

(1961) 11 OHC CK 0001

In the Orissa High Court

Case No : Company Act Case No. 10 of 1960

Shanti Prasad Jain

APPELLANT

Vs

Kalinga Tubes Ltd. and Others

RESPONDENT

Date of Decision : 20-11-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 2, 11
Companies Act, 1956 — Section 10, 173, 397, 398, 399
Evidence Act, 1872 — Section 114, 115

Citation : AIR 1962 Ori 202

Hon'ble Judges : S. Barman, J

Bench : Single Bench

Advocate : B.N. Dutta Roy, S. Rai Choudhury, R.N. Misra and G. Das, for the Appellant; R. Choudhury, for Respondent No. 1, S. Patnaik, for Respondents 1, 2 and 3, R.K. Mohapatra, for Respondent No. 4, (G) S. Misra, for Respondent No. 5, P.C. Misra, for Respondent No. 6, D.N. Singh, for Respondent No. 7, J.K. Patnaik, for Respondent No. 8, G.N. Misra, for Respondent No. 9, B.K. Mohanty, for Respondents Nos. 10 and 12, B. Biswal, for Respondent No. 11, Government Advocate for Respondent No. 13, B.K. Behura, for Respondent No. 14, L.K. Dasgupta, for Respondent No. 15 and R.N. Sinha, for the Respondent

Final Decision : Allowed

Judgement

S. Barman, J.—Sri Shanti Prasad Jain, an industrialist and financier,—who until lately was Chairman of the Board of Directors of Kalinga Tubes Ltd. (hereinafter referred to as the Company), is the petitioner in the complaint herein under Sections 397, 398, 402 and 403 of the Indian Companies Act, 1956 on the ground of alleged continuing and continuous process of oppression to some part of the members of the Company (including the petitioner) and mis-management in a manner prejudicial to the interests of the Company, arising out of group factions in the directorate of the Company, where the petitioner's rival groups are alleged to have acted with the ulterior motive of gaining voting power to obtain control of the Company for the said rival groups and their nominees to the exclusion of the petitioner, his group and his nominees, in the circumstances

hereinafter stated.

2. The petitioner represents what is known as the Jain Group in the Company Respondent No. 1 is the Company; respondent No. 2 Sri B. Patnaik,--who has since, after the last Elections in Orissa, become the Chief Minister of the State, and thereupon ceased to be a director in the Company,--represents what is known as the Patnaik Group including, among others, his wife respondent No. 3 Mrs. Gyan Patnaik and respondents Nos. 5 to 12 herein; respondent No. 4 Sri G.S. Loganathan, represents what is known as the Madras Group; besides these respondents, the Government of Orissa is represented by respondent No. 13 who is Secretary, Industries Department, Government of Orissa; respondents Nos. 14, 15 and 16 have subsequently been made parties herein as transferees of shares as hereinafter stated.

3. The course of events,--which led to the presentation of the petition, stated in a broad outline,--is as follows:

On December 1, 1950 the Company was incorporated as a private limited company with its registered office in Orissa with an authorised capital of Rs. 25 Lakhs; there were seven signatories including respondent No. 2 Sri B. Patnaik and respondent No. 4 C.S. Loganathan; the Company started and acquired lands; the Company, however, did not go into production until several years after its incorporation; in fact, prior to 1954 the Company was involved in large debts and was in actual financial difficulty; at that time the Company was exclusively controlled by Sri Patnaik and Sri Loganathan; they held the majority of shares of the company, the shareholders being Sri Patnaik, Sri Loganathan, Sri Tarapore, Sri Narayan Swami and Kalinga Industrial Development Corporation Ltd., by then there were two distinct groups, namely, the Madras Group represented by Sri Loganathan as aforesaid and the Orissa or the Patnaik Group represented by Sri B. Patnaik. During this period when the company was passing through actual financial crisis, the petitioner Sri S.P. Jain was nowhere in the picture.

In the middle of June, 1954, the Company which was then badly in need of capital, came to be introduced to the petitioner Sri S.P. Jain, through one Dr. H.B. Mohanty, Secretary, Industries and Development Department, Government of Orissa, who made several visits to Calcutta, contacted Sri S.P. Jain and had several discussions with him about the affairs of the Company and its financial difficulties. Dr. Mohanty introduced Sri Patnaik to Sri S.P. Jain; thereafter Sri S.P. Jain had discussion with Sri Patnaik about the affairs of the company and Sri S.P. Jain eventually visited the factory of the Company at Chouduar (Cuttack). Then there were numerous discussions between Sri S.P. Jain and Sri Patnaik about the affairs of the company, its finances, management and future prospects. During this period in June, 1954, there was certain correspondence between Sri Patnaik and Sri S.P. Jain, from which it appears that they had their points of discussion clarified including the proportion in which the shares were to be allotted and regarding the constitution of the Board of Directors--all in the proportion of one-third for each of the three groups, namely, Madras Group one-third, Orissa or

Patnaik Group one-third and Jain Group one-third; as regards the loss which the Company had already incurred on the sale of pipes amounting to Rs. 7 lakhs it was distinctly understood that the same will be taken up by the Madras and the Orissa (Patnaik) Groups. All those discussions and correspondence were with a view to arrive at a basic working understanding among the three groups.

A letter dated June 22, 1954 from Sri S.P. Jain to Sri Patnaik recorded the lines on which they all agreed to work jointly, namely, that Sri S.P. Jain undertook to supply further capital of the Company to the extent of Rs. 10,50,000 (Rupees ten lakhs fifty thousand) which is equal to the capital subscribed by each, namely, Sri Patnaik and Sri Loganathan, that the loss of Rs. 7 lakhs will be borne by Sri B. Patnaik and Sri Lognathan; that the responsibility of the future finances of the Company will be shared equally by Sri S.P. Jain, Sri Patnaik and Sri Lognathan; that Sri S.P. Jain will be the Chairman, Sri Patnaik will be the Managing Director and Sri Shithal Prasad (relation of Sri S.P. Jain) will be the joint Managing Director; these terms on which the parties agreed to work jointly, were confirmed by Sri Patnaik in his letter to Sri S.P. Jain dated June 29, 1954 in which it was expressly mentioned that Sri Patnaik and Sri Lognathan will immediately allot to Sri S.P. Jain or his nominees Rs. 3 lakhs worth of shares and will hold the balance of Rs. 5 1/2 lakhs as loan to the Company on a clear agreement that as soon as they get capital issues sanctioned for the said amount from the Controller of Capital Issues, the same will be allotted to Sri S.P. Jain or his nominees; that the said loss on the import of pipes will be borne by Sri Loganathan and Sri B. Patnaik; that in that connection they were taking steps to dissolve the managing agency firm namely the Kalinga industrial Development Corporation Ltd. so that Sri S.P. Jain, as their new partner, is not encumbered with their past transactions; that as the working capital of about Rs. 10 lakhs would be required at the initial stages, this amount of Rs. 10 lakhs was to be provided as clean advance to the Company, Rs. 5 lakhs by Sri S.P. Jain and Rs. 5 lakhs by Loganathan; it was further confirmed in the letter that Sri S.P. Jain had agreed to provide banking facilities up to Rs. 50 lakhs for the import of raw materials; it was clearly understood as recorded in the letter that any capital required will be found in equal proportion by the three principal share-holders, namely Sri S.P. Jain, Sri Loganathan and Sri Patnaik.

Then on July 27, 1954 there was a Memorandum of Oral Agreement between Sri S.P. Jain as the first part, Sri Patnaik of the second part and Sri Loganathan, Sri Tarapore and Sri Narayanswami; all of Madras--of the third part in regard to the Company, signed by all these parties; it recorded the terms of the agreement between the parties as partners of the Company which then was a private limited company. The main controversy in this case centres round this agreement which is the bone of contention between the parties; the petitioner's case being that it is binding on the Company; while the case of the rival groups is that it is a mere scrap of paper not binding on the Company; indeed this document carried with it, as will be seen, the seeds of dissention between the three groups which ultimately led to this unfortunate litigation.

The effect and legal implications of the document, upon construction thereof, which is a question of law, will be dealt with hereinafter. The petitioner's case is that it was in terms of this agreement that the constitution of the Board was changed and the managing agency resigned and that there are such other telling circumstances, purporting to show that the Agreement was acted upon; while the case of the rival groups is that these changes were brought about in ordinary course of business without reference to the agreement. During all this time Sri S.P. Jain acted as Chairman of the Company and gave all guidance and advice in the matter of management of the Company, and his influence, as a seasoned businessman, was also made use of in the interest of the Company; the instances of such guidance, advice and his administration of the Company are evident from the correspondence and other documents produced in this case. There can be no doubt as to this position that it was through the influence of Sri S.P. Jain that the bank facilities were obtained from the Chartered Bank of India which because of the personal guarantee given by Sri S.P. Jain, had advanced loans of several lakhs of rupees to the Company. Except for these credit facilities, which the Company received through the influence of Sri S.P. Jain, the Company could not have raised itself to its present status as a prosperous growing concern. Incidentally, it may also be noted here that obtaining of these credit facilities for the Company was also one of the terms of the said Agreement of July 27, 1954. Indeed, as records show, the Chartered Bank gave overdraft facilities to the Company, only because of Sri S.P. Jain was connected with the Company as its Chairman.

It was early in 1956, that, while the Company was still a private limited Company, the said three representatives of the three groups, describing themselves as partners, discussed the desirability of expanding the business and making it a public company, to obtain loan from industrial Corporation because, under the terms of Section 23(1)(e) read with Section 2(c) of the Indian Finance Corporation Act, loan is advanced only to a public limited Company, and ultimately the Company was converted into a public Company on or about January 11, 1957; the shareholders of the Company, when it was private, however continued to be the shareholders of the Public Company at all material times. Sri S.P. Jain himself, along with his other colleagues, encouraged the conversion of the Company into public Company.

Before the Company was made public company there were informal meetings among the members of the three groups and it was all through understood that the shares issued or to be issued were to be offered at par to the existing shareholders and that the shareholders would be at liberty to apply for the shares in their own names or in the names of their nominees and indeed throughout the period from the date of the agreement of July. 27, 1954 until the dispute arose the allotment of shares was confined to the three groups in equal proportion.

The next chapter in this story opens in the month of March 1958 which relates to

the allotment of 39,000 ordinary shares, the issue of which the Controller of Capital issues, had, by his letter of authority dated December 18, 1957, sanctioned: Under the said authority, all the said new shares were to be issued privately for cash at par: Condition No. 6 of the said sanction was that subject to the provisions of Section 81 of the Companies Act, 1956, the new shares should, in the first instance, be offered to the existing shareholders with the right of remuneration attached.

In this context it may be mentioned that this sanction was made by the Controller of Capital Issues on an application made by the Company for the issue of 39,000 ordinary shares of Rs. 100/- each for total face value of Rs. 30 lakhs made on September 17, 1956, when the Company was still a private company; in Clause 7 of the said application it was stated that the cash issue will be private and that it would be issued to the existing directors, shareholders and/or their nominees: it was on the basis of this application that the Controller of Capital Issues had sanctioned the increase of share capital by his letter dated December 18, 1957 as aforesaid: in the meantime, the company had become a public company since January 1957. Now it was the allotment of these 39,000 new shares which became the proximate cause of trouble among the rival groups.

The petitioner's case is that under the Agreement dated July 27, 1954, these 39,000 new shares were to be allotted to the three groups in equal proportion as existing shareholders or to their nominees. On March 1, 1958, a notice was issued for an extraordinary general meeting to be held on March 29, 1958 for the purpose of considering, inter alia, the "manner and proportion in which such shares are to be issued as stated in the Agenda: in the Explanatory Statement it was stated that it was necessary in the interest of the Company to increase the share capital and the moneys were urgently needed by the Company for the purpose of expansion of its business. At the extra-ordinary general meeting on March 29, 1958 Shri. S.P. Jain was not personally present: at this meeting curiously enough a resolution was moved by the respondent No. 3 Mrs. Gyan Patnaik that the said 39,000 shares shall not be offered or allotted to the existing shareholders of the equity shares in the Company or to the public, to which an amendment was moved by two members of the Jain Group but the amendment, when put to vote, was declared lost, and Mrs. Gyan Patnaik's resolution was passed. An exception had been taken, on behalf of the Jain Group, that--as what actually took place at the meeting showed,--the notice dated March 1, 1958 was misleading as hereinafter fully discussed.

Thereafter, on April 18, 1958 the Jain Group filed a suit in the Court of the Subordinate Judge, Cuttack being, Title Suit No. 21 of 1958 for declaration that the resolutions passed at the extraordinary general meeting of the Company on March 29, 1958 are ultra vires, illegal, void and not binding on the Jain Group and/or its share-holders, permanent injunction against the defendants in the suit, including the Company and the rival groups, restraining them from giving any effect or acting in any way in pursuance of the said resolution, passed at the

extraordinary general meeting of the Company on March 29, 1958, and further restraining the defendants from issuing or allotting any shares in terms of the impugned resolutions; on the same date an interim injunction was issued restraining the defendants, from giving effect to the resolutions passed on March 29, 1958.

As hereinafter discussed, the said injunction order was not obeyed by the Company in that notwithstanding the said injunction, the Company and its management,--by way of giving effect to the said resolutions passed at the extraordinary general meeting on March 29, 1958,--had received applications for allotment of these 39,000 shares at a point of time when the injunction order was still in force. In the mean time there was an application for modification of the injunction order on May 15, 1958 but it was adjourned till June 30, 1958. The Company, however, in pursuance of their decision to take steps for allotment of these shares issued a notice on June 21, 1958 for Board meeting to be held on June 30, 1958. The injunction application not having been disposed of, there was a subsequent notice of meeting issued by the Company on July 23, 1958 for a Board meeting to be held on July 30, 1958 including in the Agenda an item for consideration of allotment of these 39,000 shares subject to any order of the Court. Then ultimately on July 30, 1958 the injunction order was "vacated by the learned Subordinate Judge, whereupon the learned Advocate for the Jain Group applied for stay of operation of the said order vacating the injunction so that they might move the High Court; it is said that at that time the learned Advocate for the Company was present in Court and he also received a copy of the application for stay of operation of the order vacating the injunction, but, as fully discussed hereinafter, the allotment appears to have been rushed through with indecent haste and scramble, and allotment is stated to have been made within 40 minutes from the passing of the order vacating the injunction and everything was done as fait accompli--later on, however, on the same day the Subordinate Judge made, an order staying the operation of order vacating the injunction; but it was too late. What exactly happened on July 30, 1958 deserves justifiable comments, made on behalf of the Jain Group, that the Company had allotted these 39,000 shares hastily with an ulterior motive.

The next episode in the history of this litigation was that the rival groups, in pursuance of their persistent policy to oust the Jain Group, made a further attempt to raise the capital of the Company from Rs. 1 crore to Rs. 3 crores in a certain specified manner and issued a notice of an extraordinary general meeting to be held on September 21, 1960; in the Explanatory statement, attached to the notice, it was said that the shares in the Company should be offered to outsiders, that is, persons other than the existing shareholders and as such capital as possible should be raised from such outsiders; that this would ensure that the Structure of the Company would be further broad-based and the shares would be held by various independent persons, that is, not the existing shareholders.

On September 14, 1960 Sri S.P. Jain filed the present complaint under Sections 397, 398, 402 and 403 Indian Companies Act, on the ground of continuing and continuous oppression to the minority group of shareholders including himself, and mismanagement of the affairs of the Company as stated in the petition. The main grounds, on which the petition was filed, were that the rival groups were pursuing their policy of continuing and continuous process of oppression of the petitioner and his group being the minority shareholders, with a view to completely exclude the petitioner and his group from all control in the affairs of the Company; further that the affairs of the Company were being conducted in a manner prejudicial to the interests of the company by the rival groups, particulars whereof are fully stated in the petition; that the whole object of the rival groups is said to be to obtain realignment of the shareholding, in a manner so that they can control over 75 per cent of the voting power; that in view of the wrongful acts of the rival groups who had combined together, there has arisen a justifiable lack of confidence on the part of the petitioner and his group in the conduct and management of the affairs of the company.

On this petition, an interim order was passed by this Court, inter alia, restraining the rival groups from placing before the said extra-ordinary general meeting which was to be held on, September 21, 1960 or considering any resolution or resolutions with regard to the increase of the share capital of the Company by creation of additional 1 lakh equity shares of Rs. 100/- each.

The defence taken on behalf of the rival groups, is, in substance, a simple denial of all the allegations made in the petition.

4. The points involved herein resolve themselves into the following broad questions, namely:

(a) Whether the said Agreement, made between the representatives of the said three groups on July 27, 1954, when the Company was still a Private Company,-- regarding inter alia, equal representation of the three groups in the Board of Directors and equal share-holding of the three groups in the same proportion,-- was acted upon and continued to be binding on the Company.

(b) Whether the conduct of the rival groups in the matter of allotment of the said 39,000 new shares and their subsequent conduct amounted to continuing and continuous process of oppression to minority shareholders including the petitioner, and mis-management likely to be prejudicial to the interests of the Company.

(c) Whether such oppression and mismanagement were sufficient grounds for winding-up the Company under the "just and equitable" rule,

(d) What reliefs, if any, can be given on the present petition.

(e) Result:

5. Re: Agreement of July 27, 1954.

The said Memorandum of Oral Agreement dated July 27, 1954 (Ext. 1) was signed by representatives of all the three groups including Sri S. Patnaik, Sri C.S. Lognathan Sri S.P. Jain and others. This arrangement was arrived at between the parties in 1954 when the Company was a Private Company still in its infancy, and was actually passing through a financial crisis for want of capital. Dr. H.B. Mohanty, the then Secretary to the Government of Orissa, Industries Department, played an important part in inducing Sri S.P. Jain to agree to join the Company and help it with capital.

There is ample evidence to show, from the circumstances in the pre-agreement stage, that a basic understanding was arrived at among the parties, as appears from the correspondences between Sri S.P. Jain and Sri B. Patnaik. Ultimately all the understanding and arrangements took place in the form of a formal agreement which was the Agreement of July 27, 1954 in the shape of a memorandum. The rival groups, to suit their convenience, now describe it as a mere scrap of paper and disown it as not binding on the Company, although the said agreement was referred to in their own correspondences in as late as 1957, showing that it was acted upon.

6-9. (After discussion of evidence on the point whether the various clauses in the agreement were acted upon. His Lordship proceeded:)

10. A point was taken, on behalf of the Company, that at one stage in the proceedings before the learned Subordinate Judge in the said Title Suit No. 21 of 1958 the learned counsel for the Jain Group (plffs. in the said: suit) has conceded that the said Agreement of July 27, 1954 is not binding and cannot be enforced against the Company since the Company is not a party to it. From the judgment of Mr. Justice Rao in Ahoka Marketing Ltd. v. Kalinga Tubes Ltd., Misc. Appeal No. 77 of 1958,--being an appeal from the said order dated July 30, 1958 of the learned Subordinate Judge in the said Title Suit No. 21 of 1958, vacating the order of injunction made therein,--It, however, appears that the learned counsel for the Jain Group (plaintiffs in the said suit) contended that the learned Subordinate Judge misconceived the effect of the concessions made before him that the said Agreement dated July 27, 1954 was not binding and could not be enforced against the Company since the Company was not a party to it, and further that the learned Subordinate Judge wrongly came to the conclusion that it had no force now and need not be taken into consideration. Indeed, from the facts and circumstances, I am satisfied that the effect and legal implications of the Agreement were presumably not fully presented to the learned Subordinate Judge and thus the learned Subordinate Judge obviously was not in a position at that stage to appreciate the effect and implication of what was being submitted before him in that particular context.

That apart, assuming that it was some sort of concession on which the Company now relies, even so, it was a concession with regard to a point of law and therefore there cannot be any question of estoppel arising from such admission. It is the settled position in law that when the facts are fully set out and admitted,

a party's opinion about the legal effect of those facts is of no consequence in construing it; no estoppel arises by reason of admission of the party as to such effect; a counsel's admission of a point of law cannot be binding upon a court; and court is not precluded from deciding the rights of the parties on a true view of the law; in a certain case, where the High Court seems to have understood counsel, to have admitted the legal effect of a certain document which was a question of construction, their Lordships of the Privy Council expressed the opinion that such admission, if correctly understood, was erroneous in point of law, and does not preclude the counsel from claiming his client's legal rights in spite of such admission *Kalidas Dhanjibhai Vs. The State of Bombay*, ; *Societe Belge de Banque v. Giridhari Lal Chaudhury*, AIR 1940 PC 90; *Maharani Beni Pershad Koeri v. Dudh Nath Roy* 26 Ind App 216 at p. 221 (PC). Having regard to these Authorities, the Company cannot rely on the alleged admission, made on behalf of the Jain Group, that the Agreement is not binding or that it cannot be enforced against the Company:

11. Re: Alleged oppression and mismanagement; Ground for winding up on just and equitable rule; Alternative remedy u/s 397.

We now come to the second question for consideration, namely, whether the conduct of the rival groups in the matter of allotment of the said 39,000 new shares and their subsequent conduct amounted to continuing and continuous process of oppression of the minority shareholders including the petitioner, and mismanagement of the affairs of the Company likely to be prejudicial to the interests of the Company.

The genesis of the entire trouble between these three groups in the Company arose out of allotment of these 39,000 shares (new); the normal company practice was to offer the newly issued shares to the existing shareholders under the provisions of the law both u/s 105-C of the Companies Act, 1913 read with Regulation 42 of the said Act as also under the provisions of Section 81 of the Companies Act, 1956. There can be no question that in the present case there has been departure from this normal company course, as stated in the Representation of the Central Government through the Registrar of Companies dated December 5, 1960 filed herein.

On this point the Company took a purely legalistic stand on the interpretation of the relevant provisions, with which aspect I shall deal later on when, coming to discuss the law. Apart from the legalistic approach, this court in its equitable jurisdiction, under Sections 397, 398, 402 and 403 of the Companies Act, 1956 has to decide whether the conduct of the rival groups in the matter of allotment of the said shares in the manner that they did, and their subsequent conduct amounted to oppression to any member or members (including the petitioner), and whether it amounted to such mismanagement as likely to be prejudicial to the interests of the Company.

12. The position, briefly stated, was this; At Board meeting on March 1, 1958

where Sri S.P. Jain presided as Chairman, the agenda, which was decided upon to be Considered at an extraordinary general meeting to be held on March 29, 1958, was as follows:

"AGENDA

1. To authorise the Directors to issue 39,000 ordinary shares of the face value of Rs. 100/- each.
2. The manner and proportion in which such shares are to be issued.
3. Miscellaneous."

In the Explanatory Statement attached to the Agenda it was stated that it was necessary in the interest of the Company to increase its share capital and the moneys were urgently needed by the Company for the purpose of expansion of its business. This was given out to be the apparent (which subsequently transpired to be not the Teal motive.) The Agenda of the Notice for the "Extraordinary General Meeting to be held on March 29, 1958 under item No. 2 thus clearly shows that the extraordinary general meeting was to decide the manner and proportion in which further shares were to be issued: it was then clearly understood by the shareholders, including the petitioner; that u/s 81 of the Companies Act 1956, and in accordance with the company's application to the Controller of the Capital Issues, on which sanction was obtained, and under condition No. 6 of the Controller's letter of authority dated December 18, 1957,-- such new shares were, in the first, instance, to be offered to the persons who, at the date of offer, are holders of the equity shares of the Company in proportion to the capital paid up on those shares at that date; the offer was to include the right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; the Company's application to the Controller of Capital Issues seeking consent for the said issue, however, did not stipulate any manner other than offering the new shares to the existing shareholders; it should also be noted that the Explanatory Statement attached to the notice dated March 1, 1958 for the extra ordinary general meeting to be held on March 20, 1958 also did not make any indication of the proposed issue of new shares in any manner, other than what was indicated in the application for new shares on which sanction was obtained; that apart, there was even no draft of a resolution proposed by the Board to be placed before the extra ordinary general meeting for consideration by the share- holders.

Immediately after receiving the notice of March 1, 1958 Sri Shital Prasad Jain, Chairman "of the Bharat Nidhi Ltd. (of the Jain Group) by a letter dated March 12/17, 1958 addressed to the Managing Director of the Kalinga Tubes Ltd. pointedly drew the Company's attention to these aspects. The Managing Director of the Company in his reply dated March 20, 1958 pointed out that the matter was to be decided by the general meeting of the Shareholders and did not express any opinion in the matter. Thus it is clear that "the notice dated March 1, 1958 for the extraordinary general meeting to be held on March, 29,: 1958,

containing an agenda referring to the manner and proportion in which the shares were to be issued, was kept conveniently vague and left the minority shareholders with the impression that all shareholders, including themselves, would get at certain shares out of the said 39,000 new shares, that the question was only what proportion of the new shares would be offered to them; the words "manner and proportion" in which such shares are to be issued naturally led the share-holders to believe that they will get a chance to be offered at least some proportion of the newly issued shares which had been sanctioned by the Controller of Capital Issues. What indeed was the real motive of those in the management of the Company at that time, representing the majority shareholders, was kept absolutely in the background of their mind, which subsequently became exposed at the extraordinary general meeting on March 29, 1958 to the surprise of the minority shareholders: At the extraordinary general meeting of March, 29, 1958, -- where Sri S.P. Jain did not happen to be personally present,-- surprisingly Mrs. Gyan Patnaik of the Patnaik Group moved the following resolution:--

* ? * * Resolved that the said 39,000 ordinary shares of Rs. 100/- each shall not be offered or allotted to the existing shareholders of the equity shares in the Company or to the public."

The said resolution was seconded by the Company's commercial Manager Mr. H.B. Subramaniam. The purpose and effect of the resolution were that name of the existing shareholders, including the minority share-holders, were to be offered or allotted the new shares, and thus they were to be deprived of the benefit of the newly issued shares sanctioned by the Controller of Capital Issues on the application of the Company that they were to be issued to the existing shareholders and/or their nominees. Thereupon one Mr. S.L. Agarwal of the Jain Group, who was present,--by reference to the application to the Controller of Capital Issues on which sanction had been made,---moved an amendment which was seconded by Mr. D.R. Sabharwal of the Jain Group: the amending resolution, that was moved by the Jain Group, was as follows:--

"That the 39,000 shares shall be offered to the existing shareholders of the Company in the proportion of the share-holding so held by them and the offer shall re-main open for a period of fifteen days with the right to accept or renounce the whole or part of the offer in their names or in the names of their nominee or nominees. If the shares are not accepted within the period allotted, the offer shall be deemed to have been declined by them."

The resolution, which was moved by the Jain Group, was in consonance with both the Company's application to the Controller of Capital Issues on which the sanction was obtained for issue of the said 39,000 shares, as also in accordance with the terms of the sanction itself. The amendment, moved by the Jain Group, was, however, lost because of their minority position in share-holding; obviously, the rival groups knew and were conscious of their position of overpowering strength at the meeting, and hence the entire show was--just a device so as to

bring it to voting and have the resolution,--depriving the existing shareholders of the benefit of the newly issued shares, carried at the meeting. This episode brought the trouble between the groups, which was brewing for sometime past--to an issue and the Jain Group naturally resented the entire move of the said rival groups.

13. Immediately after the meeting of March 29, 1958, Sri S.P. Jain wrote a letter to the Secretary of the Company on April 2, 1958 stating therein that he understood from the proceedings of the meeting held on March 29, 1958 that some applications for allotments of some shares out of the proposed new issue of 39,000 shares had been received; in the said letter Sri S.P. Jain requested the Secretary to send to him the details of the said applications and similar details of such applications,--as may be received by the Company in future, including the name of the applicant, his profession, full address, number of shares applied for, and the amount sent with the application. The Secretary of the Company in his letter of reply dated April 5, 1958 to Sri S.P. Jain wrote that the applications were with the Managing Director and the Secretary requested Sri S.P. Jain to address direct to the Managing Director for the necessary information. Thereupon Sri S.P. Jain wrote to the Managing Director Sri B. Patnaik on April 8, 1958 stating that certain applications from individuals for allotment of shares out of the new shares had been received and that they were with Sri B. Patnaik and in the said letter Sri S.P. Jain requested Sri B. Patnaik to send to him a list up to date of the applications received with the names of the applicants, their profession, full address, the number of shares applied for and the amount remitted to the Company with the applications, and Sri S.P. Jain also made a request to send to him similar particulars in respect of applications, which may be received further; no reply, however, was given to this request for the particulars of the alleged applications; the fact of withholding of these documents by the Company leads the Court to a reasonable inference adverse to those in the management of the Company at the time. In the normal course these applications should have been with the Secretary of the Company but, in the present case, curiously enough the applications were alleged to have been with the managing director.

The plea, taken on behalf of the rival groups, as contained in a counter affidavit filed by respondent No. 2 dated March 17, 1961, for non-production of the said applications referred to in the letter of the Secretary dated April 5, 1958 as having been with the Company's Managing Director,--was that though in fact that certain applications were received by the Managing Director from various people expressing their willingness to acquire share in the Company, but after Sri S.P. Jain had filed the Title Suit No. 21 of 1958 and had obtained interim injunction, various rumours started as a result thereof and thus the intending share-holders were scared away and accordingly they took back their applications and that subsequently fresh offers were made to buy the shares in the Company in the first half of July, 1958. In my opinion, this explanation is unacceptable; it is not intelligible how the applicants for shares can get back their applications from the Company; in the normal course, if cheques had been

sent along with applications, they must have been entered in the books of the Company; these applications and moneys received from the applicants must have been entered in the register and books of account; the moneys were to be deposited in a scheduled Bank as required u/s 69 (3) and (4) of the Indian Companies Act, 1956. The alleged applications, if any, must have been made, before the date of the extraordinary general meeting which was held on March 29, 1958,--along with the application moneys payable on such application on such shares, which shall not be less than 5 per cent of the nominal share u/s 69(3) of the Act. The Title suit No. 21 of 1958 was not filed until April 18, 1958. Therefore, for more than three weeks the moneys and the applications were lying with the Company, because the case of the respondents 1 and 2, in the said affidavit dated March 17, 1961, is that, after the Jain Group had filed the title suit on April 18, 1958 and obtained interim injunction, the applicants for shares were scared away and took back their applications and moneys during all these weeks when the applications and the moneys required to be sent along with the applications were presumably received before the general meeting on March 29, 1958.

The Company cannot be heard to say, relying upon that abstract doctrine of onus of proof, that it was no part of its duty to produce the applications, unless it was called upon to do so. A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision; with regard to third parties, this may be right enough--they have no responsibility for the conduct of the suit; but with regard to the parties to the suit, it is an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition. (T.S. Murugessam Pillai v. M.D. Gnana Sambandha Pandara Sannadhi AIR 1917 PC 6; Rameshwar Singh v. Bajit Lal Pathak AIR 1929 PC 95; Hiralal and Others Vs. Badkulal and Others, .

In the present case, undoubtedly all these facts were within the special knowledge of those in the management of the Company at the time and by reason of non-production of the relevant documents, the petitioner is entitled to the benefit of presumption against the Company. The petitioner had made an application filed on April 5, 1961 for production of documents including Cash Books and ledger Books of the Company for the year 1958; on the said application this Court made an order on April 7, 1961 directing the Company to produce the said documents as mentioned in the said petition; the Books of Account for the year 1958 were not produced by the Company; in any event it was for the Company to tender the Books of Account of the year 1958 in evidence and get them exhibited in court. The Company having failed to do so the Court can draw an adverse inference against the Company.

14. The Company pursued its policy of excluding the minority shareholders from

the benefit of the newly issued 39,000 shares in spite of the order of injunction dated April 18, 1958 passed by the learned Subordinate Judge in the said Title Suit No. 21 of 1958 restraining the Company and the other defendants in the suit, including members of the rival groups, from issuing and allotting the 39,000 ordinary shares to persons other than the existing shareholders and giving effect to the resolution, in that regard, of the extraordinary general meeting of the shareholders held on March 29, 1958. While the injunction was still continuing, on June 21, 1958 the Company issued a notice for Board meeting to be held on June 30, 1958, one of the items in the agenda being issue and allotment of further capital in view of Court injunctions. It was about this time that Sri S.P. Jain applied for leave to go out of India; in fact, he was absent from India till the end of September 1958. Although the suit was still pending, unfortunately the rival groups included in the Agenda of the notice of Board meeting to be held on July 21, 1958, the consideration and allotment of the said shares on the basis of the resolution of the extra-ordinary general meeting held on March 29, 1958 authorising the Board of Directors to issue and allot 39,000 shares; the Company, however, mentioned in the Agenda that it will be subject to any order of the Court of the Subordinate Judge in the pending suit. This explanation is not acceptable, because the fact remains that the conduct of the Company,--in including in the Agenda the consideration of the said resolution, passed at the general meeting "on March 29, 1958, with a view to give effect to the same,-- was by itself, violation of the said order of injunction; all these notices of the meeting,--including, in the Agenda, the consideration of allotment of the said 39,000 shares,--We undoubtedly with a view to give effect to the said resolution and thus it was in breach of the injunction order which was still continuing; the proceedings were not carried on in a normal and orthodox manner, as appears from facts hereinafter stated.

On July 23, 1958 the Company again gave notice of Board meeting to be held on July 30, 1958 at 10.30 A.M. again including in the Agenda the consideration of allotment of the said 39,000 shares. After receiving the said notice, Sri D.R. Sabharwal of the Jain Group on July 29, 1958 (by that time Sri S.P. Jain was out of India) vote to the Managing Director of the Company that the list of applicants for allotment of shares which was to be considered at the Board meeting on July 30, 1958 had not been so far placed before the Board, nor had the same been intimated to Sri D.R. Sabharwal; that at the last Board meeting which was called on July 21, 1958 the question of allotment was in the Agenda but no list of applicants was placed on the table; Sri Sabharwal in the said letter pointed out to the Managing Director of the Company that as judgment was expected to be delivered on July 30, 1958, the Company had therefore purposely called the meeting on the said date (July 30, 1958): that the reasons for calling the Board meeting with great haste were obvious; that the Chairman (referring to Sri S.P. Jain) also sometime back wrote to the Managing Director for supplying him the list of applications which was mentioned by the Managing Director in the extra-ordinary general meeting on March 29, 1958 to have been received, but no list

was supplied to the Chairman; in the said letter Sri D.R. Sabharwal insisted that the list of applicants who had applied for allotment of shares should be placed on the table at the Board meeting on July 30, 1953; and lastly it was commented in the said letter that it was unfortunate that even the Directors and the Chairman are being kept in the dark on such important matters. On the same date (July 29, 1958) Sri D.R. Sabharwal also addressed another letter to the Managing Director of the Company asking for the particulars as to how did the applicants know that shares were being issued and that the Company intended to allot shares; then, as to who received the applications for allotment of shares and whether there was an authority granted by the Board; whether there was anybody authorised by the Board to call for any applications; and the reason why the list of applicants was not placed before the Board though in the Agenda for several meetings of the Board, consideration of this matter was mentioned and lastly the reason why this information was suppressed from the Chairman and the writer of the letter; yet no reply was given to any of these letters by the managing Director of the Company.

15. Then we come to the crucial date, namely, July 30, 1958 on which the said 39,000 new shares were ultimately allotted to persons to the exclusion of the existing shareholders including the petitioner as one of the minority shareholder. Some time after 10.30 in the morning of that date when the court normally sits, the learned Subordinate Judge vacated the interim order of injunction in the said Title Suit No. 21 of 1958. Immediately an application was made by the learned Advocate for the Jain Group, who were plaintiffs in the said suit, for stay of operation of the said order vacating the injunction for three days, in order to be able to move the High Court for an order of stay of operation of the said order; as appears from records, the learned Advocate for the Company and the rival groups was present in court when the said prayer was made to the learned Subordinate Judge that the operation of his order vacating the injunction will take effect after three days; it further appears that at about 12.30 P.M. the learned Advocate for the Company and the rival groups was served with a copy of the petition for stay of operation of the said order vacating the injunction; acknowledgment of receipt of which appears off the body of the petition itself. In the meantime,--as the minutes of the Board Meeting of July 30, 1958 show,--the Chairman of the meeting (Sri Lagnathan of the rival group) placed before the Board a note received from the Company's Advocate at 11.45 A.M. and informed the Board that the learned Subordinate Judge had vacated the order of injunction previously passed by him in the said suit, thereupon, the Chairman produced before the Board the applications of various persons offering to purchase shares in the Company and the Chairman informed the Board that 5 percent of the application money had already been received by the Company, and immediately shares were allotted to seven persons who are stated to have applied for the same along with the application money; the meeting is stated to have terminated at 10.10 p.m.; soon mere-after notices of allotment were issued and posted under certificate of posting and the names of the allottees were entered in the

Register of Members, and thereafter a return, as required under the Companies Act, 1956, was filed with the Registrar of Companies, Orissa, Cuttack, by 12.40 P.M.

16. Thus, there is a good deal of substance in the petitioner's case, that taking advantage of the fact that the interim order stood vacated for 2 or 3 hours on July 30, 1958, the respondents 2 and 4 (who were present at the Board meeting) hurriedly and with uncanny haste and by playing a trick caused the said 39,000 shares to be allotted among their friends and nominees or persons under their control.

It is, indeed, significant that no particulars had been given to the Board or to Sri Jain (who at the time was Chairman of the Company) or to Sri D.R. Sabharwal of the minority group, in spite of requests as aforesaid as to when the applications were made to the Company for subscribing the said 39,000 new shares and on what authority such alleged applications were received by the Company. It is also curious that no explanation had been given as to how these so-called seven independent applicants, including one from Gauhati in Assam, came to know that the Company was going to allot the said 39,000 new shares; although no authority had been given by the Board to receive any offer, for the subscription of the said new shares or to entertain any application in respect thereof, yet certain applications appear to have been made by and received from the so-called independent parties for subscribing the said shares; none of these applications were ever produced or placed before the Board of Directors prior to the Board Meeting on July 30, 1958. In fact Sri S.P. Jain and Sri D.R. Sabharwal were trying to obtain information about these so-called applications for Shares but no information was supplied to Sri S.P. Jain in spite of repeated requests and he was deliberately kept in the dark.

Furthermore, it is intriguing that, in course of hearing this application, on April 18, 1961, the Secretary of the Company annexed to his affidavit, filed on that date, the seven applications of seven persons to whom shares were allotted on July 30, 1958; these applications appear to bear dates from July 10 to July 14/15, 1958; those applications include one from Mrs. Swarn Obhrai of Gauhati, Assam, dated July 10, 1958.

If these applications were genuine, then they were in existence and in possession of the Company by the middle of July, 1958. It is a staggering circumstance that,--in spite of repeated requests by Sri D.R. Sabharwal, in his letter dated July 29, 1958, for supplying the particulars of the applications,--the Company, far from supplying the particulars, did not even care to give a reply to the said requests. It is inexplicable how these seven applications,--all bearing date from July 10 to July 15, 1958,--came to be subsequently disclosed by the Company as late as April 18, 1951 after this case Was already heard for several days. Thus, I have reasons to doubt the genuineness of these applications. My suspicion is further confirmed by the non-production of the Company's books of account from which it could be ascertained whether the application moneys,--alleged to

have been sent with the applications, all by the middle of July 1958, long before the Board Meeting of July 30, 1958, were duly entered therein as required by law.

17. There is another aspect with regard to these seven applications,--all of mid-July, 1958. The injunction order, passed by the learned Subordinate Judge in the said Title Suit, was still pending when these applications all of mid-July, 1958 are stated to have been received by the Company. But the Company could not receive these applications, while the injunction was still continuing restraining the Company and the rival group from issuing and allotting the said 39,000 ordinary shares to persons other than the existing shareholders and front giving effect to the resolution, in that regard, of the extra-ordinary general meeting of the shareholders held on March 29, 1958; the very fact of the Company having received these applications and the application moneys in the middle of July, 1958, when the injunction was in force, is by itself a breach of the injunction order passed by the Court. In this context, my attention was drawn to an advertisement of notice, advertised in the issue of the Prajatantra dated May 10, 1958 whereby notice was given to whomsoever It may concern that the Court had fixed date mentioned therein for receiving objections, if any, to the application for injunction and that in the absence of any objection, the matter would be disposed of according to law. In the face of this notice by advertisement as also in view of the injunction passed by the Court, neither the applicants could apply for the shares nor the Company Could receive or entertain such applications and application moneys which all were in violation of the injunction order.

18. In this back ground, I accept the petitioner's case that the purported allotment of the said 39,000 ordinary shares were surreptitiously and deliberately made solely with a view to defeating the rights of the minority shareholders represented by the petitioner and his group. The rival group rode roughshod over the minority group and appear to have dictated the general conduct of the Company's affairs and its policy with an intolerant dis-regard of the wishes of the minority group of share-holders and indeed in disregard of the best interests of the Company itself.

19. Much was argued, on behalf of the Company on the plea of mixed motive that if the true effect of the whole evidence is, that the Company and the rival groups truly and reasonably believed at the time of allotment of the said 39,000 new shares that what they did was for the interest of the Company, they are not chargeable with dolus malus or breach of trust merely because in promoting the interest of the Company they were also promoting their own, or because they afterwards profited thereby.

In the present case, it is clear that the allotment of the said 39,000 shares to seven persons were not in the interest of the Company, because records, including the balance-sheets, show that even by 1960 share moneys Rs. 39 lakhs were not realised from the said allottees. Although, it was given out, by those in the management of the Company, that the Company was in urgent need of

funds, the said allotments of 39,000 new shares did not however bring immediate funds to the Company.

The position was this: The Company asked for only the minimum of 5 per cent of the nominal amount of the shares although the Company was in urgent need of money; on previous occasions full payment was made for allotment of shares. The balance sheet for the year 1958-59 (page 7) shows that for the said 39,000 ordinary (equity) shares of Rs. 100/- each fully called up, calls unpaid, due and payable after March 31, 1959, were Rs. 33,15,000 which were left outstanding; this clearly shows that the real motive of the rival groups was not the interest of the Company which was in urgent need of moneys; their real motive was to oust the Jain Group from the Company. The balance-sheet for the following year 1959-60 (page 6) also shows that Rs. 7,65,000/- were still outstanding. It is also significant that while these unpaid call moneys were left outstanding, the Company was still taking loans and paying interest to Banks and others; thus the balance-sheet for the year 1958-59 (page 13) shows that the Company was paying interest to Banks and others to the tune of Rs. 3,08,659/- apart from interest on Fixed Loans which was Rs. 2,59,059/-, thus the total interest that the Company was paying was Rs. 5,67,718/-. The said shares could have been forfeited for non-payment of call moneys but that was not done, which clearly shows that it is not that the rival groups were keen on raising capital for the Company which was in urgent need of money; if the Company realised the call moneys which were left outstanding, it could have reduced its liability. Thus, it is clear that the interest of the Company was not at all in the mind of those in the management of the Company at the time. In fact the Company was in need of funds, and it would have been in the interest of the Company to raise moneys quickly by offering the shares to the existing shareholders, who were ready to have them on full payment of the en-tire consideration; instead, the rival groups, with a view to oust the minority group, took recourse to measures by reason of which the Company's interest itself suffered, because on the one hand they were taking loans and paying interest to Banks and others, while the unpaid share moneys for the said 39,000 shares were being left outstanding even as late at 1960, that is to say, two years after the allotment of the said shares in July, 1958.

Even in respect of the application moneys,--which the said seven applicants in their applications mentioned to have sent therewith,--there is nothing on record to show who drew the cheques in respect of the said application moneys, and whether they had been entered in the books of account of the Company. While the genuineness of these allotments of the said 39,000 shares was being challenged from the very beginning, the Company should have produced all the relevant books of Account showing the correct position; the non-production of the relevant documents leads this Court to draw an adverse inference against the Company and its management.

20. In my opinion, the allotment of 39,000 shares, In the manner it was done, was. not a bona fide transaction; it was just to oust the Jain Group. The Directors

of the Company were in a fiduciary position, and the Jain group, representing minority shareholders, was in the position of cestui que trust; the conduct of those, in the management of the Company at that time, was clearly a breach of trust. The directors belonging to the rival groups did not exercise their power for the benefit of the Company and they had clearly a motive which affected the Company, its interest and the existing shareholders and accordingly it is a fit case for the interference by the Court as a Court of equity in order to prevent a breach on the part of the said directors and to protect the cestuique trust, namely, the Company and the existing shareholders; it is a case where as between the Directors of the Company and the existing shareholders there is a breach of trust and bad faith and hence the necessity for exercise of the equitable jurisdiction of this Court. The allotment of the said 39,000 shares to the said seven persons did not serve the interest of the Company, because the unpaid share moneys were allowed to be left outstanding, although the Company was in urgent need of funds; the real motive of the rival groups was to keep out the Jain Group. The said allotment of 39,008 shares was to the prejudice of the Company, in that it did not get immediate funds in not having received the call moneys, at the same time had to pay heavy sums as interest for loans raised by it, as appears from the balance-sheet.

21. Subsequent conduct of the rival groups also shows that their oppression and mismanagement did not cease even after the allotment of the said 39,000 shares which was resented by the Jain Group. The company still,--in pursuance of its policy of continuing and continuous process of oppression of the petitioner and his group being the minority shareholders,--made a similar attempt in August-September 1960 and the Company issued a notice dated August 25, 1960 for holding an extraordinary general meeting on September 21, 1960 for the purpose of considering and, if thought fit, passing with or without amendment certain resolutions, mentioned therein, with a view to further increase the share-capital from Rs. 1 crore to Rs. 3 crores by creation of additional one lakh of equity shares of Rs. 100/- each and one lakh preference shares as mentioned in the notice and for necessary alteration of the Memorandum and Articles of Association. The proposed resolution No. 4 mentioned in the said notice was as follows:

"4. Resolved that subject to the sanction to issue of further equity and preference shares as aforesaid to be obtained from the Controller of Capital Issues the said shares or so much thereof have been sanctioned to be issued, shall be issued either at par or at such premium as the Directors think fit provided however that such equity and preference shares shall not be offered or allotted to the existing shareholders of the Company but that the Directors be and they are hereby expressly authorised subject to such sanction as aforesaid to issue and allot such shares either, privately or to other persons not being existing shareholders or to the public by issue of prospectus as they think fit and on such terms and conditions as the Directors think fit and proper in the best interest of the Company and at the sole discretion of the Directors."

In an Explanatory statement in the said Notice, regarding the said proposed special Resolution No. 4 it was stated that the management considered it necessary and desirable that the shares in the Company should be offered to outsiders i.e., persons other than the existing share-holders, and as much capital as possible should be raised from such outsiders, that this would ensure that the structure of the company will be further broadbased and the shares should be held by various independent persons, i.e., not the existing share-holders.

It appears, however, that,--contrary to all preaching of broad-basedness of share-holding as expressed in the said Explanatory Statement,--the share-holding in the Company, far from being broad-based, is now confined to a few share-holders of the rival group in that the said 39,000 shares are now in the hands of only two, namely, the respondent No. 16 Central Bank of India, Madras, holding, as owner, 30,000 shares, and respondent No. 14 Bijoy Kumar Mall holding, also as owner, the remaining 9,000 shares, thus the structure of shareholding in the Company has, by reason of the conduct of the rival groups, assumed the shape of an inverted pyramid, narrowed down to tiny base far from being broad-based, it is clear that the Company and the rival group had ulterior motive in their move to increase the share capital by creation of additional shares as aforesaid, all in the pretence of being offered to outsiders, that is persons other than existing share-holders, as proposed in the said Special Resolution No. 4 mentioned in the notice for the extraordinary general meeting to be held on September 21, 1960. It was immediately, after the petitioner received the notice, that he filed the present application under Sections 397, 398, 402 and 403 Companies Act, 1956 on September 14, 1960, on the said application an order of interim injunction was made by this Court restraining the company and the rival groups from proceeding further with the said issue and Allotment of the said one lakh equity shares as aforesaid; And thus the further attempt of oppression and mismanagement failed because of the timely intervention by this Court before further mischief was done.

22. Thus, it is not a case of isolated instance of oppression or mismanagement of the Company's affairs,--but the persistent conduct of those, in the management of the Company, from 1958 onwards, shows that the motive of the rival groups was to completely oust the minority group of share-holders. The sole object of convening the said meeting on September 21, 1960 and to pass the said resolution in furtherance of the continuing and continuous process of oppression of the petitioner and his group being the minority share-holders and with a view to completely exclude the petitioner and his group from all control in the affairs of the Company and to deprive them of the financial advantages to be gained by them by the issue of new shares at par and to retain such advantages to themselves, so that ultimately the petitioner and his group may be forced to sell their holdings to respondents 2 and 4 and their group at a nominal value; it was with this mala fide object and in view that the said shares were proposed to be offered to the so-called outsiders and not to the existing shareholders. If the said resolution was allowed to be passed, the petitioner and his group would have

been deprived of their right to subscribe to the new shares in proportion to their existing holdings, and the respondents 2 and 4 in furtherance of their mala fide object would have packed the general meeting with their nominees, benamdars and persons within their control, and would, thus, have fraudulently excluded the petitioner and his group; furthermore, if such a resolution was allowed to be passed the respondents Nos. 2 and 4 and their group would have acquired more than 75 per cent of voting strength of the Company and would have also gained enormous financial advantages to themselves.

I am satisfied that the respondents Nos. 2 and 4 and their group had been and are still behaving with the minority shareholders represented by the petitioner and his group in a manner which is oppressive and which is burdensome, harsh and wrongful; the whole object of the respondents Nos. 2 and 4 and their groups is to obtain a realignment of the shares holding in a manner, so that they can control over 75 per cent of the voting power; the conduct of the respondents and their groups has been such as to involve a visible departure from the standard of fair dealing and a violation of the conditions of fair-play. In view of the wrongful acts of respondents 2 and 4 and their groups who had thus combined together as hereinbefore mentioned, there has arisen a justifiable lack of confidence on the part of the petitioner and his group in the conduct and management of the Company's affairs by respondents Nos. 2 and 4 and their groups, such lack of confidence has been caused by the lack of probity in the conduct of the company's affairs by the said respondents and their groups, the said respondents are more concerned with the benefits personal to them-selves than with the welfare of the Company and are acting unfairly to the petitioner and his group. I, therefore, hold that the conduct of the rival groups in the matter of allotment of the said 39,000 shares and their subsequent conduct amounted to continuing and continuous process or oppression to minority shareholders, including the petitioner, and mismanagement likely to be prejudicial to the interests of the Company.

23. It is the settled position in law that such oppression of minority shareholders is itself sufficient for winding up, on the ground that it is just and equitable that the Company should be wound up. The Court exercises its just and equitable jurisdiction in cases of this type, where the circumstances were such as to warrant the inference that there has been, it least, unfair abuse of the powers and in impairment of confidence in the probity in which the Company's affairs should have been conducted. In the present case, to wind up the Company would, however, unfairly prejudice the petitioner and the other members of the minority group because the break-up value of the assets would not be sufficient for the purpose of properly compensating all the shareholders with the consequence that the shares will go down and the assets of the Company will also go down; furthermore, as a result of liquidation, the said rival groups, taking advantage of the same, will acquire the assets for themselves; while on the other hand, if the oppression is removed, the company will prosper.

These are the reasons why instead of petitioning for a winding up order, the Jain Group of shareholders seek herein to invoke the new remedy given by Section 397 of the Companies Act, 1956 which lays down the appropriate remedy; words of the section suggest that the legislature had in mind some remedy whereby the Company instead of being wound up, might continue to operate; the object of the remedy is to bring "to an end the matters complained of", that is, the oppression; this remedy is available even when the oppression is so moderate that it only inflicts wounds on the Company whilst leaving it active. In the present case, although the Company was not put out of action altogether, the rival groups, by their oppression, brought down the whole edifice, by riding roughshod over the minority group and dictating the general conduct of the Company's affairs and its policy, totally ignoring the wishes of the minority group of shareholders and the interest of the Company itself as aforesaid. In my opinion, this is a fit case where the injured Jain Group of shareholders have a remedy u/s 397.

The remedy u/s 397--substantially the same as u/s 210 of the English Companies Act, 1948,--is of undoubted value and has already been extensively and effectively invoked as a threat to induce those in control to behave reasonably towards all interests; as a weapon in the share holder's armoury it will probably always prove more potent when brandished in terrorem than when actually used to strike; in any event, it is particularly useful in the case of small Companies,--as in the present case,--when it will normally be superior to winding up, and available in circumstances where winding-up might be impracticable and disadvantageous.

24. Reliefs:

This leads me to the consideration of the question of reliefs, prayed for in this application which, for convenience of ready reference, are set out below:---

"(a) Removal of the present Board of Directors of the Company consisting of the respondents Nos. 2 to 5:

(b) Reconstitution of the Board of directors of the Company with at least two permanent representatives from your petitioner's group and to ensure equal representation in the Board of the said Company of the three groups of shareholders mentioned in the petition,

(c) Directions be given for suitable alterations and/or changes in the Articles of Association of the Company with a view to incorporate the provisions of the said Agreement between the parties dated 27th July, 1954, and to give effect to prayers (a) and (b) above;

(d) A declaration that the resolution passed at the Board meeting on the 1st March, 1958 and at the General Meeting on the 29th March 1958 are null and void, illegal, ultra vires and/or were passed in abuse of the powers of the respondents Nos. 2 and 4 and their group and in oppression of the minority

shareholders and the said resolutions be set aside in so far as they purport to relate to the issue of allotment of the said 39,000 shares:

(e) A declaration that the resolution of the Board of Directors of the Company dated 30th July 1958 purporting to allot 39,000 shares to the respondents Nos. 6 to 12 in proportions mentioned therein are illegal, null and void and ultra vires the provisions of law and/or were passed in the abuse of the powers of the respondents Nos. 2 and 4 and/or their groups and in oppression of the minority shareholders of the Company and are not binding upon the company and/or the petitioner and his group and the said resolutions be set aside.

(ee) A declaration that the transfer of the said 39,000 shares or any part thereof to the respondents 14, 15 and 16. Sri B.K. Mall, Sri K.C. Dalai and the Central Bank of India is illegal, null and void, inoperative and ultra vires the provisions of law and/or the said two respondents neither had nor have, nor ever acquired any right, title or interest in the said shares.

(f) Directions be given to the respondents Nos. 6 to 12 as also respondents 14, 15 and 16 to sell the said 39,000 shares to the Company upon payment of the amounts actually paid thereon so far and the Company be directed to offer the same to the existing shareholders as on the 29th July 1958 in proportion to their respective holdings.

(g) Alternatively, the respondents Nos. 6 to 12 as also respondents 14, 15 and 16 be directed to sell the said 39,000 shares to the existing shareholders of the Company as on the 29th July, 1958 who are willing to purchase the same in proportion to their respective holdings against payment of the amount actually paid so far by the respondents 6 to 12 as also respondents Nos. 14, 15 and 16.

(h) Injunction restraining the Company and respondents Nos. 2 to 5 from placing before the General Meeting of the Company proposed to be held on 21st September 1960 and/or from passing any resolution or resolutions with regard to the increase of the share capital of the Company, creation of additional 1,00,000 Equity Shares of Rs. 100/- each and/or alterations of the Articles of Association to incorporate such increase in the share capital of the Company:

xx xx xx xx

(m) Suitable direction be given and orders be made with a view to regulate the conduct of the affairs of the Company in future."

These prayers can be broadly classed under four groups: firstly, constitution of the Board of Directors; secondly, the question of allotment of the said 39,000 new shares; thirdly, future allotment and lastly, general prayer for suitable direction for regulation of the conduct of the affairs of the Company.

25. As regards the law, on which the reliefs, prayed for, are to be considered,-- apart from Sections 397, 398, 402 and 403 under which this application herein has been made,--Section 304 of the Act provides as to the effect of alteration of

memorandum or articles of the Company u/s 397 or 398, that such alterations shall have the same effect as if they had been duly made by the Company in accordance with the provisions of the Act; and that the said provisions shall apply accordingly to the memorandum or articles as so altered. All these provisions have been introduced in Indian statute by the amending Act of 1956 on the basis of Section 210 of the English Companies Act, 1948. The English law introduced Section 210, on the recommendation of what is known as Cohen Committee, who had carefully examined suggestions intended to strengthen the minority shareholders in resisting oppression by the majority. The Committee considered that a step in the right direction would be to enlarge the power of the Court to make a winding up order by providing that the power shall be exercisable notwithstanding the existence of an alternative remedy; the Committee also took into consideration the position that in many cases, however, the winding up of the Company will not benefit the minority shareholders, since the break-up value of the assets may be small, or the only available purchaser may be that very majority whose oppression has driven the minority to seek redress, the Committee therefore suggested that-

"the court should have, in addition, the power to impose upon the parties to a dispute whatever settlement the court considers just and equitable. This discretion must be unfettered, for it is impossible to lay down a general guide to the solution of what are essentially individual cases. We do not think that the Court can be expected in every case to find and impose a solution; but our proposal will give the court a jurisdiction which it at present lacks, and thereby at least empower it to impose a solution in those cases where one exists." "(Para 60 of the Report)".

Accordingly Cohen Committee recommended that there be a new section under which, on a shareholder's petition, the court, if satisfied that a minority of the shareholders is being oppressed and that a winding-up order would not do justice to the minority, should be empowered, instead of making a winding-up order, to make such other order, as to the Court may seem just.

26. It was on these recommendations that Section 210 was introduced in the English Act in 1948, and thereafter in India in 1952 the Company Law Committee, known as the Bhabha Committee, made its Report; the said Indian Committee had carefully examined the scope of Section 210 of the English Companies Act, 1948 and considered that not only could the English Section 210 be suitably adapted to the circumstances of this country but its scope might be appropriately enlarged to cover not only the cases of oppression to a minority of shareholders, but also of gross mismanagement of the affairs of a Company which cannot be otherwise suitably dealt with under the provisions of the Companies Act; the Indian Committee accordingly recommended the enactment of two sections:

(i) to provide for a remedy for the oppression of minorities on the lines of Section 210 of the English Act, 1948: and

(ii) to provide for a remedy in cases of mismanagement of company's affairs in a manner prejudicial to the interests of the Company.

It will be noticed that the Indian Committee had departed in some important particulars, from the provisions of Section 210 on which the Indian Committee's recommendations were essentially based; in the first place, the Indian Committee had provided that any material change in the Control of a Company may be deemed by the court to constitute a fact, which would justify the grant of alternative remedy instead of winding-up in a case of oppression, and also where in the opinion of the court by reason of such a change in the management or by reason of gross mismanagement the interests of the company have been or are likely to be prejudiced, the Court may make an order determining any agreement howsoever constituted between the Company and the managing agent.

On these recommendations of the Indian Company law Committee, Section 398 (1) (b) and (2) was introduced in the Indian Statute, which provides to the effect that, if by reason of a material change in the management or control of the company, it is likely that the affairs of the Company will be conducted in a manner prejudicial to the interests of the Company, the Court with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit; thus, the likelihood or apprehension of the effect of such material change is enough. In the present case, a solvent group of shareholders, namely, the Jain Group was excluded and in fact successfully ousted from having its legitimate share in the allotment of the newly issued shares, in the circumstances aforesaid thus there has been a material change in the ownership of the shares and in the management and control of the Company which, accordingly, gives rise to an occasion for invoking the jurisdiction of this Court under the said provisions of the Act.

27. The word "oppression" was defined by Viscount Simonds in *Scottish Co-operative Wholesale Society Ltd, v. Meyer* (1958) 3 All ER 66 at p. 71 (House of Lords) where he accepted the dictionary meaning "burdensome, harsh and wrongful", that is to say, what the ordinary man would understand is the meaning of the word; and the said definition of the word, as found in English Section 210 and the Indian Section 397, has been respectively adopted both in England and by the Courts in India; Lord Morton in his speech in the said House of Lords case observed that he was not disposed to give a narrow meaning to the word "oppression" having regard to the manifest object of the section.

28. Each case thus has to be decided on facts and features peculiar to itself. These provisions, being new both in English and Indian statutes, the authority, so far in the shape of judicial decision, is comparatively meagre. The principles, however, have been clearly laid down by the House of Lords in the said decision (1958) 3 All ER 66 which in the same year was followed by the English Court of Appeal in *Re H. R. Harmer Ltd.* (1958) 3 All ER 689. As Viscount Simonds laid down in his speech, in the said House of Lords case, if this section is inapt to cover such a case (as in my opinion in the present case also) it will be a dead

letter indeed; his Lordship expressed himself strongly in that case because it appeared to him to be a glaring example of precisely the evil which Parliament intended to remedy; the House of Lords also expressed the view that the Section warrants the Court in looking at the business realities of a situation and does not confine them to a narrow legalistic view. The principles, laid down in the House of Lords case were, with great respect, not only reiterated but also further amplified by the English Court of Appeal in (1958) 3 All ER 689, where it was laid down that if there is oppression, it remains oppression, even though the oppression is due simply to the controlling shareholder's overweening desire for power and control not with a view to his own pecuniary advantage; the result rather than the motive is the material thing.

The section invites attention, not to events considered in isolation, but to events considered as part of the consecutive story; in considering whether the way in which the majority groups conducted the Company's affairs, was oppressive,--although naturally attention must be paid to the various incidents of which the petitioner complains, taking these incidents by themselves,--the court is concerned really to consider the history of the matter as a whole and to see whether a course of conduct by the majority groups has been established which constitutes an oppression of the other shareholders.

29. The principles laid down in the said English decision have been followed and reiterated by the courts in India. In the matter of Richardson and Cruddas Ltd. Life Insurance Corporation of India Vs. Haridas Mundhra and Others, the Calcutta High Court held that the powers of the Court u/s 402 of the Companies Act are very wide; the court may make any order for the regulation of the conduct of the Company's affairs upon terms and conditions, as may, in the opinion of the Court, be just and equitable in the facts and circumstances of the case; the section is an innovation in the Company's administration by the Court and the Court's power of managing u/s 402 has to be worked out with reference to the facts and circumstances of each case. In the Calcutta case, the Court appointed a special officer with an advisory Board to the total exclusion of the shareholders of the Company to function subject to the terms and conditions laid down in the order made by the Court.

In a recent decision, the Calcutta High Court following the said English decision, expressed the view that where the directors failed to behave with scrupulous fairness to the minority shareholders and failed to maintain the utmost good faith between themselves and the minority shareholders by their unlawful conduct of the affairs of the company, the minority shareholders could justly invoke Sections 397, 398 and 402 In Re: Hindusthan Co-operative Insurance Society Ltd., .

30. On the question of jurisdiction of this Court to grant the reliefs prayed for, the Act provides that the High Court has exclusive jurisdiction under Sections 397 to 407 (both inclusive). Section 10 provides that the Court having jurisdiction under the Act shall be the High Court having jurisdiction in relation to the place at which the registered office of the Company concerned is situate. By

reason of Sub-section (2) of Section 10, the Central Government has no power to empower any District Court to exercise any jurisdiction conferred by the Act in respect of companies generally, by, among other sections, Sections 395 to 407 (both inclusive).

31. With this general discussion of the law in the light of which the reliefs, prayed for, have to be considered, I now deal with the said four groups of reliefs seriatim as follows:--

32. Re--Reliefs in respect of reconstitution of the Board of Directors.

As regards reconstitution of the Board, it was strenuously argued, on behalf of the Company, that grant of prayers (a), (b) and (c)--relating to the constitution of the Board,--will affect the provisions of the Act, namely, Sections 255 to 259, 263 and 264 all relating to the constitution of the Board of Directors under the Act) the Company's point is that the removal and reconstitution of the Board,--in the manner prayed for by the petitioner making room for representation of the Jain Group in the Board in accordance with the terms of the said agreement dated July 27, 1954,--will negative the provisions of the statute, as for instance, u/s 259 any increase in the number of its directors beyond the maximum number of directors beyond nine,--which is the permissible maximum under the Company's Articles,--is not possible, unless approved by the Central Government. It was further submitted on behalf of the Company, that representatives of the Government of Orissa and the Industrial Finance Corporation in the Board, who are there in the Board as non-rotating directors, cannot also be disturbed. The Company's point, in substance, is that the petitioner or his group cannot be fitted in the rotating group of directors and that it is impossible, according to the Company, to give effect to the said agreement of July 27, 1954 for proportional representation of the three groups without violating the statute; that, assuming the said Agreement of July 27, 1954 was a valid agreement, even then the Agreement, according to the Company, cannot be given effect under the articles of association of the Company, as they stand, which had varied the Agreement, if it was at all binding on the Company; that by virtue of Section 9(b) of the Act, such an agreement as repugnant to the provisions of the Act is or has become void.

This argument, however, wholly overlooks the provisions of Section 265 of the Act providing for option to company to adopt proportional representation for the appointment of directors. Section 265 runs as follows:--

"265. Option to Company to adopt proportional representation for the appointment of directors: Notwithstanding anything contained in this Act, the Articles of a Company may provide for the appointment of not less than two-thirds of the total number of the directors of a public Company or of a private Company which is a subsidiary of a public company, according to the principles of proportional representation, whether by the single transferable Vote or by a system of cumulative voting or otherwise, the appointments being made once in

every three years and interim casual vacancies being filled in accordance with the provisions, *mutatis mutandis*, of Section 262."

This Section permits proportional group representation, as prayed for by the petitioner; the words "notwithstanding anything contained in this Act" clearly show that in spite of the provisions relating to the constitution of the Board of Directors from Section 252 onwards, the provisions of Section 265,--giving option to the Company to adopt proportional representation for the appointment of directors,--are absolute and not dependent on any of the provisions contained in the Act, including those, on which the respondent Company herein relied in support of its contention. Section 265 is an important new provision for the appointment of directors by the principles of proportional representation, which has been incorporated in the Act after discussion at great length by the joint Committee; the non-obstante clause in the section removes all the difficulties in the way of reconstitution of the Board, in the manner prayed for by the petitioner, by adopting of proportional representation; for instance, the provisions in Section 255 that not less than two-thirds of the total number of directors shall be persons whose period of office is liable to determination by retirement of directors by rotation is not applicable either to the one-third of the number of directors who are to be appointed according to the articles or to the directors appointed by the principle of proportional representation.

In my opinion, the non-obstante clause in Section 265 is a complete answer to the company's contentions on this point. Thus, the proportional representation of the three groups u/s 255,--which is consistent with the Agreement dated July, 1954,--can be given effect to, notwithstanding anything contained in the Act.

33. u/s 402 read with Section 404, the Court has unfettered discretion to make any order which it considers to be appropriate such as removal of the present Board and reconstitution of the Board in the manner it thinks fit; if the Court makes an order under which it alters any part of the company's memorandum of articles of association, such alteration, made by the court, shall, in all respects, have the same effect as if it had been duly made by the Company in accordance with the provisions of the Act, and such alteration will be itself unalterable except by the leave of the Court or in manner indicated in the order; notwithstanding any other provision in the Act, the Company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Court, any alteration whatsoever which is inconsistent with the order.

It was in this view of these provisions that, in both the cases cited above, the Calcutta High Court removed and reconstituted the Board because the Court has such powers to remove and reconstitute the Board, although such removal and reconstitution may involve contravention of certain provisions of the statute as also the memorandum and articles of association of the Company. In the present case, I am satisfied that the acts complained of all refer to the continuing and continuous conduct of the affairs of the Company, and that the affairs of the Company have been conducted in a manner which can justly be described as

oppressive to the minority shareholders; further, that the affairs of the Company have also been conducted in a manner prejudicial to the interest of the company and that a material change has taken place in the management or control of the Company with the result that the affairs of the Company are being conducted in a manner prejudicial to the interest of the Company. The very attitude of the management shows that they failed to behave with scrupulous fairness to the minority share-holders as was incumbent on them as holding a position of trust; hence the necessity for reconstitution of the Board of Directors based on proportional representation.

34. It was, however, strongly urged on behalf of the Company that the Court has no jurisdiction under Sections 397, 398 and 402 of the Act to introduce proportional representation u/s 265 because according to the Company's point of view, such right is vested in the Central Government alone u/s 408 onwards : that in the scheme of the Act this distinction of classification of powers has been introduced through Group A and Group B in Chapter VI of the Companies Act, 1956, Group A being powers of court and Group B being powers of Central Government; it was contended that there was no non-obstante clause in Group A powers of Court but there was such non-obstante clause in group B powers of Central Government. The purely legalistic stand, that was taken on behalf of the Company was shortly stated, thus proportional representation u/s 265 could only be decided by the share-holders and not by an outside agency as this Court; that condition precedent to proportional representation u/s 265 is that the Company must be in a position to constitute a Board consisting of not less than two thirds of the total number of Directors according to the principle of proportional representation; but in the present case, the Company cannot have such two-thirds in the Board because the Industrial Finance Corporation and the Government Directors cannot be excluded; accordingly, their numerical strength, namely, four (two from industrial Finance Corporation and two from Government of Orissa) must be set apart: the permissible maximum number of directors under the articles when the Company was first registered was nine out of which four are to be reserved, namely, two each for Industrial Finance Corporation and Government of Orissa as aforesaid, thus, leaving only five, as rotating directors whereas u/s 265 it has to be two-thirds of the maximum number (nine), that is to say, six; therefore, the six rotating directors, according to the principle of proportional representation as proposed, and the four ex-officio non-rotating directors, the total number being 10 exceed the permissible maximum number of directors, namely nine.

The company's point is that these difficulties in the way of getting proportional representation u/s 265, can only be solved by Central Government under Group B powers of Central Government (Sections 408, 409 and onward); provisions accordingly have been made placing such powers with the Central Government under Group B, powers, whereby express powers have been given to the Central Government to deal with reconstitution of the Board and introduce proportional representation u/s 265; Sections 408 and 409, giving powers to the Central

Government, deal with the same subject-matter and the same circumstances as in Sections 397 and 398 and onward under which powers have been given to court, further, Sections 408 and 409 give powers to the Central Government to set out the machinery for the purpose of giving effect to the same, through a body called Advisory Commission as provided in Sections 410 to 415 of the Act: that Section 408 also gives power to the Central Government to make fresh appointments of directors according to the principle of proportional representation u/s 265 in express terms, and lays down solution of the difficulties in the way of maintaining two-thirds rotating directors in spite of the provision for ex-officio non-rotating directors (as in the present case), by expressly providing that for the purpose of reckoning two-thirds, any director or directors appointed by the Central Government shall not be taken into account.

35. All these arguments urged, on behalf of the Company, in support of its point,--that the Central Government alone has power to introduce proportional representation u/s 265,--however, lose their force as wholly fallacious, in the face of the position, firstly that Section 404, under Group A powers of court, itself contains a non-obstante clause providing that where an order by Court u/s 397 and Section 398 makes any alteration in the memorandum or articles of a company, then notwithstanding any other provision of the Act, the Company shall not have power to make without the leave of the Court, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles; and further that such alterations made by the order of the court shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of the Act; secondly, the proviso to Article 10 of the articles of association of the Company,--that the number of persons who can be appointed as special directors or ex-officio directors shall in no case exceed one-third of the total number of directors of the Company,--is a complete answer to the Company's point that four out of nine ex-officio directors have to be set apart and reserved for the Industrial Finances Corporation and Government of Orissa; under the said proviso to Article 10 the number of persons who can be appointed as ex-officio directors shall not in any case exceed one-third of the total number of directors of the Company, that is to say, the number of such ex-officio directors cannot exceed one-third of the permissible limit of nine, that is to say, three; therefore, the Industrial Finance Corporation and the Government of Orissa, taken together cannot have more than three directors in the Board under the articles of association of the Company.

I do not, therefore, accept any of the Company's contentions on this point.

36. That apart, Section 10 of the Companies Act, 1955-gives exclusive jurisdiction to the High Court with regard to the powers conferred by, among other sections, Sections 397 to 407 (both inclusive) all under Group A powers of court for prevention or corruption and mismanagement under Chapter VI of the Act. u/s 399(4) the Central Government may, if in its opinion circumstances exist which make it just and equitable as to do, authorise any member of the

Company to apply to the Court u/s 397 or 398. Section 400 provides for notice to be given to the Central Government of applications under Sections 397 and 398; in the present case also, notice was given to the Central Government and the representation of the Central Government under the section dated December 5, 1960 has been made by the Registrar of Companies, Orissa, authorised in that behalf; in the said representation, the Central Government has not opposed the present petition; in fact the Central Government submitted to the jurisdiction of the Court. Thus, if the Central Government had exclusive jurisdiction under Sections 408 and 409, then it would not have left the matter to this Court for decision. In fact, u/s 401 the Central Government could itself apply to the court for an order under Sections 397 or 398 or cause an application to be made to the court for such an order by any person authorised by it in this behalf.

So, there is no substance in the Company's point that appointment of directors according to the principle of proportional representation u/s 265 was a matter of exclusive jurisdiction of the Central Government under Sections 408 and 409, as was argued on behalf of the Company.

37. In fact, powers of court under Group A (Sections 397 to 407) are much wider than powers of Central Government under Group B (Sections 408 and 409). The power of the Central Government is limited to fresh appointment of directors only in certain contingencies as provided in Section 408; the question of Central Government to make fresh appointments of directors according to proportional representation u/s 265, as provided in the proviso to Section 408(1), can only arise if the Company has not availed itself of the option given to it u/s 265: so, if the option to company to adopt proportional representation for the appointment of directors is not availed of by the Company, then only the Central Government may direct the Company to amend its articles: in the manner provided in that Section. The Central Government can impose on the Company not more than two directors for a period not exceeding three years only under conditions and in contingencies as provided in Section 408. The powers of Court under Group A (Section 397 to 407) are, however, much wider in that if the court passes an order, providing for the appointment of the directors according to the principle of proportional representation, then by virtue of Section 404, such order of Court, making the alterations, shall, in all respects, have the same effect as if the alterations had been duly made by the Company, in accordance with the provisions of the Act, and accordingly, the company will be deemed to have availed itself of the option given to it u/s 265 and so there is no scope left for the Central Government to exercise its powers u/s 408.

38. In the light of the above, I order and direct the Board to be reconstituted in terms of the order hereinafter fully stated.

39. Re: Reliefs in respect of the said new 39,000 shares:

Now, on the question of reliefs in respect of the allotment of the said 39,000 new shares in the manner it was done, under the circumstances aforesaid, the

petitioner relied on the provisions of Section 81 of the Companies Act 1958, relating to further issue of capital. The relevant provisions of Section 81 (Prior to the amendment made on December 28, 1960), as applicable in the present context, are set out as follows:

"81. Further issue of capital.

(1). Where at any time subsequent to the first allotment of shares in a Company, it is proposed to increase the subscribed capital of the Company by the issue of new shares, then subject to any directions to the contrary which may be given by the Company in a general meeting, and subject only to those directions.

(a) such new shares shall be offered to the persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the capital paid up on those shares on that rate:

(2) XX XX XX XX XX XX (3) This section shall not apply to a private company"

In the present case, the allotment of the said 39,000 shares was the first allotment after the Company became a public company on January 11, 1957: between January 11, 1957 when the Company became a public company and July 30, 1958 there was no other allotment of shares by the Company as a public company. Sub-section (3) of Section 81 has expressly laid down that Section 81 shall not apply to a private Company. Therefore, the allotment of these 39,000 shares was to be first allotment of shares by the company as a public company; whatever directions were given at the extraordinary general meeting on March 29, 1958 were not subsequent to the first allotment, and further the resolution prior to the first allotment at the said general meeting on March 29, 1958,--that the 39,000 shares shall not be offered or allotted to the existing holders of equity shares in the Company or to the public,--was also before the first allotment which was made at the Board meeting on July 30, 1958. Thus it is clear that no contrary direction (contrary to Section 81(1)(a)) was given subsequent to the first allotment of shares to the Company as a public company.

There is a good principle involved in the words "subsequent to the first allotment of share", namely, that the first allotment must, in any event, be to the existing shareholders u/s 81(1)(a); there is no qualification attached to the first allotment; that is an absolute right given to the existing shareholders without any qualification whatsoever; the allotment on July 30, 1958 of the said 39,000 shares being the first allotment, there is no question of contravention of the requirement that it will be subject to any directions to the contrary which may be given by the Company in a general meeting; thus u/s 81(1)(a) the said 39,000 new shares were to be offered to the persons who, at the date of the offer, were holders of the equity shares of the Company in proportion to the capital paid up on these shares at that date, and thus no other option was left to the Company with regard to the first allotment and that is exactly why in the agenda for the meeting on March 29, 1958 the subject which was to be considered was the "manner and proportion" in which such shares were to be issued presumably to

the existing share-holders, as the Jain Group of shareholders understood the Agenda to mean.

The object of Section 81 is to prevent discrimination amongst shareholders and prevent the directors from offering shares to outsiders before they are offered to the shareholders; so long as these two requirements are complied with, the action of the directors in selecting the time when they will issue the shares as also the proportion in which they should be issued is a matter left to their discretion; this is of course subject to the general exception that the directors are not to act against the interest of the Company or mala fide, the statutory right of the existing shareholders to acquire the new shares continues till the time limited has expired and that right can only be lost if he declines to accept the shares prior to the expiry of the time-limit; the section limits the powers of directors to dispose of the further issue of capital in any manner that they may think most beneficial to the Company; they are under a mandate to offer these shares in the first instance to the members in proportion to the existing shares held by them; in other words, a member becomes entitled under the provisions of the Section by reason of his being the holder of a certain number of shares in the company, to obtain shares in the further issue of capital as of right *Mathalone Vs. Bombay Life Assurance Co. Ltd.*, .

That apart, Section 81 does not contemplate total exclusion of the existing shareholders from participating in the allotment of new shares; the clause "subject to any directions to the contrary" can only refer to the manner and proportion in which the shares have to be offered to the existing share-holders; it cannot mean any direction not to offer at all to the existing shareholders, as has been done in the present case. This view is further confirmed by the reiterating clause in the section itself, namely, "subject only to those directions". Thus, in my opinion, the clause "subject to any directions to the contrary" cannot mean any direction not to offer at all any share to the existing share-holders; I do not accept any other interpretation of the said clause as correct. The intention of the legislature is clear from the change in Section 81 by amendment, made on December 28, 1960, by which the clause "subject to any directions to the contrary" etc. has been deleted. In any view of the interpretation of the said clause in Section 81, before amendment of 1930, the existing shareholders cannot be totally excluded from having any benefit of the allotment of the said 39,000 shares which was the first allotment of shares in the Company, after it became public company. Accordingly, the said 39,000 shares should have been offered, in the first instance, to the existing shareholders including the petitioner and his group.

40. Assuming (but not deciding) that the said clause "subject to any directions to the contrary which may be given by the Company in general meeting" in Section 81, was applicable to the allotment of the said 39,000 shares, even so,--by reason of invalidity of the notice dated March 1, 1958 for the extraordinary general meeting held on March 29, 1958, at which the resolution was passed

that the said 39,000 shares shall not be offered or allotted to the existing holders of the equity shares in the Company or to the public,--the said allotment of 39,000 shares on July 30, 1958 pursuant to the said resolution was invalid.

The notice dated March 1, 1958 for the extra-ordinary general meeting held on March 29, 1958, should have contained the draft or substance of the resolution that was to be passed at the said meeting which purported to give directions contrary to Section 81(1)(a) of the Act; the particular nature of the business should have been stated as also all necessary information and the actual purpose of the meeting; there is nothing to show from the notice that a resolution would be passed that the said 39,000 shares shall not be offered or allotted to the existing holders of the equity shares in the Company or to the public; thus the notice for the general meeting on March 29, 1958 was bad, and accordingly whatever resolution was passed was ineffective owing to the absence of the notice of the actual resolution which was to be passed giving directions contrary to Section 81(1)(a) of the Act which gave the existing shareholders the right to be offered the new shares in the first instance.

41. Their Lordships of the Privy Council in *Pacific Coast Coal Mines Ltd. v. Arbuthnot* 1917 AC 607 ; (AIR 1917 PC 52), held that resolution at such meeting without notice giving the necessary particulars was ineffective; and that the acts done in pursuance of such resolution were consequently ultra vires the Company and incapable of being made valid even by acquiescence on the part of the shareholders; in that particular case, certain shareholders in, and directors of a company entered into an agreement between themselves; and it was provided that the shares held by a group of shareholders were to be surrendered in exchange at par for debentures to be created and issued by the Company; the Company, in pursuance of that agreement, obtained a private Act whereby the agreement was "validated, ratified and confirmed, subject to the same being adopted by a resolution passed by 76 per cent of the share-holders present personally or by proxy, at any meeting of the shareholders called for that purpose"; a resolution was passed by the required majority, but the notices convening the meeting did not state, the effect of the agreement, and the proxies of shareholders who before the meeting had no opportunity of knowing the contents of the agreement were used to support the resolution; the articles of association provided that the notice should state its general nature; four years later, when, the shareholders by their acts and conduct adopted and acquiesced in the agreement, the company and two shareholders, suing on behalf of all, brought an action to set aside the trust deed creating the debentures and the debentures issued thereunder. It was in this context, that the Privy Council declared the resolution ineffective, and that the said agreement and the acts done in pursuance of it were consequently ultra vires the Company and incapable of being made valid even by acquiescence on the part of the shareholders; their Lordships considered that it was necessary to consider the purpose for which the meeting was directed to be called, the terms of the notice by which this was done and the circumstances in which the meeting took place.

In the present case, the Explanatory statement annexed to the said notice dated March 1, 1958 does not set out all material facts in order to make it a valid notice of tin; general meeting. Section 173 of the Indian Companies Act, 1956, requires that where any items of business are to be transacted at such meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business. In the present case the material facts for the second item of business in the Agenda, namely "the manner and proportion in which such shares are to be issued" were neither mentioned in the notice nor set out in the Explanatory Statement annexed to the notice; in fact, the notice did not even indicate that the said new shares shall not be offered or allotted to the existing holders of the equity shares in the Company or to the public, nor did it state that the issue and allotment of the said 39,000 shares shall be at the sole discretion of the directors; indeed, it was suppressed that one of the conditions of the Controller's sanction for issue of the said 39,000 new shares was Condition No. 6, namely, that subject to the provisions of Section 81, the new shares should, in the first instance, be offered to the existing shareholders with the right of renunciation attached. Therefore, in view of such suppression of material facts, the resolutions passed at the said general meeting on March 29, 1958 in pursuance of such invalid notice are bad and not effective; accordingly the allotment of the said 39,000 shares at the Board Meeting of July 30, 1958 in pursuance of such resolution is also invalid and ineffective.

42. Similarly, in *Teede and Bishop Ltd.* (1901) 70 LJ Ch 409, notice was given of an extra-ordinary meeting of shareholders in a company for the purpose of considering, and, if thought fit, passing resolutions for voluntary winding up, with the appointment of a liquidator at a fixed remuneration, for the purpose of reconstruction in accordance with the terms of a draft agreement; at the meeting, however, the only resolution put was for the voluntary winding-up of the Company, with the appointment of a liquidator; on these facts, it was found that the resolution put to the meeting was not in accordance with the resolutions of which notice had been given and therefore no valid resolution for a voluntary winding-up had ever been passed and accordingly, the usual compulsory order was made, in the judgment *Cozens-Hardy, J.*,--while discussing the principle involved in the decision and finding that there never was a valid resolution for winding-up,--took the view that when the meeting was held, the resolutions of which notice was given were not put at all; the only resolution put and passed was for voluntary winding-up and the appointment of a liquidator; that, however, was altogether different in its results and objects from what was proposed in the notice; it was not a winding-up to bring into operation the relevant provisions of the Companies Act, 1862; in fact, it was not the resolution of which notice had been given; a share-holder, receiving the notice, might very well say that he would not trouble to attend an ordinary reconstruction meeting, and that at the same time have the strongest objection to an ordinary voluntary winding-up, which is something more than a winding-up for the limited purpose of a

reconstruction, and accordingly the teamed Judge came to the conclusion that there was no valid winding-up in existence.

43. The same view was also reiterated in another English Case in *Re Bridport Old Brewery Co. (1867) 2 Ch. A .191* where notice was given of an extraordinary meeting of shareholders in a Company "for the purpose of considering, and, if so determined on, of passing, a resolution to wind up the company voluntarily"; the meeting, however, passed a resolution "that it has been proved to the satisfaction of the Company that the Company could not, by reason of its liabilities, continue its business; and that it was advisable to wind-up the same"; no meeting was ever called to confirm this resolution. On these facts it was held that the resolution that was passed was invalid, because the notice did not show that it was intended to propose resolution that the Company was unable, by reason of its liabilities, to continue its business nor did it contain anything to show that it was proposed to pass such a resolution for winding up the Company as would not require confirmation by a subsequent meeting. It is evidently of great importance to shareholders that they should have proper notice of what subjects are proposed to be considered at a meeting, and in that particular case they had not such notice; the shareholders were entitled to have a notice which would give them to understand what resolution was going to be proposed at the meeting; it is of great importance that steps taken in the matter of such consequence should be perfectly regular; it was held that there was no sufficient notice and the resolution passed at the meeting was therefore irregular; if the proceedings are not taken regularly according to law, they are abortive.

44. In the present case, item 2 of the Agenda of the notice dated March 1, 1958 of the extra-ordinary general meeting held on March 29, 1958 was only "the manner and proportion in which such shares (39,000 ordinary shares) are to be issued"? but subsequent events which followed,--ultimately resulting in the resolution that the said 39,000 shares shall not be offered or allotted to the existing holders of the equity shares in the company or to the public,--show that the notice of March 1, 1953 was, on the face of it, misleading. The said resolution Which was passed at the general meeting on March 29, 1958 was not according to item 2 of the Agenda of which notice had been given; shareholders having received the said notice had apparently been given the impression that the existing shareholders would get at least some of the new shares and that the only question was in what proportion, and, that is presumably the reason why most of the shareholders did not trouble to attend the said general meeting personally; if indeed the real nature of the resolution which was intended to be passed was mentioned or indicated in the notice or in the attached Explanatory Statement, the shareholders might have raised strong objections to such a resolution for excluding altogether the existing share-holders from the said 39,000 new shares; if, indeed, the shareholders had got the slightest idea that it was going to be proposed that they will not get any new share, then the Jain Group and the neutral shareholders would have attended the meeting personally;

in fact, the petitioner himself, who was left with the same impression about the apparent purport of the notice, did not attend the general meeting personally; the proxies, taken by surprise, were not prepared, and thus were not in a position to represent the views of the share holders effectively.

45. Therefore, the transaction of business at the extra-ordinary general meeting on March 29, 1958 Which had not been sufficiently notified or which was substantially different from that notified is invalid; in this case both the notice as also the attached Explanatory Statement were undoubtedly deceptive and misleading. Therefore, the allotment made on July 30, 1958 pursuant to the said resolution passed at the general meeting on March 29, 1958 with no notice or with insufficient notice or with deceptive or misleading notice is invalid.

46. The said resolution, thus purporting to give directions contrary to Section 81(1)(a) in the said general meeting without valid notice in respect of the 39,000 shares as aforesaid,--must accordingly be set aside and the Company restrained from acting upon the said resolution, as it shows that the predominant motive of those voting for the said resolution in the form in which it was presented,--namely, that the said 39,000 share shall not be offered or allotted to the existing holders of the equity shares in the Company or to the public, was to injure the minority or to dominate for the sake of domination and not to protect the economic position of themselves or of the Company: and the said resolution was such that those voting for it could not reasonably have regarded it as beneficial to the Company: such discrimination against the existing shareholders and lack of candour in the notice convening the said extra-ordinary general meeting on March 29, 1958 vitiated the said resolution as also the allotment of the said 39,000 shares pursuant to the said invalid resolution.

47. I, therefore hold that the petitioner is entitled to reliefs as prayed for in his petition with regard to the issue and allotment of the said 39,000 shares.

Out of the said 39,000 shares, 30,000 shares are now being held by the Central Bank of India, Madras who is respondent No. 16 in this present petition, and the remaining 9,000 shares are now being held by Bijoy Kumar Mull being respondent No. 14 herein. u/s 153 of the Indian Companies Act, 1956 no trust is recognised by the Company. In the present case, however, there is no such difficulty because, according to the list of share-holders given by the Secretary of the Company in his affidavit dated September 19, 1960, being Annexure A to the said affidavit, the Central Bank of India, Madras under serial No. 12 is the holder of 30,000 shares : the Secretary also states in paragraph 10 of the affidavit itself which is verified to his knowledge that the major holdings of the shares are by the Central Bank of India, Madras, who are holding 30, 000 shares worth Rs. 30,00,000/ on their own : that apart, the affidavit of the Agent, Central Bank of India, Madras, himself dated April 7, 1961, is that the Bank became the transferee and owner of 30,000 shares of the new allotment stated to be in good faith and without notice of their pawnor's defect of title, if any, in those shares, and further that the register of members, showing the Bank as the holder of the

said shares, is prima facie evidence of the membership of the Bank with a presumption of membership in its favour. It appears from records that distinctive number of 30,000 shares now held by the Central Bank of India, Madras, as owner thereof are 61001 to 86000, and 95001 to 100000. u/s 150 read with Section 164 of the Companies Act, 1956, the Register is prima facie evidence of ownership of the Central Bank of India, Madras in respect of the said 30,000 shares.

Sri Bijoy Kumar Mall respondent No. 14 herein is the owner of the remaining 9,000 shares as appears from the list of share-holders given by the Secretary of the Company annexed to his said affidavit under serial No. 30. Bijoy Kumar Mall also filed an affidavit dated April 3, 1961 stating that he had acquired an absolute right and interest in the said 9,000 equity shares : thus he claims to be the owner and holder of the said 9,000 shares.

48. In the circumstances, hereinbefore stated both the Central Bank of India, Madras (respondent 16) and Bijoy Kumar Mall [respondent No. 14) each have to sell the proportionate number of shares, namely, one-third, to the petitioner and/or his nominees who are members of the Company. Thus the Central Bank of India, Madras, has to sell to the petitioner or his nominees 10,000 shares out of the said 30,000 shares, and Bijoy Kumar Mall also has to sell 3,000 shares out of his 9000 shares to the petitioner or his nominees all in terms of the order hereinafter fully stated : thus the petitioner and his group will have 13,000 shares out of the said 39,000 shares, being the one-third of the said new shares.

49. Re : Reliefs in respect of future allotment. Lastly with regard to the future allotment of shares, the Company's move to increase the share capital in September 1960, was stopped by an injunction, passed by this Court, restraining the Company and the respondents herein from passing any resolution, allotting or offering any shares of the Company to outsiders without first offering the same to the existing shareholders in proportion to their holding as aforesaid. That move became abortive and it is infructuous. In the matter of future issue and allotment of shares I make no order on this petition and I leave it to the Company and its management to act according to law. The Company is however restrained from taking steps for increase of share capital in future before giving effect to the order made herein.

50. Interests of Industrial Finance Corporation of India and Government of Orissa are protected by the order made herein :

While thus allowing reliefs to the petitioner both with regard to the reconstitution of the Board and the allotment of the said 39,000 new shares, I must make it clear that the interests of neither the industrial Finance Corporation of India nor of the Government of Orissa will, in any way, be affected by this order : nothing in this order will in any way affect their contracts with the Company. It was strenuously argued, on behalf of the Company, that the proposed order as prayed for will affect both the Industrial Finance Corporation as also the

Government contracts. Section 402(e) protects the Industrial Finance Corporation and Government contracts; certain difficulties,--which were sought to be shown in giving effect to the order made herein,--have no substance because they are only imaginary and not real. Abundant caution has been taken in making the order herein that neither the Industrial Finance Corporation nor the Government of Orissa be, in any way, prejudiced in respect of their contracts with the Company either by reason of reconstitution of the Board or by reason of the sale of 13,000 shares out of the laid 39,000 new shares to the petitioner and/or his nominees in the manner fully stated in the order.

As fully discussed above Article 10 of the articles of association, provides for appointment of ex-officio directors subject to the proviso that the number of persons who can be appointed as such special directors or ex-officio directors shall in no case exceed one-third of the total number of directors of the Company: so the maximum number of directors having been maintained under this order at nine, as hereinafter stated, the ex-officio directors cannot be more than three, that is to say one-third of the permissible maximum number. The existing number of ex-officio directors in the Board is three. There is no cause for any apprehension of any alleged difficulties standing in the way of giving effect to either the Govt. contract or the Industrial Finance Corporation contract : because the order herein makes provision enabling the Company to increase the number of directors,--if the Industrial Finance Corporation of India desires,--by alteration of the Company's Articles of Association to provide for such increase in accordance with the provisions of law.

That apart, there is a special provision u/s 25(2) of the Industrial Finance Corporation Act, 1948 which gives protection to such directors appointed by the Corporation, as provided therein. Assuming (but not deciding) that on an interpretation of Section 25 (2) the Industrial Finance Corporation cannot appoint a director on the Board of the Company in excess of the maximum number by the Articles, and assuming that the Industrial Finance Corporation in future may insist on appointing more than one director in the Board of the Company, even so, in such a contingency, under the order made herein, the Company has the right to alter its Articles to provide for increase of the number of its directors beyond the maximum, fixed by the Articles, according to law. I find no ground for apprehension of any difficulty in the way of smooth working of the Company, according to the order made herein.

51. As the House of Lords reiterated and expressed: the view (which I repeat with great respect) in (1958) 3 All E R 66, cited above, the English Section 210 corresponding to the Indian Section 397 warrants the Court in looking at the business realities of a situation and does not confine them to a narrow legalistic view : if the section is inept to cover such a case, it will be a dead letter indeed. This disposes of the purely legalistic stand, taken on behalf of the Company, concerning the Company's contracts with the Industrial Finance Corporation and the Govt. of Orissa, whose interests are, far from being in any way prejudiced

sufficiently protected by the order made herein.

52. Re: Points challenging the maintainability of the petition.

In the course of argument, a point was taken, on behalf of the Company that the orders made in the said Title Suit No. 21 of 1958 operate as res judicata and that by reason of the Jain group having filed the said Title Suit and pursued it, they are estopped from making the present application. Apart from the position that this Court has exclusive jurisdiction by virtue of Section 10, read with Section 2(11) of the Indian Companies Act, 1956 as aforesaid, the scope of the said Title Suit is limited, and, in fact, the trial court in the suit, when vacating the order of injunction, made it clear in his order dated July 30, 1958 that the plaintiffs in the suit have got remedies u/s 397 and Section 398 of the Indian Companies Act and that the High Court will have ample power u/s 402 of the Companies Act to direct the regulation of the conduct of the company's affairs; further that Section 10 of the Act confers jurisdiction on the High. Court in respect of such matters. Mr. Justice Rao,--while dismissing the Misc. Appeal No. 77 of 1958 from the said order of the trial court in the suit, vacating the interim injunction as aforesaid,--also made it amply clear that he was concerned only with the legality or propriety or otherwise of the order, of the learned Subordinate Judge vacating the interim injunction and the desirability or otherwise of this Court issuing a temporary injunction; further that if the appellants therein (referring the plaintiffs in their said title suit, namely, the Jain Group) are aggrieved by the conduct of the directors on July 30, 1958, they can seek any remedy available to them in law. Thus,--having regard to the exclusive jurisdiction of the High Court under Sections 397 to 407 both inclusive, read with Section 10 of the Companies Act 1956,--the decision in the said Misc. Appeal cannot operate as res judicata; indeed the question of granting reliefs against oppression to the minority shareholders and mismanagement of the Company's affairs under Sections 397, 398, 402 and 403 is the exclusive jurisdiction of the High Court alone, and no such reliefs, as prayed for herein, can be given in the said Title Suit; therefore, no order made in the said Title Suit can operate as res judicata, nor there can arise any question of alleged estoppel either in law or in facts of this case.

53. Then, point was taken, on behalf of respondent No. 16, Central Bank of India Ltd. that, at the time of presentation of this petition, the Central Bank of India Ltd. was not made a party, but it was subsequently added as a party respondent; that, thereafter, a fresh consent in writing having not been obtained, the petition is not maintainable as far as the added respondent is concerned. This argument, however, is wholly untenable as without any substance whatsoever. Their Lordships of the Supreme Court while having no hesitation in rejecting such contention, laid down that the validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented, cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. *Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and*

Others, . In any event, in the present case no such ground,--challenging the maintainability of the petition, as against the newly added respondent, by reason of a fresh consent in writing having not been obtained by the plaintiff,--was taken in the affidavit filed on behalf of the newly added respondent. Order 8, Rule 2 CPC provides that the defendant must raise by his pleadings all matters which show the suit not to be maintainable. In fact, none of the other newly added respondents also took the point of non-maintainability on the ground of fresh consent in writing not having been obtained. In view of the well settled position in law, as discussed above, there is no substance in this point, and it is accordingly decided against, the newly added respondent.

54. Lastly, another point, urged on behalf of the Company, was that the petition,--as disclosing no cause of action for interference of this Court under Sections 397, 398, 402 and 403 as prayed for,--is not maintainable; that this case should be tried, on the petition as it stands, and the subsequent affidavits should not be looked into; the Company's point is that subsequent affidavits made in support of the petition are not acceptable. This argument, made on behalf of the company is untenable. Indeed, both under the English law as also the Indian law, the result of decided cases appears to be that, while the statutory affidavit is always necessary, it is not always sufficient; it is never sufficient where the petition is based on allegations such as oppression, mismanagement, fraud etc.; in such cases the facts in support of the allegations must be stated on affidavits; the Court has never attempted to state exhaustively the circumstances, in which apart from cases based on allegations of fraud, the statutory affidavit is to be regarded as insufficient; each case must depend on its peculiar facts. In the particular context, Sections 397 to 407 (both inclusive) of the Indian Companies Act, 1953, are aimed at putting an end to the continuing state of affairs; not at compensating the petitioner for a wrong which, in the present case, is a continuing wrong; the petition ought to state in clear terms in the prayer the general nature of the relief sought, which indeed, in my opinion, has been stated in the present case; it is rarely wise or even possible to rely solely on statutory affidavit under the Companies (Court) Rules; where such allegations of oppressions, mismanagement and fraud are made, documents referred to in the petition should be proved by affidavit and a separate affidavit exhibiting documents should generally be filed where the petitioner must rely on documents if the petition is opposed, for they form part of his case, and the respondents to the petition are entitled to know what case is made out against them; in fact as soon as affidavit on opposition is filed, it is generally necessary or expedient to fortify the petitioner's case by filing further affidavit as evidence; the nature of further affidavit in support must, of course, depend on the case alleged and on the opposition affidavit. The Companies (Court) Rules, 1959 issued by the Supreme Court u/s 643 (1) and (2) of the Companies Act, 1956 contain the statutory recognition of these principles. The provisions of the CPC are also applicable to company cases.

As regards prayers, the petition clearly states the prayers on broad lines as to

the reconstitution of the Board, allotment of the 39,000 shares, future allotment and other incidental reliefs. The reliefs granted, as by order made herein, are only consequential reliefs clearly prayed for in the petition itself. In fact, in the case of, (1958) 3 All E R 689 it appears that the trial judge, upon holding that the petitioners had proved their case, made an order u/s 210 but (with the agreement of the petitioners) not in the terms of the prayer in the petition. Therefore, it is open to the Court to give such consequential reliefs as it may think fit and proper in the circumstances of the case, it is on these principles that Order 20, Rule 6 of the English Rules of the Supreme Court and Order 7, Rule 7 of the Indian CPC provide that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for; there is, thus provision for alter-native relief by virtue of which the plaintiff may rely upon several different rights alternatively, although they may be inconsistent. Once the reliefs have been clearly and broadly prayed for in the petition itself, it is for the Court to amplify those reliefs always giving consequential reliefs, within the ambit of the reliefs prayed for as has been done in the present case. I, therefore, find against the Company, on this point also challenging the maintain-ability of the petition alleged to be disclosing no cause of action for interference by this Court for grant of reliefs prayed for, and hold that the Company's point, is untenable.

55. Result:

The result, therefore, is that I order, direct and grant the following reliefs:

- (i) All the directors of the Company now on the Board, except the nominees of the Government of Orissa and the Industrial Finance Corporation of India, will cease to function as directors of the Company with immediate effect.
- (ii) The Board of Directors of the Company is hereby reconstitute for a limited period mentioned in Clause (iii) hereunder in the following manner:

The Board will consist of-

2 directors as representing the Govt. of Orissa;

1 director as representing the Industrial Finance Corporation of India :

2 directors from the Patnaik Group to be nominated by respondent No. 2 Sri B. Patnaik;

2 directors from the Loganathan Group to be nominated by respondent No. 4 Sri C.S. Loganathan;

2 directors from the Jain Group to be nominated by the petitioner Sri Shanti Prasad Jain.

Total 9 directors.

(iii) All the directors on the Board reconstituted as above excepting the nominees of the Government of Orissa and the Industrial Finance Corporation of India, will hold office until the conclusion of the annual general meeting in respect of the financial year of the Company ending after the date of the first meeting of the Board reconstituted as above: such directors will be eligible for reappointment.

(iv) The Board of Directors as mentioned in Clause (ii) above will, during the period of their office, have such powers and duties as are provided by the articles of association of the Company as amended by this order and as per provisions of law and are in conformity with the terms of this order.

(v) The respondent Central Bank of India Ltd. is the present registered holder of 30,000 shares bearing share numbers 61001 to 86000 (both inclusive) and 95001 to 100,000 (both inclusive). The respondent Bijoykumar Mall is the present registered holder of 9000 shares bearing Share Nos. 85001 to 95000 (both inclusive). The respondent Central Bank of India Ltd. out of its aforesaid holdings of 30,000 shares is directed to sell and transfer 10,000 shares bearing share Nos. 61001 to 71000 (both inclusive) or 10,000 shares bearing any other share numbers to the petitioner Shanti Prasad Jain and/or his nominees who are members of the Company and deliver the relative share certificates together with duly executed transfer deeds, against payment of Rs. 10 lakhs being the face value of the said shares. The respondent Bijoykumar Mall, out of his aforesaid holding of 9000 shares, is directed to sell and transfer 3,000 shares bearing share Nos. 86001 to 89000 (both inclusive) of 3,000 shares bearing any other share nos. to the petitioner Shanti Prasad Jain/or his nominees who are members of the company and deliver the relative share certificates together with duly executed transfer deeds against payment of Rs. 3 lakhs being the face value of the said shares. The petitioner Shanti Prasad Jain is directed to purchase the said 13,000 shares In his own name and/or in the names of his nominees who are members of the Company against payment of Rs. 13 lakhs in the manner aforesaid. The said sale and purchase should be completed within a period of one month from today.

(vi) If any of the 10,000 shares, delivered by the respondent Central Bank of India Ltd. in pursuance of this order, were being held by the respondent Central Bank of India Ltd. as pledgee on behalf of any pledger or pledgers, the amounts so received by the said Bank from the petitioner Shanti Prasad Jain and/or his nominees as a result of the sale as aforesaid, pertaining to those shares, shall be credited by the said Bank to the account of the said pledger or pledgers, after deducting the necessary costs, charges and expenses of and incidental to the sale, if any,

(iv) The respondent Central bank of India Ltd. and Bijoy Kumar Mall are, by this order, restrained from dealing, with or disposing of the said 30,000 shares and 9000 shares in their respective possession and/or exercising any-rights as shareholders in any manner whatsoever, save and except for the purpose of selling and transferring the same to Shanti Prasad Jain and/or his nominees who

are members, of the Company as provided herein.

(viii) If the petitioner Shanti Prasad Jain and/or his nominees who are members of the Company should fail and neglect to purchase the said 13,000 shares by making, payment as aforesaid within a period of one month from to-day, the order of injunction mentioned in Clause (vii) above would stand vacated.

(ix) If the respondent Central Bank of India Ltd., and/or Bijoykumar Mall should fail or neglect to sell and transfer the said 13,000 shares or any portion thereof or to deliver the relative share certificates or any portion thereof, together with duly executed transfer deeds. to Shanti Prasad Jain and/or his nominees who are members. of the Company, within a period of one month from today against payment, then the petitioner Shanti Prasad Jain and/or his nominees who are members of the Company shall, within a period of two months from the date of this order pay a sum of Rs. 13 lakhs being the purchase price of the said 13,000 shares to the Company. On receipt of the said sum of Rs. 13 lakhs by the Company as aforesaid, the said 13,000 shares shall stand sold and transferred to the petitioner Shanti Prasad Jain and/or his nominees being members of the Company by the respondents Central Bank of India Ltd. and Bijoy Kumar Mall, and the Company shall rectify its register of members by deleting the names of the respondents Central Bank of India Ltd. and Bijoykumar Mall as holders of the said shares bearing Nos. 61001 to 71000 (both inclusive) and 68001 to 89000 (both inclusive) respectively or bearing any other share numbers as may be sold and transferred as aforesaid, and enter in their place in the said register of members the name or names of the petitioner Shanti Prasad Jain and/or his nominees being members of the Company, as the registered holders of the said shares numbers 61001 to 71000 (both inclusive) and 86001 to 89000 (both inclusive) respectively or bearing any other share numbers as may be sold and transferred as aforesaid and issue duplicate scrips in lieu thereof to the petitioner Shanti Prasad Jain and/or his nominees who are members of they Company, as the case may be. The Company shall also immediately thereafter, at the expense of the petitioner Shanti Prasad Jain, give public notice of the aforesaid cancellation and issue share certificates by advertisements, in one daily newspaper circulating in the States of West Bengal, Orissa, Madras, Bombay and in New Delhi.

(x) The articles of association of the Company are hereby altered as follows:

(a) Article 8 of the articles of association of the company is amended to read as follows :

"8. Until otherwise determined by General meeting by special resolution the number of directors shall not be less than seven or more than nine."

(b) The following Article be added after Article 8 as above and be numbered as Article 8-A.:

"8-A. Notwithstanding anything contained in these articles the appointment of

Directors in any General Meeting shall be made in accordance with the principle of proportional representation by single transferable vote : such directors will retire at the end of every three years and will be eligible for re-election."

(xi) In the event it becomes necessary for the Company to increase the number of its Directors beyond the maximum fixed by its Articles, in pursuance of any direction of the Industrial Finance Corporation of India to appoint more than one director, then this order shall not prejudice the right of the Company to alter its Articles to provide such increase in accordance with the provisions of law.

(xii) The Company is restrained from taking any steps for further increase of share capital in future in any manner before giving effect to this order.

(xiii) The Company shall immediately send a copy of the order made herein to the Registrar of Companies, Orissa, Cuttack.

(xiv) Liberty to the parties to apply to this Court.

56. The petition for reliefs prayed for herein is accordingly, allowed in terms as aforesaid. In the circumstances of the case, each party to pay its own costs in this proceeding throughout.