
(1996) 10 MAD CK 0036

In the Madras High Court

Case No : A.A.O. No's. 559 and 689 to 695 of 1995

Shoe Specialities P. Ltd. and others

APPELLANT

Vs

Standard Distilleries and Breweries P. Ltd. and others

RESPONDENT

Date of Decision : 16-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Companies Act, 1956 — Section 167, 186, 255, 284, 397

Citation : (1996) 10 MAD CK 0036

Hon'ble Judges : Shivaraj V. Patil, J; S.S. Subramani, J

Bench : Division Bench

Advocate : T. Raghavan, Habibullah Badsha, A.L. Somayaji and C. Harikrishnan, for the Appellant;

Judgement

S.S. Subramani, J.—All these appeals arise against the order of the Company Law Board (for short "the Board") in Company Application

No. 208 of 1994 in Company Petition No. 44 of 1993.

2. The parties hereafter will be referred to according to their respective rank as in the order of the Board.

3. The brief history of the case may be stated as follows :

Dwarakadoss Chhabria (late) had two sons, namely, R.D. Chhabria (R.D.C.) and M.D. Chhabria (M.D.C.). R.D.C. has two sons, namely, M.R.

Chhabria (M.R.C.) and K.R. Chhabria (K.R.C.). M.R.C. is the ninth respondent before the Company Law Board. The family was controlling

various companies, and one such company is known as Shoe Specialities Private Limited (hereinafter referred to as "SSPL"), the first respondent

in the company petition. That company was incorporated, some time in November, 1987, and as on July, 1991, the shareholding pattern of the

company stood as follows :

Standard Distilleries Pvt. Ltd.

(hereinafter referred to as ""Standard"") 1,000 shares

Stridewell Leathers Pvt. Ltd.

(for short, referred to as ""Stridewell"") 2,000 shares

Bhankerpur Simbhaoli Beverages (P.) Ltd.

(for short, ""Bhankerpur"") 2,000 shares

4. It is seen that some disputes arose between members of the family, i.e., between MRC on the one hand and RDC and MDC on the other.

MRC was controlling Shaw Wallace Company Ltd., and the employees of the company were directors in SSPL. In view of the misunderstanding

between the members of the family, MRC wanted to take control of SSPL, and, at his instance, the board of directors resolved to increase the

paid-up capital of the company. The same was done without the knowledge of Standard and Stridewell, which were controlled by RDC and

MDC. They filed Company Petition No. 29 of 1992 before the Board, and the attempt to increase the share capital could not be implemented by

the ninth respondent, namely, MRC. The Board did not recognise the resolution alleged to have been passed by SSPL and the subsequent issuing

of shares and its pledge to one Malleswara Company controlled by the ninth respondent. The order of the Board is dated May 28, 1993.

5. Even though in SSPL, the third and fourth petitioners who were controlling Standard and Stridewell companies had major shares, the actual

control was by the board of directors appointed by Shaw Wallace Company Limited, which was under the control of the ninth respondent.

Making mention of the various observations made by the Board in its order in C.P. No. 29 of 1992, and also alleging oppression, Standard and

Stridewell, the third and fourth petitioners, joined together and filed Company Petition No. 44 of 1993 [See Standard Distilleries v. Shoe

Specialities [1995] 83 Comp Cas 727, for the removal of the directors of SSPL and for other reliefs. Various acts and omissions of the board of

directors and also the ninth respondent were alleged in the petition, including the acts which are the subject matter of C.P. No. 29 of 1992. Though

Company Petition No. 44 of 1993 was heard by the Board, no order could be

passed since in the meanwhile, Malleswara Company (referred to above) filed a writ petition before this court and obtained a stay order against the implementation of the order in Company Petition No. 29 of 1992. On the dismissal of the writ petition, the Board allowed Company Petition No. 44 of 1993. In the material part of the order, the Board held that the refusal of the directors to hold the extraordinary general meeting as per the requisition by the majority shareholders is improper and it also found that grounds have been made out to find that there was oppression. Therefore, it held that as per requisition dated October 8, 1993 (which is really October 7, 1993), the prayer made by Standard, i.e., the first petitioner for an extraordinary general meeting was proper. The prayer for removal of the directors sought in the company petition was not allowed by the Board for the following reason :

We are of the view that it will not be appropriate to look into the bona fides of SSPL in rejecting the requisition by the first petitioner at this distant point of time and consider the removal of the board of directors, especially when petitioners Nos. 1 and 2 having become majority shareholders in view of order dated May 28, 1993, and can effectively exercise their majority right along with their directors on the board of SSPL.

6. It may be stated that reference in that order regarding the requisition which was rejected by SSPL is dated June 30, 1993, on the ground that

the person who signed the requisition was not authorised to do so. It was subsequent to that another requisition was made on October 8, 1993.

The Board further said thus :

Accordingly, we dispose of this petition with the direction to the board of directors of SSPL to act on the requisition lodged by the petitioner on

October 8, 1993, as per the provisions of section 167 of the Companies Act, as if the second requisition had been lodged with SSPL on

September 26, 1994. Both the parties are at liberty to approach us in case of any difficulty in convening the general meeting. Till the extra-ordinary

general meeting is held, the present board will not take any decision except relating to the said requisition.

7. The order is dated June 8, 1994.

8. We have already quoted the order of the Board which said that the petitioners can effectively exercise their majority right along with their

directors on the board of SSPL.

9. Apprehending that they will not be in a position to effectively exercise their majority right, they sought the intervention of the Board by filing a

miscellaneous application, namely, C.A. No. 114 of 1994 in C.P. No. 44 of 1993. In that application, they referred to various acts and omissions

on the part of the board of directors of SSPL, after the dismissal of the writ petition filed by Malleswara. They also brought to the notice of the

Board that even though C.P. No. 44 of 1993 was for removal of directors, after the disposal of the writ petition, the board of directors resigned

and a new board has been constituted surreptitiously. It is further said that the said Act was to pre-empt their proposed action and to make the

order of the Board infructuous. It is also submitted therein that the constitution of the new board is illegal, invalid and void in law. It was also said

that they were apprehensive about the acts and misdeeds of the ninth respondent and the fraud that has been committed till date. It was also

brought to the notice of the Board in their affidavit about the requisition letter dated October 7, 1993, wherein they have sought the removal of all

additional directors appointed on or after June 1, 1993, and also for the removal of any director who had been appointed as director in a casual

vacancy on or after June 1, 1993. It was said that in view of the resolution in the requisition letter, there is a possibility of pandemonium being

created during the meeting and, therefore, they wanted an independent chairman to be appointed to conduct the meeting. There are other prayers

also in the miscellaneous petition.

10. A counter-statement was filed by various respondents, and the main objection raised was that the Board has become functus officio after it has

disposed of the main company petition, and it has no jurisdiction to pass a subsequent order regarding the same. The Board, after considering the

merits and demerits of all these contentions, passed an order on July 15, 1994. In that order, the Board found that the contention that it has

become functus officio is not correct and still it has retained seisin over the matter and, therefore, it has jurisdiction to pass the subsequent orders

especially when the application is u/s 397 of the Companies Act, and its powers can be exercised u/s 402 of the said Act as well. It was also held

that the word ""convening"" which it used in its main order in C.P. No. 44 of 1993

should not be construed literally and the same was used by them in a larger perspective to include all proceedings till the completion of the extraordinary general meeting. Thereafter, it came to the conclusion that even though it has got the power to appoint an independent chairman, it was not doing so, since the independent chairman will have to take decision on the eligibility of the shareholders to take part in the proceedings of the meeting, and that may not be possible for him in the context of the different interpretations given by parties to the order of the Division Bench of this court. Under the above circumstances, it gave the following directions :

However, at the same time, we feel that it is absolutely essential that the proceedings of the EOGM are conducted in a proper manner and we

should have independent information as to the conduct of the meeting from an independent source. Accordingly, we appoint Shri B. Bhavani

Shankar, former Regional Director, Department of Company Affairs, presently residing at L-11, Paras Apartments, Jeevaratnam Nagar, Adayar,

Madras-20, to observe the proceedings of the EOGM whenever the same is held and send us a report within 15 days thereof. He will be paid an

honorarium of Rs. 5,000 by the company. We also direct whoever calls the meeting, either the company or on the failure of the company, the

requisitionists to serve a copy of the notice, calling for the meeting to the independent observer. The chairman of the meeting is directed to record

all the votes polled in favour of and against each and every resolution separately member-wise and send a copy of the minutes of the meeting within

15 days from the date of holding the meeting with a copy to the petitioners.

11. The order in miscellaneous application, namely, C.A. No. 114 of 1994 was not challenged by any one and it has become final. Thereafter, on

October 19, 1994, the extraordinary general meeting was held in the presence of the observer who also sent his report to the Board. A new

chairman was elected for the meeting and he was Shri Premachandran, one of the employees of Shaw Wallace Company and the director in

SSPL. In that meeting, the chairman expressed that resolutions Nos. 1 to 5 as disclosed in the requisition dated October 7, 1993, had become

infructuous. Those resolutions were concerned with the removal of the directors who were holding office till June 1, 1994, i.e., respondents Nos. 2

to 6. By the time the extraordinary general meeting was convened, those directors ceased to hold office and, therefore, it was held to be

infructuous. In so far as resolution No. 6 was concerned, it related to the removal of all directors (appellants in C.M.A. Nos. 689 to 695 of 1995

who had assumed charge since June 1, 1993. An objection was taken that the resolution is vague and without specifying the name of the director

who should be removed, it should not be acted upon. The said resolution was split into 7 as 6(a) to 6(g), each resolution concerning each director

appointed after June 1, 1993. They are : (1) M.S.A. Kumar, (2) K.K. Banerjee, (3) A.K.M.A. Shamsuddin, (4) A. Syed Ahmed, (5) M.M.

Gupta, (6) S. Sriram and (7) D. Premachandran.

12. At the meeting, it was also contended that only three shareholders, i.e., petitioners Nos. 1 and 2 and the seventh respondent alone can vote

and no other person claiming himself as the transferee or pledgee of the shareholders is entitled to vote. The chairman wanted the persons who

attended the meeting to identify themselves by entering the name of the company which they represented. From the observer's note, it is seen that

Shri A.S. Varadharajan represented the first petitioner (having 1,000 votes), and B. Raghavan represented Stridewell having 2,000 votes, K.

Swaminathan represented the seventh respondent having 2,000 votes. Another person by name V. Subramaniam claimed himself to represent

Alakananda Manufacturers and Finance Limited, as beneficial owner of 2,000 shares of Stridewell (second petitioner) also claimed as representing

Stridewell. One M.K.C. Pie representing Alakananda and one M. Seal represented Jose Investments Private Limited claimed themselves as

having some right under the seventh respondent.

13. The locus standi of V. Subramaniam who claimed himself to be the beneficial owner of Stridewell was objected to on the ground that Shri

Raghavan is the competent person to represent the same, and when the second petitioner himself is present for voting, the beneficial owner or

alleged power of attorney cannot have a right. When this objection was raised it is said that the chairman called for the register of members and

verified the same and passed an order holding that only persons whose name was found in the register of members will be permitted to attend and

exercise their votes. At that time A.S. Varadharajan, who represented Standard

(first petitioner) brought to the notice of the chairman various legal issues for consideration. It was also brought to the notice of the chairman the order in C.P. No. 29 of 1992 and also the violation of various undertakings given by the directors of SSPL before the Board. It was also contended before him that the second petitioner could be represented only by the third and fourth petitioners by virtue of the judicial pronouncements and no other person should be allowed to vote on behalf of the second petitioner. These objections were taken on record. It is said that the chairman thereafter ruled that the seventh respondent's name was not there in the register of members and, therefore, the transferee, namely, Alaknandha and Jose alone will be permitted to participate in the meeting. It was further observed by the chairman that in so far as the second petitioner was concerned, both the second petitioner and Alaknandha as beneficial owner will vote separately and the decision will be informed later. The resolutions were put to vote and it was informed that the result will be announced on October 21, 1994. Even at that time, some representation was filed by petitioners Nos. 1 and 2 before the chairman that if third parties are permitted to vote that will be against the earlier decision of the court. It was further stated that so far as the shares in the second petitioner are concerned, they retained the original and, therefore, there cannot be any pledge or beneficial ownership in so far as the second petitioner's right is concerned.

14. On October 21, 1994, the chairman ruled that the representations made by the second petitioner as well as by Alaknanda as beneficial owner could not be considered as a decision on this aspect involved interpretation of various judicial orders. At the same time, the chairman further ruled that Bhankerpur having transferred its shares, was not entitled to vote and the transferee's vote alone could be counted. In view of this stand, taken by the chairman, it was held as against 1,000 votes cast by the first petitioner in favour of the resolution, 2,000 votes were cast against it, i.e., by Alaknandha and Jose as transferees of the seventh respondent, and, therefore, all the resolutions were defeated. The effect was, the removal of the directors sought for could not be achieved by the ruling of the chairman. It was this stand taken by the chairman which was objected to by the petitioners and, therefore, they filed an application before the

Board as Company Application No. 208 of 1994. The following reliefs were sought for in that application :

(a) To set aside the decision of the chairman in permitting Alaknanda to vote in respect of 2,000 shares held by Stridewell in SSPL and in

permitting Alaknanda and Jose to vote in respect of 2,000 shares owned by Bhankerpur in SSPL; and to declare that votes polled by Stridewell in respect of their 2,000 shares to be counted.

(b) To declare that the resolutions 6(a) to 6(g) and resolutions 8 to 10 in the agenda of the meeting held on October 19, 1994, have been passed.

(c) To direct the respondents to deliver possession of all records, statutory books or documents relating to SSPL to the petitioners.

(d) To supersede the board of directors of SSPL and to appoint an interim administrator to take charge of the management of affairs and assets and properties of the company SSPL.

(e) To direct the present board of SSPL not to take any decision regarding the management of the affairs of SSPL including the acquisition or disposal or changing the composition of shareholding in SSPL or taking any decision which could adversely affect the interest of the petitioners.

The petitioners pray that ad interim orders in terms of prayers (a) and (e) be passed and thus render justice"".

15. Various objections were raised by the respondents to the application. In their objection, it was stated that after the disposal of C.P. No. 44 of

1993, the Board has become functus officio and even if anything could be done, that work was also completed by the order dated July 15, 1994,

in C.A. No. 114 of 1994. It was further contended that the relief sought for was beyond the scope of the main relief in C.P. No. 44 of 1993, and,

therefore, it should not be considered. It was further said that when substantive rights of the parties are at stake, that should not be the subject-

matter of an interlocutory application in a matter which has already been disposed of. A supplementary reply was also filed wherein it was stated

that the Board did not retain seisin of the matter except to the limited extent of getting a report of the proceedings of the extraordinary general

meeting and once the same has been filed by the observer, the Board cannot have any consideration to give any further direction. It was also

contended that the application itself is mala fide. The following contentions were

also raised, namely, the petitioners wanted supersession of the directors of SSPL and for appointment of an interim administrator to carry on the affairs of the company. Since the same was not granted, for the very same purpose, the present application has been filed and the same is barred. They also disputed that petitioners Nos. 1 and 2 holding 60 per cent. shares in SSPL. They also supported the stand of the chairman in not taking into consideration the votes on behalf of the second petitioner represented by Raghavan. They said that if that application was allowed, it will go far beyond the scope of the order in the main petition, namely, C.P. No. 44 of 1993 and, therefore, the same has to be dismissed.

16. The Board, on the basis of the averments in the counter-affidavit, heard learned counsel and finally held that the stand taken by the chairman was not proper. The representation by Raghavan on behalf of the second petitioner was held as proper, and in fact, there was nobody to put forward a counter-claim against him and, therefore, non-consideration or rejection of his vote was improper. In that view, the Board held that the resolution be declared as passed. It also held that the contention that it has become functus officio and it has no power to pass orders on the application is not correct, and u/s 397 read with section 402 of the Companies Act, it has power to rectify all matters that are complained of. In that view, the application was allowed. With the result, the directors who were sought to be appointed by the petitioners were declared as appointed and seven directors who were appointed after June 1, 1993, were declared as removed from their office. The directors were directed to hand over charge to the newly appointed directors within ten days from the date of receipt of a copy of the order. It is against the said order of the Company Law Board, dated September 3, 1995, that these appeals are filed. Except one appeal filed by the first respondent, all the other appeals are filed by the directors who have been removed by order of the Board.

17. The two other appeals were also filed, one in the name of Stridewell represented by one Nandi, claiming himself to be a director, as C.M.A. No. 688 of 1995. Another appeal was filed by Alaknanda Manufacturers and Finance Limited as C.M.A. No. 696 of 1995 as beneficial owner of Stridewell. Both the appeals were dismissed as not pressed on September 24, 1996. It may be mentioned that Jose Investments, who also claimed

to be a transferee of the seventh respondent has not filed any appeal.

18. The following submissions were made by Mr. Habibullah Badsha, learned senior counsel on behalf of the appellants in the various appeals : (1)

The relief sought for in Company Application No. 208 of 1984 is far beyond the scope of the prayer made in the main company petition, namely,

C.P. No. 44 of 1993; (2) For the Board to invoke the power under the Regulations, there must be pending proceedings. After the decision in C.P.

No. 44 of 1993 which has been finally disposed of, the Board cannot exercise the power under regulation 44, which is equivalent to section 151 of

the Civil Procedure Code; (3) Even though Company Application No. 208 of 1994 is only a miscellaneous petition, substantive rights of the

parties are affected and, therefore, this should not have been the subject-matter of interlocutory proceedings, but should have been referred to

separate proceedings, if the petitioners are aggrieved by the conduct of the chairman; and (4) The order of the Board also violates section 284 of

the Companies Act, in the sense that no individual notice to the directors has been issued before they were removed from the office. In fact, the

contention is that the procedure adopted by the Board violates the fundamental principles of natural justice.

19. The said contentions were answered by Mr. A.L. Somayaji and Mr. C. Hari Krishnan, learned senior counsel for the respondents. They

submitted that the Board has exercised the powers under sections 397 and 402 of the Companies Act read with regulation 44. By exercising the

power u/s 397 of the Companies Act, this court should not consider the case like an individual dispute, but has to consider the same in the best

interest of the company, and taking into consideration the subject matter of the disputes, the Board can give appropriate relief. It is not confined to

the relief that is sought for. It is also said that the contention that the Board is not seized of the matter is against the prior decisions in this case,

especially in C.A. No. 114 of 1994 where a similar argument was put forward and rejected by the Board, and which has become final. It is further

said that u/s 397 of the Companies Act, the power of the Board is very vast and till the entire matter which is complained of is settled, law

presumes that the Board will have jurisdiction. No substantive rights are affected when the alleged rights accrued only pending determination by the

Board, and violation of the principles of natural justice is not a matter that was taken either at the time when the extra-ordinary meeting was held or

before the Board and the same is being taken for the first time only before this court. On the merits, it was further contended that the question of

vagueness of the resolution dated October 7, 1993, was a matter of discussion at the time of voting and in spite of the same, the chairman

understood the scope and intent of the resolution and allowed voting. Once the chairman himself is a party to it, who had knowledge and was also

aware of the consequences, he cannot thereafter contend that the principles of natural justice has been violated. Learned senior counsel further

submitted that to be whether interest of justice requires any interference by this court when there is already an order by the Board that the majority

shareholders are not permitted to elect their own directors.

20. In this connection, Mr. C. Hari Krishan, learned senior counsel, submitted that the appeal, C.M.A. No. 559 of 1995 filed by SSPL and also

the other appeals are not maintainable, since persons who were directors on the respective dates have ceased to be directors pursuant to the order

of the Board, and unless there is a special resolution the appeals cannot be maintained.

21. We will deal with this contention of Mr. C. Hari Krishan in the last portion of our judgment.

22. We will first deal with the point as to whether the order of the Board, if allowed to stand, will be beyond the scope of the main Company

Petition No. 44 of 1993. For the said purpose, we may have to consider what was the subject-matter of complaint in C.P. No. 44 of 1993, and

what was the adjudication therein. Immediately after the order of the Board in C.P. No. 29 of 1992, a requisition was sent by both the first and

second petitioners to call for an extraordinary general meeting, and the only agenda in that requisition was for the removal of the directors in SSPL.

The requisition is dated June 30, 1993, and the same was signed by one Ganguli, a director of the first petitioner. When the same was sent to the

company, the same was rejected stating that Ganguli was not authorised to sign the requisition and, therefore, it is not in proper form. This is one of

the allegations in Company Petition No. 44 of 1993. The other allegation was that at the instance of the ninth respondent, the board of directors

are acting against the interest of the company though their relationship with the company is fiduciary in character. The interest of the shareholders was not being considered and the ninth respondent's personal employees were acting at his behest and their attempt was only to reduce the majority shareholding and to make it an artificial minority. It is also alleged therein that fraudulent documents were being created for the purpose of substantiating their false claim, that there was a meeting of the board of directors whereby the shareholding was increased from 5,000 shares to 25,000 shares and even without offering the same to the existing members, the entire increased share capital was sold to Bhankerpur, the seventh respondent herein, who later alleged to have pledged the same to Malleswara Finance Company. It is contended that this action done at the behest of the ninth respondent has been found to be fraudulent and it was also found that no intimation was given to the existing shareholders though documents were created to show that the matter had been communicated to them. When fraudulent documents were created which were denounced by the Board, it cannot but be doubted that the board of directors were mismanaging the affairs of the company and were misusing their official capacity. It is said, the Board considered this question. The intention of the ninth respondent and the existing board of directors was an act of oppression. By one stroke, a substantial majority in a company was reduced to a minority. All acts of the ninth respondent and the then board of directors were found to be fraudulent and oppressive in character. It is said that the act of oppression continued and unless the entire board of directors is removed by giving control to the majority shareholders, the company cannot be properly managed. It is further contended that apart from making the majority into an artificial minority, the Board has further found that the non-existing members have been inducted in the second petitioner-company with the active connivance of some employees of the ninth respondent. For the said purpose, they also relied on an affidavit filed by one B.B. Nandi, who claimed to be the representative of the second petitioner. Nandi filed a miscellaneous application, namely, C.A. No. 92 of 1992 in C.P. No. 29 of 1992. The purport of the application was to delete the name of the second petitioner as one of the petitioners in Company Petition No. 29 of 1992. Nandi did not have any capacity in the second petitioner/company and the application itself was

filed in his individual capacity. The Board dismissed that application and, thereafter, it was not challenged. Various acts and omissions on the part

of the board of directors at the behest of the ninth respondent are also alleged in C.P. No. 44 of 1993.

23. The Company Law Board considered the same. It found that there was substance in the complaint.

24. In Company Petition No. 29 of 1992, the Board held that the increase in share capital from 5,000 shares to 25,000 shares is not warranted

and the intention was only to deprive the majority shareholders of the right of management of the company. The subsequent pledge of those shares

to Malleswara and the inclusion of the name of Malleswara in the register of members was also held to be improper; and the name of Malleswara

was directed to be removed. Though Malleswara filed a writ petition before this court, the same was dismissed. Once the finding of the Board that

the name of Malleswara was improperly included in the register of members was there, and when there was a direction of the Board to delete the

name of Malleswara from the register of members, status quo ante had to be restored. If status quo ante was restored, the majority shareholders in

SSPL will be petitioners Nos. 1 and 2 under the control of petitioners Nos. 3 and 4.

25. In this connection, we may also note that even in C.P. No. 44 of 1993, the prayer was for removal of the directors by order of the Company

Law Board. The Board, in its wisdom, said that as far as possible the democratic rights of the shareholders should be respected, and that is why it

said that petitioners Nos. 1 and 2 can effectively exercise their majority right to elect their own directors on the board of SSPL. The Board at that

time thought that the views of the majority shareholders will be respected, and a board of directors need not be imposed by it.

26. The impugned application on which the impugned order was passed was filed on October 27, 1996. In the meanwhile, something more had

happened, and it was also brought to our notice.

27. Against the judgment of the Company Law Board in C.P. No. 29 of 1992, Malleswara Finance and Investments Co. Private Limited filed a

writ petition and the same was dismissed. It filed a writ appeal before a Division Bench of this court as Writ Appeal No. 806 of 1994. The order

of the Company Law Board was challenged by the seventh respondent and another in A.A.O. No. 743 of 1993 and A.A.O. No. 875 of 1994.

All these matters were heard and disposed of by a common judgment dated September 27, 1994 [See Malleswara Finance and Investments Co.

P. Ltd. Vs. Company Law Board and others, . At the time when the appeals were being heard, various other acts of oppression were taken note

of by this court. It took note of the fact that the board of directors newly constituted on June 2, 1994, had acted against the interest of the

company and they have also violated the undertaking and the majority shareholders of SSPL were prevented from exercising their democratic

rights. This court also took note of the fact that even though the allotment of shares which was the subject-matter in C.P. No. 29 of 1992 was

fraudulent, and though it was a single act, its consequences are continuous and it had a continuous effect, which amounted to an oppression by the

board of directors, who were hand in glove with the ninth respondent. It also took note of the fact that the requisition of petitioners Nos. 1 and 2

for convening an extraordinary general meeting was being postponed by the board of directors under some pretext or other and they were

perpetuating the mismanagement. Their acts were condemned by this court as they were against the interest of the company and they have also

acted against the fiduciary confidential relationship which they owed to the company. Under the above circumstances, this court thought that the

court itself should fix a date for the extraordinary general meeting. Otherwise, there will be a long delay in implementing the order of the Board. An

urgency was found by this court for fixing a date for holding the extraordinary general meeting. In the judgment in that case, it was held thus (at

page 891) :

Having regard to the long-drawn litigation, we are of the view that it will be in the interest of justice to grant the request as prayed for by

respondents Nos. 1 to 4 in the C.M. As. Hence, we direct the company to hold the extraordinary general meeting on October 19, 1994. This

order will be treated as notice to the parties for the meeting on October 19, 1994, within the meaning of the Companies Act.

28. It is pursuant to this order, that the meeting which is challenged in Company Application No. 208 of 1994 was held. Learned counsel for the

petitioners also brought to our notice another decision of a Bench of this court [See Shoe Specialities Ltd. and others Vs. Tracstar Investment Ltd.

and others, in C.M. As. Nos. 106 to 109 and 132 of 1996 wherein also the various acts and omissions by the very same board of directors were

deplicated by this court. The acts and omissions subsequent to the judgment in C.P. No. 29 of 1992 and which they made mention of in the

judgment in Writ Appeal No. 806 of 1994, and the connected C.M. As. was the subject-matter in C.M. As. Nos. 106 to 109 and 132 of 1996.

29. From the facts stated above, it is clear that though the petitioners had majority shares, they were not allowed to work or manage the company.

Everything was controlled by the employees of the ninth respondent who were acting against the interest of the company. That was the matter

which was complained of in C.P. No. 44 of 1993 and the complaint was proved. Therefore, all grounds were made out for invoking the powers

u/s 397 of the Companies Act.

30. Now, we will consider the scope of section 397 of the Companies Act. Section 397 of the said Act reads thus :

Application to Company Law Board for relief in cases of oppression. -

(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a

manner oppressive to any member or members (including any one or more of themselves) may apply to the Company Law Board for an order

under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the Company Law Board is of opinion -

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

and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a

winding-up order on the ground that it was just and equitable that the company should be wound up;

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

31. That section corresponds to section 210 of the English Companies Act. Commenting on the powers u/s 210 of the English Companies Act,

Boyle and Sykes - in their book entitled Gore-Browne on Companies, 42nd edition (1972), at page 799, have said thus :

Section 210 confers a wide power on the court which is of the opinion that there has been a course of oppressive conduct, etc. Section 210(2)

provides that "with a view to bringing to an end the matters complained of" the court may make such orders as it thinks fit, whether for regulating

the conduct of the company's affairs in the future, or for the purchase of the shares of any members of the company by other members of the

company or by the company, and, in the case of a purchase by the company for the reduction accordingly of the company's capital, or otherwise".

The power to order the company to purchase the shares of some part of the members is an exception to the general rule prohibiting the return of

capital to members.

32. Pennington's Company Law, fifth edition (1985), deals with the same subject, and at page 751 the learned author deals with the powers of the

court. The relevant portion reads thus :

The remedies which the court could employ in giving relief under the original statutory provision were left to its discretion, and could include such

things as ordering the persons responsible for the oppression to pay compensation to shareholders who had been oppressed, appointing or

removing directors, appointing a receiver to manage the company's business temporarily, and altering the voting and other rights of classes of

members. The court has an equally wide discretion under the present statutory provision, and the only limitation is that the order it makes must be

relevant and appropriate to give relief from the matters complained of. The petitioners must state in their petition what orders they wish the court

make and a petition will not be heard if it merely asks the court to make an order regulating the company's affairs, or such order as the court thinks

just.

Without affecting the generality of its power to give whatever relief is appropriate in the circumstances, the new statutory provision empowers the

court to make any order it thinks fit regulating the conduct of the company's affairs in future; to require the company not to do or not to continue

doing any act complained of, or to require it to do any act when the petitioner has complained of the company's omission to do it in the past

(injunctive and mandatory injunctive relief).

33. In *Rajahmundry Electric Supply Corporation Limited v. A. Nageswara Rao* [1956] 26 Comp Cas 55 (AP); [1956] 2 AWR 123, the Andhra

Pradesh High Court had occasion to consider a corresponding provision of the Indian Companies Act, 1913. Section 153C of the earlier

Companies Act corresponds to section 397 of the present Act. In the said decision, it was held thus (at pages 60 and 61 of 26 Comp Cas) :

If the conditions laid down are satisfied, the court can exercise this power by making suitable orders to put an end to the matters complained of.

What are suitable orders would depend upon the circumstances of each case. No doubt, sub-section (5) of section 153C enumerates the various

powers the court can exercise under this section. But they are obviously not exhaustive as these powers are without prejudice to the generality of

the powers vested in a court under sub-section (4). The nature of the order to be passed by a court, therefore, depends upon the state of

mismanagement and the nature of the restrictions required to put an end to that mismanagement. . .

It is no doubt true that so long as a company is not wound up, a court will not interfere with the internal management of that company. But the

decisions embodying this principle have no bearing when the court is called upon and when it interferes in exercise of its powers u/s 153C of the

Act.

34. A Division Bench of our High Court considered a similar question and the decision is *Syed Mahomed Ali v. R. Sundaramurthy* [1958] 28

Comp Cas 554 ; ILR [1958] (Mad) 845, the corresponding sections of the English Act and the Indian Act were compared and the Bench held

thus (at pages 561 to 563 of 28 Comp Cas)

The learned Advocate-General referred to the decision in *Antigen Laboratories Ltd., In re* [1951] 1 All ER 110 (Ch D) and a passage from

Buckley's Company Law at page 1091, in support of the proposition that a petitioner seeking relief u/s 210 of the English Companies Act which

corresponds to section 397 of the (Indian) Companies Act should state in the prayer in clear terms the general nature of the relief sought, whether

it be for the appointment of a director or of some other kind. His contention was that in the petition the only relief prayed for was regulation of the

conduct of the affairs of the company in future and not in regard to any action against the directors for the alleged malfeasance and misfeasance.

That may be so, but the petition contains an elaborate statement of the charges against the directors and an investigation into those charges would

be necessary even for the purpose of regulating the affairs of the company. We do not think that the absence of any formal prayer in the petition u/s

397 would entitle the court to refrain from investigating into the various charges levelled against the directors. In Gower's Modern Company Law

(second edition), at page 513, the scope of section 210 of the English Act which corresponds to section 397 of the (Indian) Companies Act is

discussed and referring to the Cohen Report, on which the section in the English Act was based, the learned author says "that it was the intention

that the court should ""have power to impose upon the parties whatever settlement the court considers just and equitable"". While recognising that

the court could not be expected in every case to find and impose a solution it was thought that its discretion must be unfettered for it is impossible

to lay down a general guide in the solution of what are essentially individual cases". Referring to the decision in *Antigen Laboratories Ltd.*, In re

[1951] 1 All ER 110, the learned author says "that it has been held that the petitioner cannot just ask the court to exercise its discretion but must

indicate the nature of the relief wanted. This decision though perhaps inevitable seems regrettable and inconsistent with the intention that the court

should have power to find and impose a solution". The decision of the English court was, as pointed out by the learned author, the result of the

procedure of the English High Courts "which was ill adapted for the exercise of the inquisitorial and constructive role thus imposed upon the court".

We are not hampered by such rigid technicalities of procedure and if the minority in a company complains of an oppression and discloses certain

grounds of complaint in the petition which are made the basis follow the relief, we would hold that the court should ordinarily investigate the

charges. Such investigations may in certain cases be necessary even to regulate the future conduct of the company for providing against recurrence

of such abuses of power by the majority. We are, therefore, of opinion that notwithstanding the omission in the petition to pray for relief against the

delinquent directors, an enquiry into the charges against them was properly within the scope of the petition. Sections 402 and 406 of the (Indian)

Companies Act give ample jurisdiction to the court to dispose of the matter in the larger interests of the company.

35. The entire power of the company court under sections 397, 398 and 402 of the Companies Act was considered by the Bombay High Court in

the decision in *Shanti Prasad Jain v. Union of India* [1973] 75 Bom LR 778. In that case, the learned company judge reconstituted the board for a

period of seven years and the question that came up for consideration was, whether the same is against the provisions of sections 255 and 408 of

the Companies Act. While considering the same, the entire law was considered by the Bench. Tulzapurkar J., as he then was, speaking for the

Bench, held thus :

In our view the submissions made by Mr. Sen on the point of legality or otherwise of the impugned orders will have to be appreciated in the

context of the principal question as to what are the powers of the court when it is acting in proceedings instituted under sections 397, 398, read

with section 402 of the Companies Act. The questions whether a board of directors of the type indicated in the impugned order could be

reconstituted by the court or not and whether the court has power to frame an article inconsistent with the provisions of section 255 of the Act or

not must in the ultimate analysis depend upon the true ambit of the powers of the court u/s 397 or 398 read with section 402 for, if these sections

confer upon the court jurisdiction and powers of the widest amplitude to pass appropriate orders which the circumstances of the case may require,

it would be difficult to accept Mr. Sen's submission that the impugned orders and directions are liable to be set aside on the basis that the

reconstituted board or modified article 95 was not in consonance with section 255 of the Act. To correctly appreciate the ambit of the court's

jurisdiction and the amplitude of the court's power under sections 397, 398 read with section 402 of the Companies Act, 1956, it will be

necessary to consider the entire scheme of the Act pertaining to corporate management of companies. At the outset, it may be stated that all these

concerned provisions occur in Part VI of the Act which deals with the management and administration of companies. It may be further pointed out

that in this part there are eight chapters. Chapter I contains general provisions with regard to corporate management and administration of the companies such as registered office, register of members and debenture holders, annual returns, meeting and proceedings, accounts, audit, investigation, etc.; Chapter II, which includes section 255 deals with directors, their qualification, disqualification and remuneration, meetings of the board, board's powers, procedure where directors are interested, etc.; Chapter III deals with managing agents, their appointment, remuneration, restrictions on their powers, etc.; Chapter IV deals with secretaries and treasurers; Chapter IV-A deals with powers of the Central Government to remove managerial personnel from office on the recommendation of the tribunal; Chapter V deals with arbitration, compromises, arrangements and reconstructions; Chapter VI, which includes sections 397 to 409, deals with prevention of oppression and mismanagement; Chapter VII deals with constitution and powers of advisory committee; and Chapter VIII contains miscellaneous provisions. It will thus be seen that section 255 on which substantially the entire argument of Mr. Sen is based is to be found in Chapter II which deals with directors and the constitution of the board, through which agency the corporate management of the affairs of a company is usually undertaken, while Chapter VI, which contains material provisions from sections 397 to 409, deals with matters pertaining to prevention of oppression and mismanagement arising out of corporate management. In other words, it is very clear that Chapter II which includes section 255 deals with corporate management of a company through directors in normal circumstances, while Chapter VI deals with emergent situations or extraordinary circumstances where the normal corporate management has failed and has run into oppression or mismanagement and steps are required to be taken to prevent oppression and/or mismanagement in the conduct of the affairs of a company. It is in view of this scheme which is very apparent on a fair reading of the arrangement of chapters and the sections contained in each chapter which are all grouped under Part VI of the Act that the question will have to be answered as to whether the powers of the court under Chapter VI (which includes sections 397, 398 and 402) should be read as subject to the provisions contained in the other chapters which deal with normal corporate management of a company and in our view, in the context of this scheme having

regard to the object that is sought to be achieved by sections 397, 398 read with section 402, the powers of the court thereunder cannot be so read. Further, an analysis of the sections contained in Chapter VI of Part VI of the Act will also indicate that the powers of the court u/s 397 or 398 read with section 402 cannot be read as being subject to the other provisions contained in sections dealing with usual corporate management of a company in normal circumstances. As stated earlier, Chapter VI deals with the prevention of oppression and mismanagement and the provisions therein have been divided under two heads - under head A powers have been conferred upon the court to deal with cases of oppression and mismanagement in a company falling under sections 397 and 398 of the Act while under head B similar powers have been given to the Central Government to deal with cases of oppression and mismanagement in a company but it will be clear that some limitations have been placed on the Government's powers while there are no limitations or restrictions on the court's powers to pass orders that may be required for bringing to an end the oppression or mismanagement in future or to see that the affairs of the company are not being conducted in a manner prejudicial to public interest. In other words, whenever the Legislature wanted to do so it has made a distinction between powers conferred on the Government (vide section 408) and powers conferred on the court (vide section 402) while dealing with similar emergent situations or extraordinary circumstances arising in the management of a company and in the case of the Government it was placed restrictions or limitations on the Government's powers but no restrictions or limitations of anything have been prescribed on the court's powers. If the Legislature had desired that the court's powers while acting u/s 397 or 398 read with section 402 should be exercised subject to or in consonance with the other provisions of the Act it would have said so. Moreover, the topics or subjects dealt with by sections 397 and 398 are such that it becomes impossible to read ally such restrictions or limitation on the powers of the court acting u/s 402. u/s 397 read with section 402 power has been conferred on the court "to make such orders as it thinks fit if it comes to the conclusion that the affairs of a company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members and that to wind up the company would unfairly

prejudice such member or members but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up "with a view to bringing to an end the matters complained of". Similarly, u/s 398 read with section 402 power has been conferred upon the court "to make such orders as it thinks fit", if it comes to the conclusion that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or that a material change has taken place in the management or control of the company by reason of which it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in, a manner prejudicial to the interests of the company "with a view to bringing to an end or preventing the matters complained of or apprehended". Both the wide nature of the power conferred on the court and the object or objects sought to be achieved by the exercise of such power are clearly indicated in sections 397 and 398. Without prejudice to the generality of the powers conferred on the court under these sections, section 402 proceeds to indicate what type of orders the court could pass and clauses (a) to (g) are clearly illustrative and not exhaustive of the type of such orders. Clauses (a) and (g) indicate the widest amplitude of the court's power; under clause (a) the court's order may provide for the regulation of the conduct of the company's affairs in future and under clause (g) the court's order may provide for any other matter for which in the opinion of the court it is just and equitable that provisions should be made. An examination of the aforesaid sections clearly brings out two aspects, first, the very wide nature of the power conferred on the court and, secondly, the object that is sought to be achieved by the exercise of such power with the result that the only limitation that could be impliedly read on the exercise of the power would be that nexus must exist between the order that may be passed thereunder and the object sought to be achieved by these sections and beyond this limitation which arises by necessary implication it is difficult to read any other restriction or limitation on the exercise of the court's power. We are, therefore, unable to accept Mr. Sen's contention that the court's powers u/s 398 read with section 402 should be read as subject to the other provisions of the Act dealing with normal corporate management or that the court's orders and directions issued thereunder must be in

consonance with the other provisions of the Act.

36. There is another aspect of sections 397, 398 and 402 which also shows that no such limitation as is sought to be suggested by Mr. Sen can be

read on the court's power while acting under these sections. Section 397 clearly suggests that the court must come to the conclusion that the

company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members of the

company and that to wind up the company would unfairly prejudice and member or members, but that otherwise the facts, would justify the

making of a winding up order on the ground that it was just and equitable that the company should be wound up before any order could be passed

that it. In other words, instead of destroying the corporate existence of company the court has been enabled to continue its corporate existence by

passing such orders as it thinks fit in order to achieve the objective of removing the oppression to any member or members of a company or to

prevent the company's affairs from being conducted in a manner prejudicial to public interest. Similarly, sub-section (2) of section 398 clearly

provides that where the court is of the opinion that the affairs of the company are being conducted in a manner suggested in sub-section (1), then,

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

words, sections 397 and 398 are intended to avoid winding up of the company if possible and keep it going while at the same time relieving the

minority shareholders from acts of oppression and mismanagement or preventing its affairs being conducted in a manner prejudicial to the public

interest and if that be the objective the court must have power to interfere with the normal corporate management of the company. If u/s 398 read

with section 402, the court is required by its order to provide for the regulation of the conduct of the company's affairs in future because of

oppression or mismanagement that has occurred during the course of normal corporate management, the court must have the power to supplant

the entire corporate management or rather corporate mismanagement by resorting to non-corporate management which may take the form of

appointing an administrator or a special officer or a committee of advisors, etc., who could be in charge of the affairs of the company. If the court

were to have to such power the very object of the section would be defeated. We must observe in fairness to Mr. Sen that it was not disputed by him that powers of the court u/s 398 read with section 402 of the Companies Act were wide enough to enable the court to appoint an administrator or a special officer or a committee of advisors for the future management of the company and thereby supplant completely the corporate management through the board of directors and it was conceded that it should be so for the simple reason that if as a result of the corporate management that has been allowed to run for a certain period oppression or mismanagement has resulted, the court should have power to substitute the entire corporate management by some form of non-corporate management and while doing so the court cannot obviously have any regard or be subject to the other provisions dealing with the corporate form of management. But what was urged by Mr. Sen was that if while acting u/s 398 read with section 402, the court thought it fit to have recourse to a mode of corporate type of management, for example, if the court felt proper to have the board of directors for future management, then such corporate mode of management to be provided by the court should conform to the other provisions of the Act dealing with the corporate management. It is not possible to accept this contention of Mr. Sen for two reasons. In the first place, if the court's power under these sections is wide enough to have the corporate management supplanted wholly or completely, it is difficult to understand why the court should not have power to make a partial inroad or encroachment and have a truncated form of corporate management if the exigencies of the case required it, and any truncated form of corporate management can never conform to all the provisions dealing with the corporate management. Secondly, it will all depend upon the facts and circumstances of each case as to how, in what manner and to what extent the court should allow the voice of the shareholders' directors on the board of directors to prevail over that of the other directors and we do not think that the court's powers in that behalf could in any manner be curbed. In our view, therefore, the position is clear that while acting u/s 398 read with section 402 of the Companies Act, the court has ample jurisdiction and very wide powers to pass such orders and give such directions as it thinks fit to achieve the object and there would be no limitation or restriction on such power that the same should be

exercised subject to the other provisions of the Act dealing with normal corporate management or that such orders and directions should be in

consonance with such provisions of the Act.

37. In *Bennet Coleman and Co. v. Union of India* [1977] 47 Comp Cas 92, the Bombay High Court had occasion to consider the same. Their

Lordships said thus (at page 116) :

An examination of the aforesaid sections brings out two aspects; first, the very wide nature of the power conferred on the court, and, secondly,

the object that is sought to be achieved by the exercise of such power, with the result that the only limitation that could be impliedly read on the

exercise of the power would be that nexus must exist between the order that may be passed thereunder and the object sought to be achieved by

those sections and beyond this limitation which arises by necessary implication it is difficult to read any other restriction or limitation on the exercise

of the court's power.

38. In *Rakhra Sports Pvt. Ltd. v. Khraitilal Rakhra* [1993] 76 Comp Cas 545, a Division Bench of the Karnataka High Court, while dealing with

the powers of court u/s 397 of the Companies Act, had held thus (at page 586) :

Under section 397 of the Companies Act, 1956, the court is empowered to make an order "as it thinks fit"; similar is the power vested in the

court u/s 398. Power u/s 402 is a power which may be exercised, without prejudice to the generality of the powers of the court under sections

397 and 398, and, therefore, such a power can in no way be of a limited nature. A power to make an order as the court thinks fit would

necessarily comprise within it a power to make an order which is just and equitable in the circumstances of the case, because essentially, this is an

unlimited judicial power.

39. Even if the unlimited powers expounded by the various decisions are not exercised, the decision in *Needle Industries (India) Ltd. and Others*

Vs. Needle Industries Newey (India) Holding Ltd. and Others, will be of some help. In that case, their Lordships said that in a given case even if

the case of oppression is not proved, substantial justice must be done between the parties and the parties must be placed as nearly as may be in

the same position if they could have been placed. The relevant portion of the said paragraph 172 reads thus (at page 845 of 51 Comp Cas) :

Even though the company petition fails and the appeals succeed on the finding that the holding company has failed to make out a case of

oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in

which they would have been, if the meeting of May 2, were held in accordance with law.

40. On the basis of the above settled position of law, and on proved facts, it cannot be said that the decision of the Board is in any way improper.

Company Petition No. 44 of 1993 was filed to rectify the mismanagement and they wanted an administrator to be appointed after removing the

directors. That relief was not granted by the Company Law Board since it was of the view that the majority decision will be respected. If that pious

wish of the Board was respected, the board of directors would have been removed long back. But that was also prevented by various acts and

omissions. Under the above circumstances, the petitioners had to move for the appointment of an independent chairman and the Board again

thought that the democratic set up will be maintained and wanted an election to be conducted leaving the entire matter to the shareholders under

the guidance of an observer. Even that could not be implemented by the partiality of the chairman. We have to approach the decision of the Board

in the above background. The purpose of section 397 read with section 402 of the Companies Act has already been explained in the various

decisions. The Board has got unlimited power. Learned senior counsel contended that even the petitioners did not want their board of directors to

be handed over management and by virtue of the impugned order, the relief that was sought for in Company Petition No. 44 of 1993 is now

granted in an interlocutory application. We cannot accept the said argument. At the time when Company Petition No. 44 of 1993 was filed, the

extraordinary general meeting was not held and, therefore, that could be the only relief at that time. In view of the subsequent events and that too

after the extraordinary general meeting under the guidance of the observer, the only thing that had to be considered was, whether the new directors

were duly elected to the board and whether the existing board is to be removed. Company Petition No. 44 of 1993 itself was filed to get

management of the company by the majority shareholders and that was the main complaint. We do not find any difficulty in coming to the

conclusion that under the provisions of the Companies Act, the Board was legally entitled to and has got the power which it exercised under the impugned order.

41. While exercising the powers under sections 397 and 402 of the Companies Act, the court is considering not only the relief that is sought for,

but also considers as to what is the nature of the complaint and how the same has to be rectified. It is the interest of the company that is being

considered and not the individual dispute between the petitioner and the respondent. If that be so, the interest of the company requires that the

majority shareholders must have their say in the management. The Company Law Board, after deciding the case on the merits, has held that the

second petitioner represented by Raghavan having 2,000 shares must go in favour of the resolution and adding the 1,000 votes of the first

petitioner, the resolution was passed. Before the chairman, the only person who challenged or put forward the claim against the second petitioner

was V. Subramaniam, claiming to be the power of attorney and alleged pledgee-cum-beneficial owner of the second petitioner. The Company

Law Board held that when the original owner himself is present, the beneficial owner's claim cannot be considered and he is not a competitor. The

claim of V. Subramaniam was on the basis of a pledge and the same will not convey title. A similar point has been considered in Balkrishan Gupta

and Others Vs. Swadeshi Polytex Ltd. and Another, . In paragraph 33 of the judgment, their Lordships said thus :

In the case of a pledge, however, the legal title to the goods pledged would not vest in the pawnee. The pawnee has only a special property.

A pawnee has no right of foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically

granted by law.

42. In view of this legal position, V. Subramaniam, representing Alaknandha as pledgee-cum-beneficial owner, cannot claim any title. Further, the

original share certificates are with the petitioners and even the pledge is disputed by them. In either way, he cannot have any voting right. When the

Company Law Board decided against Alaknandha, an appeal was filed on its behalf as C.M.A. No. 696 of 1995 and the same was dismissed as

withdrawn on September 24, 1996. It may also be mentioned that another

appeal was filed in the name of Stridewell Leathers Private Limited as C.M.A. 688 of 1995 by one Nandhi, which was also withdrawn on the same date. In that view, the only persons who can claim and still have title over the shares are petitioners Nos. 1 and 2 and, therefore, the decision of the Board is only to be confirmed.

43. Learned senior counsel for the appellants contended that the application has been filed under rule 44 of the Company Law Board Regulations,

1991. Rule 44 corresponds to section 151 of the Code of Civil Procedure. The contention raised by learned senior counsel is that rule 44 could be

invoked only in a pending proceeding and the same cannot be a subject-matter to investigate the rights of parties. It is their case that once an order

has been passed in the main application, the Board has ceased to have any power to pass a subsequent order and that too far in excess of the

relief that was granted in the main petition. Regulation 44 reads thus :

Saving of inherent power of the Bench. - Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to

make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.

44. The submission of learned senior counsel for the appellants is that the Board has no jurisdiction to entertain Company Application No. 208 of

1994, the reason being that it has already disposed of the main matter and no matter was pending before the Board. Since the application is filed

under regulation 44, the matter must be pending before that court and invocation of that power was not proper. The further argument is that the

Board has become functus officio and, therefore, even if there is any complaint, that could be agitated only in a separate proceeding.

45. We have already expressed our opinion about the scope of section 397 of the Companies Act. In this connection, it is better to quote a

passage of the Calcutta High Court in *Sindhri Iron, Foundry (P.) Ltd., In re* [1964] 34 Comp Cas 510. Wherein their Lordships said thus :

The purpose and object of sections 397 and 398 is to put an end to acts of oppression and mismanagement promptly and speedily rather than

allow the parties to be involved in a costly and protracted litigation. If the facts justify interference by the court in the exercise of its powers under

the two sections and in the conditions prescribed by the sections are fulfilled the

court ought not to relegate the parties to a series of protracted and costly litigation.

Section 397 neither contemplates nor requires a continuous course of oppressive wrongful conduct over a period of time. If the court is satisfied

that a single wrongful act is such that its effect will be a continuous course of oppression and there is no prospect of remedying the situation by the

voluntary act of the party responsible for the wrongful act, the court is entitled to interfere by an appropriate order u/s 397 of the Act.

46. Since Company Petition No. 44 of 1993 is allowed, it follows that all the ingredients under section 397 of the Companies Act have been

complied with. We may also take note of the meaning of the word "functus officio" in Wharton's Law Lexicon, 14th edition, which reads thus :

"Functus officio", a person who has discharged his duty, or whose office or authority is at an end.

In Black's Law Dictionary, the meaning for "functus officio" is given as follows :

Having fulfilled the function, discharged the office, or accomplished the purpose, and, therefore, of no further force or authority.

In Corpus Juris Secundum, "functus officio" is defined thus :

Functus officio. - Literally "having discharged his duty". Having fulfilled the function, discharged the office, or accomplished the purpose, and,

therefore, of no further force or authority; applied to an officer whose term has expired, and who has consequently no further official authority;

and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation, and is, therefore, of no further virtue or effect. . .

Further down, it is said thus :

The term has been compared with "spent".

47. Taking into consideration the purpose of sections 397 and 402 of the Companies Act, until the matter complained of is fully settled, it cannot

be said that the Board has become functus officio. Apart from the meaning which we have given, on the facts of this case, we do not think that

learned senior counsel for the appellants will be justified in contending that the Board has become "functus officio". We state the reasons

hereunder.

48. The very same contention was taken by the appellants when Company

Application No. 114 of 1994 was filed by the petitioners in the very same case. The Board rejected that contention. In paragraph 7 of the order in that application, the Board said thus :

In regard to the objection of Shri Singhvi that the Company Law Board has become functus officio after the disposal of the main petition, one of

the important aspects to be considered is whether after having passed the final order we have retained seisin over the matter and in case we have

retained seisin, then there should not be any difficulty in entertaining the application. This proposition of dealing with the matter even after final

disposal if seisin is retained has been well established in *Mohini Devi Choraria v. Apsara Cinema Pvt. Ltd.* [1988] MLJ 1004 : [1990] 69 Comp

Cas 233. From the last pars of our order dated June 8, 1994, it is apparent and clear that we have retained seisin over the matter that too

relevantly relating to the convening of EOGM. In view of this, the objection that the Company Law Board has become functus officio is not well

founded.

49. Learned senior counsel for the appellants contended that the decision cited by the Board has no application to the facts of this case and even if

we consider that decision, the question whether the Board has seisin of the matter will have to be considered.

50. Even if the unlimited powers expounded by the various decisions are not exercised, the decision in *Needle Industries (India) Ltd. and Others*

Vs. Needle Industries Newey (India) Holding Ltd. and Others, will be of some help. In that case, their Lordships said that in a given case even if

the case of oppression is not proved, substantial justice must be done between the parties and the parties must be placed as nearly as may be in

the same position if they could have been placed. The relevant portion of the said paragraph 172 reads thus (at page 845 of 51 Comp Gas)

Even though the company petition fails and the appeals succeed on the finding that the holding company has failed to make out a case of

oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in

which they would have been, if the meeting of May 2, were held in accordance with law.

51. On the basis of the above settled position of law, and on proved facts, it

cannot be said that the decision of the Board is in any way improper.

Company Petition No. 44 of 1993 was filed to rectify the mismanagement and they wanted an administrator to be appointed after removing the

directors. That relief was not granted by the Company Law Board since it was of the view that the majority decision will be respected. If that pious

wish of the Board was respected, the board of directors would have been removed long back. But that was also prevented by various acts and

omissions. Under the above circumstances, the petitioners had to move for the appointment of an independent chairman and the Board again

thought that the democratic set up will be maintained and wanted an election to be conducted leaving the entire matter to the shareholders under

the guidance of an observer. Even that could not be implemented by the partiality of the chairman. We have to approach the decision of the Board

in the above background. The purpose of section 397 read with section 402 of the Companies Act has already been explained in the various

decisions. The Board has got unlimited power. Learned senior counsel contended that even the petitioners did not want their board of directors to

be handed over management and by virtue of the impugned order, the relief that was sought for in Company Petition No. 44 of 1993 is now

granted in an interlocutory application. We cannot accept the said argument. At the time when Company Petition No. 44 of 1993 was filed, the

extraordinary general meeting was not held and, therefore, that could be the only relief at that time. In view of the subsequent events and that too

after the extraordinary general meeting under the guidance of the observer, the only thing that had to be considered was, whether the new directors

were duly elected to the board and whether the existing board is to be removed. Company Petition No. 44 of 1993 itself was filed to get

management of the company by the majority shareholders and that was the main complaint. We do not find any difficulty in coming to the

conclusion that under the provisions of the Companies Act, the Board was legally entitled to and has got the power which it exercised under the

impugned order.

52. While exercising the powers under sections 397 and 402 of the Companies Act, the court is considering not only the relief that is sought for,

but also considers as to what is the nature of the complaint and how the same

has to be rectified. It is the interest of the company that is being considered and not the individual dispute between the petitioner and the respondent. If that be so, the interest of the company requires that the majority shareholders must have their say in the management. The Company Law Board, after deciding the case on the merits, has held that the second petitioner represented by Raghavan having 2,000 shares must go in favour of the resolution and adding the 1,000 votes of the first petitioner, the resolution was passed. Before the chairman, the only person who challenged or put forward the claim against the second petitioner was V. Subramaniam, claiming to be the power of attorney and alleged pledgee-cum-beneficial owner of the second petitioner. The Company Law Board held that when the original owner himself is present, the beneficial owner's claim cannot be considered and he is not a competitor. The claim of V. Subramaniam was on the basis of a pledge and the same will not convey title. A similar point has been considered in Balkrishan Gupta and Others Vs. Swadeshi Polytex Ltd. and Another, . In paragraph 33 of the judgment, their Lordships said thus :

In the case of a pledge, however, the legal title to the goods pledged would not vest in the pawnee. The pawnee has only a special property.

A pawnee has no right of foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law.

53. In view of this legal position, V. Subramaniam, representing Alaknandha as pledgee-cum-beneficial owner, cannot claim any title. Further, the original share certificates are with the petitioners and even the pledge is disputed by them. In either way, he cannot have any voting right. When the Company Law Board decided against Alaknandha, an appeal was filed on its behalf as C. M. A. No. 696 of 1995 and the same was dismissed as withdrawn on September 24, 1996. It may also be mentioned that another appeal was filed in the name of Stridewell Leathers Private Limited as C. M. A. 688 of 1995 by one Nandhi, which was also withdrawn on the same date. In that view, the only persons who can claim and still have title over the shares are petitioners Nos. 1 and 2 and, therefore, the decision of the Board is only to be confirmed.

54. Learned senior counsel for the appellants contended that the application has

been filed under rule 44 of the Company Law Board Regulations, 1991. Rule 44 corresponds to section 151 of the Code of Civil Procedure. The contention raised by learned senior counsel is that rule 44 could be invoked only in a pending proceeding and the same cannot be a subject-matter to investigate the rights of parties. It is their case that once an order has been passed in the main application, the Board has ceased to have any power to pass a subsequent order and that too far in excess of the relief that was granted in the main petition. Regulation 44 reads thus :

Saving of inherent power of the Bench. - Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.

55. The submission of learned senior counsel for the appellants is that the Board has no jurisdiction to entertain Company Application No. 208 of

1994, the reason being that it has already disposed of the main matter and no matter was pending before the Board. Since the application is filed

under regulation 44, the matter must be pending before that court and invocation of that power was not proper. The further argument is that the

Board has become functus officio and, therefore, even if there is any complaint, that could be agitated only in a separate proceeding.

56. We have already expressed our opinion about the scope of section 397 of the Companies Act. In this connection, it is better to quote a

passage of the Calcutta High Court in *Sindhri Iron, Foundry (P.) Ltd., In re* [1964] 34 Comp Cas 510. Wherein their Lordships said thus :

The purpose and object of sections 397 and 398 is to put an end to acts of oppression and mismanagement promptly and speedily rather than

allow the parties to be involved in a costly and protracted litigation. If the facts justify interference by the court in the exercise of its powers under

the two sections and in the conditions prescribed by the sections are fulfilled the court ought not to relegate the parties to a series of protracted and

costly litigation.

Section 397 neither contemplates nor requires a continuous course of oppressive wrongful conduct over a period of time. If the court is satisfied

that a single wrongful act is such that its effect will be a continuous course of oppression and there is no prospect of remedying the situation by the

voluntary act of the party responsible for the wrongful act, the court is entitled to interfere by an appropriate order u/s 397 of the Act.

57. Since Company Petition No. 44 of 1993 is allowed, it follows that all the ingredients under section 397 of the Companies Act have been

complied with. We may also take note of the meaning of the word "functus officio" in Wharton's Law Lexicon, 14th edition, which reads thus :

"Functus officio", a person who has discharged his duty, or whose office or authority is at an end.

In Black's Law Dictionary, the meaning for "functus officio" is given as follows :

Having fulfilled the function, discharged the office, or accomplished the purpose, and, therefore, of no further force or authority.

In Corpus Juris Secundum, "functus officio" is defined thus :

Functus officio. - Literally "having discharged his duty". Having fulfilled the function, discharged the office, or accomplished the purpose, and,

therefore, of no further force or authority; applied to an officer whose term has expired, and who has consequently no further official authority;

and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation, and is, therefore, of no further virtue or effect.

. .

Further down, it is said thus :

The term has been compared with "spent".

58. Taking into consideration the purpose of sections 397 and 402 of the Companies Act, until the matter complained of is fully settled, it cannot

be said that the Board has become functus officio. Apart from the meaning which we have given, on the facts of this case, we do not think that

learned senior counsel for the appellants will be justified in contending that the Board has become "functus officio". We state the reasons

hereunder.

59. The very same contention was taken by the appellants when Company Application No+ 114 of 1994 was filed by the petitioners in the very

same case. The Board rejected that contention. In paragraph 7 of the order in that application, the Board said thus :

In regard to the objection of Shri Singhvi that the Company Law Board has become functus officio after the disposal of the main petition, one of

the important aspects to be considered is whether after having passed the final order we have retained seisin over the matter and in case we have

retained seisin, then there should not be any difficulty in entertaining the application. This proposition of dealing with the matter even after final

disposal if seisin is retained has been well established in *Mohini Devi Choraria v. Apsara Cinema Pvt. Ltd.* [1988] MLJ 1004 : [1990] 69 Comp

Cas 233. From the last pars of our order dated June 8, 1994, it is apparent and clear that we have retained seisin over the matter that too

relevantly relating to the convening of EOGM. In view of this, the objection that the Company Law Board has become functus officio is not well

founded.

60. Learned senior counsel for the appellants contended that the decision cited by the Board has no application to the facts of this case and even if

we consider that decision, the question whether the Board has seisin of the matter will have to be considered.

61. Even if the said decision is not applicable, we are of the view that the order in C.P. No. 44 of 1993 has not finally disposed of the matter. We

have already stated that the reason for not granting the reliefs was that the Board was of the view that the petitioners can effectively exercise their

majority right, and everyone will respect the democratic rights of the shareholders. We can construct that order of the Company Law Board only

as a conditional order in the sense that the reliefs sought for in the petition are not necessary since the petitioners can effectively exercise their

majority right. if the condition is not complied with, naturally, it is only the Company Law Board that could intervene and set the matters right. A

reading of the application, namely, Company Application No 114 of 1994 and also the objection raised therein by the appellant also supports the

view taken by us. We may also note that the order in Company Application No. 114 of 1994 was not challenged by any one.

62. A further contention is taken by learned senior counsel for the appellants that even if we consider that the order in C. A. No. 114 of 1994

gives the right to the Board to give directions, that power also comes to an end by passing that order and all the powers have been exhausted by

the Board. We do not accept the said contention as well. A reading of the order makes it clear that the Board wanted to have a say even

subsequent to the passing of the order. Otherwise, there was no necessity for the Board to give the following directions in their order :

However, at the same time we feel that it is absolutely essential that the proceedings of the EOGM are conducted in a proper manner and we

should have independent information as to the conduct of the meeting from an independent source. Accordingly, we appoint Shri B. Bhavani

Shankar, former Regional Director, Department of Company Affairs, presently residing at L-11, Paras Apartments, Jeevaratnam Nagar, Adyar,

Madras-20, to observe the proceedings of the EOGM whenever the same is held and send us a report within 15 days thereof. He will be paid an

honorarium of Rs. 5,000 by the company. We also direct whoever calls the meeting, either the company or on the failure of the company, the

requisitionists, to serve a copy of the notice calling for the meeting to the independent observer. The chairman of the meeting is directed to record

all the votes polled in favour or against each and every resolution separately memberwise and send a copy of the minutes of the meeting within 15

days from the date of holding the meeting with a copy to the petitioners.

63. From a reading of the above extract from the order of the Company Law Board, it is clear that even after the meeting, the Board must take a

final decision. Whether the meeting was held properly and whether any resolution has been voted out or not, are all matters to be informed to the

Board and the observer was also directed to send a copy of the proceedings to it. If the Board did not intend to pass any order subsequently, or it

was of the view that it has no more say in the complaint, there was no necessity for reporting the meeting and the result thereof to it. We may also

say that the original order in Company Petition No. 44 of 1993 was also passed by the same officers who passed the order in Company

Application No. 114 of 1994. The intention at the time of passing the order in Company Petition No. 44 of 1993 could be better explained by

them, and that is what they did while passing the order in Company Application No. 114 of 1994. The said submission of learned senior counsel

for the appellants is, therefore, found against, and we hold that the Board was justified in passing the order under regulation 44. Since the Board

has not become functus officio as contended, it was justified in considering the validity of the chairman's decision regarding the voting and declaring

the result. Regulation 44 saves the inherent power of the Board and it corresponds to section 151 of the Civil Procedure Code. It is settled law

that under the inherent powers, the court can pass any order to prevent the abuse of process and also to meet the ends of justice. In this case, the

Board has acted only within its limits.

64. The argument that substantive rights of the parties ought to have been allowed to be agitated in separate proceedings cannot be accepted since

the very purpose of section 397 of the Act is to avoid a costly and protracted litigation. The above submissions are, therefore, found against the

appellants.

65. The last argument put forward by learned senior counsel for the appellants is that the resolution dated October 7, 1993, is invalid since it

violated section 284 of the Companies Act, for, no individual notice has been given to the directors who were sought to be removed, and they

were not heard.

66. The direction given by this court to hold the meeting on October 19, 1994, does not dispense with the notice u/s 284 of the Act. It is also said

that the resolution is vague and is not directed against a particular director. Learned senior counsel for the appellants laid emphasis on the words

to remove a director""', appearing in various portions of the section in the Act. Learned junior counsel also relied on the decision in *In Re: Ruttonjee*

and Co. Ltd., , and took us through the following passage in the said decision :

Assuming that by virtue of section 284 even permanent directors may be removed; it is to be observed that the power which is given to a

company under this section is not an absolute or an unrestricted power. The Legislature has provided for adequate safeguards against arbitrary or

unreasonable exercise of this power. To remove a director u/s 284 certain essential requirements are to be fulfilled. The director concerned must

be given a reasonable opportunity to make representations against the proposal for his removal and the shareholders of the company should also

have adequate opportunities of being acquainted with such representations before they subscribe to a resolution for removal.

But before a court is asked to exercise its powers u/s 186 and to dispense with the special notice provided for in section 284, the court should at

least be told what the specific charges against the directors are.

67. Learned senior counsel for the appellants wanted us to treat the passage extracted above as his argument. He further expanded his contention by saying that the removal of the directors was without hearing them and, therefore, it violates the principles of natural justice. The very purpose of issuing notice u/s 284 of the Act is to inform the director of the charges against him and show cause why he should not be removed. The absence of notice will amount to non-seeking of any explanation from him. Learned senior counsel argued that a director has been condemned without hearing.

68. We do not agree with the said submission. The principle of natural justice may not have any application to this case. The very constitution of the board was being questioned by the petitioners from the very beginning. It is not with an accusation against a particular director that the application was filed. The complaint was generally against the board and not against a particular individual director. We do not think that section 284 of the Companies Act will have any application on the facts and circumstances of the case, and, therefore, the decision cited by learned senior counsel, namely, *In Re: Ruttonjee and Co. Ltd.*, , also will have no relevance. When a case of oppression is made out, as already decided in the earlier portion of this judgment, it is only within the power of the Company Law Board to end the matter complained of and to make such orders as it thinks fit. While considering to end the matters complained of and when it is given the power to make any such order as it thinks fit to rectify the same, the Board is empowered to remove the board of directors so that the affairs of the company can be set right. It is only under the authority of the Company Law Board and also under its supervision, the board of directors are removed. The scope of section 284 of the Companies Act is entirely different. In cases coming under that section, there must be some charge against the individual director, and it is the company that seeks the removal of that director. Only in such cases, notice contemplated under that section is called for. When C. P. No. 44 of 1993 itself is for removal of the board of directors, we do not think that any special notice is required as contemplated u/s 284 of the Companies Act.

69. The contention that the resolution is bad and vague was taken at the time

when the extraordinary general meeting was held. One of the appellants himself was chairman. After hearing the parties, he permitted voting on that resolution, holding that the resolution is good and valid. The purpose of the resolution itself was to remove the directors appointed after June 1, 1993, and the concerned directors also knew that the resolution was intended against them. When the matter was taken before the Company Law Board, the decision of the chairman was not challenged and this point was never urged before the Board. Only when the decision went against them, an argument is put forward before this court regarding violation of the principles of natural justice.

70. There is also one legal obstacle for the appellants to put forward such a contention. The petitioners can only send the resolution to the company. The receipt of the resolution is admitted. Persons in charge of the company are bound to send a copy of the same to the various directors. When they have failed to do so, that cannot be a matter of complaint against the petitioners in this case. It is their own fault. The said submission of learned senior counsel is also, therefore, not correct.

71. Finally we come to the contention raised by learned senior counsel Mr. C. Hari Krishnan, regarding the maintainability of the appeals. He submitted that by the impugned order, various directors of the company have ceased to be directors after the period provided in the order, i.e., 10 days after receipt of the copy of the order. It is not disputed that further time was given by the Board to hand over charge. The argument of learned senior counsel is that the company can be represented only by a legally authorised person and since the directors have ceased to be directors, they cannot file appeals as directors or file appeals representing the company. There must be resolutions of the company authorising the persons to file appeals. For the said purpose, learned senior counsel relied on two decisions, namely, Nibro Ltd. Vs. National Insurance Co. Ltd., and Al-Amin Seatrans Ltd. Vs. Owners and Party interested in Vessel M.V. "Loyal Bird", .

72. In Nibro Ltd. Vs. National Insurance Co. Ltd., , it was held thus

Unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company.

Needless to say that such a power can be conferred by the board of directors

only by passing a resolution in that regard.

73. In the later decision of the Calcutta High Court also, it was held by the learned judge that the institution of a suit, by a person whether in a court

or otherwise on behalf of the company cannot be construed as a technical matter. It has far-reaching effects and it often affects the policy and

finances of the company. Therefore, to institute a suit or proceeding power must be conferred by the board of directors. The said contention

cannot be accepted in this case. Even though the board of directors was directed to hand over charge to the newly elected board, even before the

expiry of the period, appeal was filed before this court and interim order was obtained on June 30, 1995. By virtue of the interim order, the

operation of the order of the Company Law Board was stayed by this court, and the order is still in force. Therefore, the contention that the

directors cannot institute the appeals having ceased to be in office, has no force.

74. In the result, we do not find any merit in any of these appeals, and consequently, confirming the order of the Company Law" Board, we

dismiss all these appeals. Parties are directed to bear their respective costs in view of the legal questions involved in the case. The appellants are

directed to hand over charge to the new board within two weeks from today.