, certain unreasonableness sets in when we are posed with the difference in the privileges granted to the two classes of persons envisaged under the section. In my view, there is no necessity at all to make any distinction between the above two set of persons. A member on the same level as another legal representative on whom shares of a deceased member devolves. But the former should, in a given case, wait for six months to file a petition for winding up and the latter need not. As it is normal to adopt the intention which is in consonance with justice, reason and convenience while interpreting the meaning of the language in a particular section of a statute, I am of the view that the prescription as to time applies to both classes of persons.

Indeed, Sri V.K.Thiruvengkatachariar invite my attention to this apparent anomaly and desired that I should express my view. As I said, I am not inclined to literally read the text as it is. A slight realignment of the section as under would bring out the true effect of it and avoid all controversy about the problems posed:

`A contributory shall not be entitled to present a petition for winding up a

company unless... (b) the shares in respect of which he is a contributory, or some of them either were originally allotted to him or have been, held by him, or have devolved on him through the death of a former holder and registered in his name, for at least six months during the 18 months immediately before the commencement of the winding up."

The petitioner in this case claims by devolution of interest in the shares of the deceased, Balasubramaniam Odayar; she has not shown that prior to this petition for winding up, she has held shares in her own name for at least six months during the 18 months before the application. On this ground also the petition should fail."

14. Learned counsel for the petitioner submits, with respect, that this view is not correct and, in addition to certain reasons in support of this submission, also refers to the English decision reported as *Bayswater Trading Co. Ltd.*, (Ch D). He also relies on certain observations in a recent decision of the Allahabad High Court reported in *Company News and Reports*, NR 64 [1985] C 501, doubting the correctness of the Madras decision.

15. After hearing both counsel, perusing the statutory provision and considering the decisions cited, I am inclined to accept the contention urged on behalf of the petitioner. To start with, it may be pointed out that section 439(4) is not a new provision. It repeats, in identical terms, the language of section 166 of the India Companies Act, 1963. Section 224 of the English Act of 1948 is also in the same terms. As I see it, there is no ambiguity or difficulty in construing the section, but as some confusion seems to have been created by the manner in which the categories of cases covered by the sub-sections have been lumped together in one uninterrupted clause, it may be useful to extract the way in which Palmer reads the section, (Palmer, 22nd edition, volume I, section 81-16):

"No contributory of a company is capable of presenting a petition unless-

1. either the number of members is reduced, in the case of a private company, below two, or in the case of any other company, below six; or

2. the shares in respect of which he is a contributory or some of them were (a) originally allotted to him, or (b) have been held by him and registered in his name for at least six months during the eighteen months before the commencement of the winding up, or (c) have devolved upon him through the death of a former holder (section 224(1)(a))."

16. This, I think, is the correct way of reading the sub-section. It really deals with the three types of cases corresponding to the three ways in which shares can be acquired: by original allotment, by transfer inter vivos and by transmission. A contributory who acquires the shares by the first and third method is straightway entitled to file a winding up petition but one who gets it by the second method has to fulfill the two conditions of registration and a minimum period of holding before he can file a winding up petition. This seems to be the

straight and simple way of reading the sub-section. Rules of grammatical construction do not also justify the import of the above two conditions into the third limb of the sub-section too. To do so really amounts to re-writing the sub-section and read additional words into it. This isn't a permissible rule of statutory construction: vide *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, *The Gujarat Electricity Board Vs. The Ahmedabad Electricity Co. Ltd. and Others*, *The Commissioner of Sales Tax, U.P. Vs. Mangal Sen Shyam Lal*, *Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd.*, *Faridabad*, and *Craies*, 6th edition pages 67 and 68. It will also be seen that such a construction renders wholly re-country the last twelve words of the sub-section, for a legal representative whose name is registered and who has held the shares for six out of eighteen months will, a fortiori, fulfill the description "the shares.... (or) have been held by him and registered in his name for at least six out of ... winding up".

17. The decision in *re Bolton Boltoning C. Ltd.* [1956] 1 ALL ER 799; [1957] 27 Com Cas 202 does not help as it was decided there that section 224 (corresponding to section 439) did not cover the case. The Madras High Court appears to have thought that some sort of discrimination would result if a like restriction is not placed on legal representatives of contributors also. I think, however, that counsel for the petitioner is right in pointing out that it is not so. No restriction is necessary in the case of an original allottee of shares as, having been in the company right from the inception, he is not likely to seek the winding up of the company without good reason. A transfer of shares arrives on the scene by collection and cannot be made a condition unless his name is registered as a member. In this type of case, a further restriction had been considered advisable in order to prevent abuse of process of court by busy-bodies obtaining shares on transfer for a short period only with a view to harass the company by filing a winding-up petition. But a transmission occurs on a fortuitous act over which no human being has any control and an abuse of a like nature is not possible. Moreover, as rightly pointed out by Sri Khanna, the legal representative of a deceased member is in a very peculiar position. He is no doubt entitled either to apply to become a member or transfer his share, subject to the right of the company to accept him or his transfer as a member in the light of its articles but until this happens-and it may take quite some time due to no fault of his- he can exercise none of his rights as a shareholder except to receive the dividend on the shares but is liable to be included in the list of contributors. This is clear from regulation 25 to 28 in Schedule I and section 430 of the Act. It is, therefore, only logical that he must also be able to file a winding-up petition, though his name may not have been entered on the register of members of that too, for some length of time, if the circumstances otherwise warrant his doing so.

18. I also see no substance in the second aspect urged by learned counsel for the company. In the first place, on the death of SP, all the six petitioner became entitled to the shares and the mere fact that the succession certificate was

obtained in the name of only petitioner No.1 may not depress the others of their rights. It is not clear how exactly the others gave up their rights in favor of petitioner No.1. But I shall take this to be so and shall assume that on SP's death, only petitioner No.1 became entitled to the shares and that petitioners Nos.2 to 6 have entered into the picture only as the legal representatives of petitioner No.1. Still, it will not be incorrect for them to say that the shares have devolved on them through the death of SP, a former holder. There is no logic in saying that this limb of the section will only apply when B succeeds to A's shares on A's death and not where B succeeds to those shares because not only A but also his immediate successor died before the latter could be placed on the register.

19. Before parting with these aspects of the case, one important feature of this case may be pointed out. Here, petitioner No.1, after obtaining the succession certificate on September 13, 1969, applied to the company for transmission to her of SP's shares as early as on January 11, 1971. She was, however, not successful in her application and had to come to the court and obtain an order in 1985 for the recognition of that right. If her rights had been recognised by the company, she would have been registered as a member in respect of these shares for more than the statutory period of holding the said shares, said to be necessary to enable her to move the petition. In the circumstances, it appears to be inequitable for the company to raise the plea that the petitioners should not be allowed to maintain this petition because the shares had not devolved on them through the death of a shareholder. The facts of the present case themselves seem to illustrate the gross inequity that may result by placing on section 439(4) the interpretation that is contended for by the respondents.

20. I, therefore, reject the contention of Sri Mittal that petitioners Nos.2 to 6 (petitioner No.1 having died) are not competent to file this petition. In the view I have taken, it is necessary to consider Sri Khanna's contention that, even if the respondents' interpretation of section 429 is taken to be correct, petitioners Nos.2 to 6 can maintain the petition if they should be taken, by virtue of Khanna J.'s order in C.P.No.25 of 1982, to have been placed on the company's register with retrospective effect as on the date of death of SP, viz., March 16, 1938.

21. I now turn to the second principal ground on which the respondent company seeks dismissal of the company petition. The point raised is very short. It is pointed out that the petition is for the winding up of the respondent company. Counsel for the petitioner, on August 19, 1981, specifically gave up his claim for the winding up of the company. Sri Mittal argues that, after this, there is nothing further left in the petition to argue. He says that there can be no question of the petition being admitted to the limited extent of determining the price at which the petitioners' shares should be purchased by the respondents. If the idea is that the company should purchase the shares, it can be done only in accordance with the procedure prescribed in section 77 or as incidental to a petition under section 397

and 398. If the petitioner's grievance is that the respondents were oppressing them or mismanaging the affairs of the company and this should be put an end to by the purchase of their shares by the other respondents, that relief can be sought only in a petition under sections 397 and 398. This petitioners has not been filed under those provision. Indeed, it could not have been because the petitioners were not members and, at any rate, did not, at the time of filing the petition (i.e., May 6, 1981), hold the request number of shares which could have entitled them to move the court under those sections. Realizing these limitations, the petitioners had advised filed a petition for winding up. Once this relief was given up, the petition deserved to be dismissed. The pendency of the petition could be unused by the petitioners as a lever to secure, or be greater by the court, a relief which they could not have obtained, or been granted, in law, otherwise. Sri Mittal also complied on the facts that the Rajpals were unable to run the company due to their internecine quarrels and finding that the Agarwals, by pumping in a lot of money and by prudent management, have lifted it out of the morass into which it had sunk, the petitioner are seeking to obstruct their further progress and development and pressurized the Agarwals into purchasing their shares at an unconscionable price. He says that the Agarwals were, and always are, willing to purchase the 167 shares of SP at the same value as was put upon the share of the company in the succession certificate and estate duty proceedings, or, at a value that may be determined by a value appointed by the court but they cannot submit to the highly exaggerated demands of the petitioner.

22. Counsel I for the petitioners disputes these propositions. He contends that the Agarwals, in collusion with one of the Rajpal, is only attempting to cash in principally on the vast extent of land owned by the company deprive the petitioners of their lawful rights. He says that when the petitions was heard initially, the court suggested that the disputes between the groups could be resolved if the petitioners could see their shares to the respondents for a value to be determined by a value and it was only because the court agreed to adjudicate upon this that he agreed not to press for the winding up. It was to this court that the respondents had also agreed. The respondent vehemently agrees that if the respondents were to be allowed to go back on this understanding, then, he should not also be held bound by his undertaking not to press for the company's winding up. That apart, he also intends that the winding up court has full jurisdiction u/s 443(1)(b) and 443(2) to pass an order other than winding up that would effectively resolve the disputes between the parties. He points out that the contentions of the respondents, if accepted, would have the petitioners who have genuine grievances and also as seen, after Khanna J.'s order in CP No.25 of 1982, to have been kept out of this just rights, total remedies, a position which would be totally incompatible with the very wide and suitable jurisdiction conferred on the courts under the Companies Act. Sri Khanna referred, in this context, to the decision in *Lord Krishna Sugar Mills Ltd. v. Abanash Karu* [1974] 44 Com. Cas 210 and *Moti Films P. Ltd. v. Harish Bansla* [1983] 54 Com Cas 856 and also on the judgment of Parkash Narain J. (as the

then was) in *Avinash Katr v. Lrd Krishan Sugar Mills Co. Ltd.* (C.O.No.58 of 1960) affirming on appeal in *Abanash Kaur v. Lord Krishan Sugar Mills Ltd.* [1974] 44 Com Cas 390 . He also urges that this petition having been admitted not once but thrice on August 19,1981, January 27,1982, and May 9,1984, cannot now be dismissed as not maintainable, these orders having become final in the absence of any; appeal there against.

23. To take the last objection first, I do not agree with learned counsel for the petitioner that it is not open to the respondents to raise the objection. The respondents could perhaps have filed an appeal from the order, admission of the petition, vide *Marketing and Advertising Associates Pvt. Ltd. Vs. Telerad Private Ltd.,* , and *George Vs. The Athimattam Rubber Co. Ltd., Thodupuzha,* . Moreover even at the stage of the final hearing of the petition, it is open to the respondents to contend that the petition has to be dismissed because the purpose for which it was admitted is beyond the scope of the powers and jurisdiction of the court on the petition filed before it. Nor do I see substance in the content urged on behalf of the petitioner that the order of admission was an order agreed to by both parties and hence it is not open to either party to result therefore. On the other hand, a review of the earlier proceedings in the case would show that, though broadly the petitioner were willing to sell their shares and the respondents to purchase them, for the very first day they could not agree on the basis on which the sale/purchase should be effected. The court was of the view that this question of the price could be determined by the court in these proceedings and admitted the petition. While it is true that the respondent did not appeal against the order of admission-the effect of which I have already considered- it will not be correct to say that the order was passed on the agreement of both parties and so cannot be challenged on the principle of the decisions in *State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others,* and *Baijnath Prasad Sah Vs. Ramphal Sahni and Another,* .

24. But I am unable to accept the contention of the respondents that the question of purchase or sale of shares between the two groups cannot at all be considered in a winding-up petition. The relief by way of winding up is to be granted only as an ultimate necessity where to wind up the company is in the best interests of all creditors and contributories. Where there are no creditors on the scheme and the fight is only between say, two groups of shareholders, the remedy of winding up is a very expensive and a prolonged process during which, through the medium of the official liquidator, the assets of the company are realised or otherwise distributed amongst the shareholders. One conceivable method of such distribution could be by giving all the assets of the company to one group of shareholders, the other being compensated in terms of money or to put it in another way, the purchase of one group's interest in the company by the other. In this view of the matter, a relief of the type sought for, short of actual winding up, is not, in principle, wholly outside the purview of the process of winding up. That apart, when a winding up petition is filed, the court is not obliged, even in a case where the clauses of section 433 are satisfied, to order a

winding up. Section 433(2) itself outlines the necessity for the court to explore the possibilities of directing the petitioner to seek a less radical remedy than winding up, if possible. Section 397 and 398 also envisage cases where the requirement of clause (f) is fulfilled, yet the aforesaid shareholders are permitted to seek a relief short of winding up. Even when the number of such shareholders is less than the statutory minimum, the Central Government can authorize the filing of a petition u/s 397 and 398. These provisions emphasize the position that the winding up of a company is not an automatic relief available for the asking on the requirements of section 433 being fulfilled. The court will and can quite irrespective of the powers conferred on it u/s 397 and 398 where on or other party moves the court for relief-examine whether winding up is the proper relief to be given the case. The court can consider also the question whether some relief short of winding up can meet the situation. The powers of the court in this regard are plenary and are expressed in very wide terms in section 443(1)(d). Situations arising under these provisions take many forms and it is difficult to formulate precisely the nature of the orders or reliefs that will suit the requirements of any particular case. The court has to award the relief to the circumstances of the particular case before it. While it is no doubt permissible to a group of shareholders fulfilling the requirements of section 399 to pray to the court to grant the wide categories of relief available u/s 402, grant of some analogous type of relief by the court exercising powers u/s 433 cannot be ruled out even to a smaller group. The powers of the court are very wide, though they will be exercised in a judicial manner and will also take note of the provision of section 397 and 398. If, in a particular case, the court comes to the conclusion that winding up of the company will achieve nothing and will only create unnecessary hardship, expense and delay, I do not see why the court cannot consider some other solution to redress the grievance of the petitioner. In this context, it is also necessary to bear in mind that even when a company is under winding up, the court can and will consider proposals for the revival or reconstruction of the company if they are practical and feasible. It will not be correct to say that only two types of orders can be passed on a winding up petition, viz., (i) its dismissal, and (ii) an order for winding up. To say so ignores the specific language of section 433 and, in particular, sub-section (1)(d) thereof. Sri Khanna has also pointed out as precedent a case in which a purchase of shares by one group on certain terms was ordered where a winding up petition was dismissed, though reference has been made therein to section 397 and 398. On a consideration of various aspects and statutory provision, I am unable to agree that this court erred or acted without jurisdiction in admitting the petition "only to the limited extent as to what is the price to be paid by the contesting respondents to the petitions." I think I should also point out here that the respondents are also perhaps committing the error of thinking that the court has decided to direct the respondents to purchase the petitioners' shares at a value to be determined. I think this is not so. To me it appears that the question is at large. In further proceedings, it is open to the court to consider whether such a purchase should be ordered and, if so, of what number of shares and, at what

price. It may also decide that it cannot be done and dismiss the winding up petition. It is not possible or correct at this stage to anticipate the shape or form of the order that may be ultimately passed, particularly in the context of the fact that the shares held by the petitioner have got subsequently augmented by the order of Khanna J. in C.P.No.25 of 1982 (which is at the moment under appeal). All that one can say now is that the court cannot pass a winding up order in view of the restricted nature of the admission order and the concession made by the petitioners.

25. For the reasons discussed above, I overrule the objection raised by Sri Mittal and decide to dismiss C.P.No.35 of 1981 at this stage. The pleadings being complete, the company petition may now be listed for hearing on January 29,1986.