

(1981) 04 DEL CK 0017

In the Delhi High Court

Case No : Civil Writ No. 343 of 1980

South India Viscose Ltd. and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 24-04-1981

Acts Referred:

Citation : (1981) 04 DEL CK 0017

Hon'ble Judges : Rajinder Sachar, J;J.D. Jain, J

Bench : Division Bench

Judgement

Sachar, J.—This petition seeks to quash the impugned order dated February 18, 1980, passed by the Company Law Board (hereinafter to be called "the CLB"), respondent No. 5, by which in exercise of its powers under s. 408(1) of the Companies Act, 1956 (hereinafter to be called "the Act"), the CLB has made the appointment of two directors on the board of directors of the petitioner-company for a period of three years.

2. The petitioner-company is a public limited company incorporated under the Act and having its registered office at Coimbatore. The authorised capital of the petitioner-company is stated to be Rs. 20 crores and the total subscribed equity capital is Rs. 7.35 crores consisting of 7,35,000 equity shares of Rs. 100 each. About 28% of the equity shares are held by the three financial institutions, namely, Unit Trust of India, General Insurance Company of India and the Life Insurance Corporation of India. From 1961, the petitioner-company commenced production of Viscose filament yarn and viscose staple fibre for which the petitioner-company installed plant, machinery and equipments imported by it from an Italian company, M/s. Italviscosa Easter Trading (to be referred to as "IET") under a collaboration agreement entered into between the petitioner-company and IET.

3. The Govt. of Tamil Nadu originally invested by way of share capital a sum of Rs. 14 lakhs and has on the board of directors of the company one of its officers since then. From 1969 the petitioner commenced production of rayon grade

wood pulp which is the basis raw material for viscose filament yarn and viscose staple fibre. This was also in collaboration with IET and the plant and machinery for the same were supplied by the said company. The process adopted by the petitioner-company for the manufacture of rayon grade wood pulp is said to be bisulphate process, which it is claimed, is a process only done by the petitioner-company. The petitioner-company claims to have declared dividend since 1964 and the shares of the petitioner are said to be listed on the stock exchange and it claims to have distributed about Rs. 9 crores by way of dividend. The IET holds shares to the extent of 25% in the capital of the petitioner-company. On an average the petitioner-company claims to pay about Rs. 350 lakhs as excise duty and about Rs. 90 lakhs as sales tax besides Income Tax. It employees about 2,000 persons and claims that it paid an average 20% bonus and 10% of the wages to the workers as additional ex gratia payment. The company which is said to have started with a capital of Rs. 5 crores in 1958 claims that as on date the block assets of the company are of the value of over Rs. 50 crores. The petitioner-company is a board managed company having two managing directors.

4. Under s. 291 of Act the board of directors of the company shall be entitled to exercise all powers and do all such acts and things as the company is authorised to act and do. Evidently the position of the board of directors is very vital to the functioning and the health of the company. Because of the sensitive position of the directors, s. 255 of the Act provides that unless the articles provide for the retirement of all the directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company, or of a private company, shall be persons whose period of office is liable to determination by retirement of the directors by rotation and shall, save as otherwise expressly provided in the Act, be appointed by the company in general meeting. As the Act is suffused with public interest which is the supervening consideration, s. 408 empowers the Central Govt. to appoint such number of persons as the Central Govt. may by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest to hold office as directors for such period not exceeding 3 years on any one occasion as it may think fit. This power, however, can be exercised only if the Central Govt., either on its own motion or on the application of not less than 100 members of the company or of the members holding not less than 1/10th of the total voting power, is satisfied after such enquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or to public interest (the words "public interest" were added by the Companies (Amend.) Act, 1963). This power under s. 408 is a peculiar feature of the company law in our country. Normally, the company being a body corporate is to be managed by a board of directors elected by its won shareholders. Provision for their removal and taking of action against them for failing in their duty are provided under the Act. There is no doubt that power is also given under ss. 397 and 398 to the court to give relief in a case where 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 if the court is of the opinion 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 if the court is of the opinion that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member. Evidently the powers that the court can exercise under s. 397 are of very wide ramifications and would no doubt empower the court to appoint persons on the board of directors who may not have been elected by the shareholders. But then such power is also to be found in all company legislations of the World. But this power vested under s. 408 of the Act in the Central Govt. is a feature peculiar to our company legislation. But that is nothing to be wondered at, because we have accepted by our Constitution that the involvement of the Central Govt., where public interest is concerned, is an acceptable requirement. This provision permits the Central Govt. to appoint on the board of directors persons to hold office as directors. This section was inserted by the joint committee, as, in its opinion the central Govt. should be vested with power to prevent mismanagement or oppression by nominating one or two members of the company to hold office as directors for a period not exceeding three years. Further consequential effect of the power under s. 408 is provided by sub section (5) which lays down that no change in the board of directors made, after a person is appointed or directed to hold office as a director, shall, as long as the director or additional director holds office, have effect unless confirmed by the Central Govt. It should be noted that in the normal course the appointment of a person on the board of directors does not require confirmation by the Central Govt. The Central Govt. was aware that far-reaching powers, which normally would interfere with the internal management of the corporate sector, have been vested in it under s. 408 of the Act. It was this realisation that presumably led the Government to seek to assuage the public opinion by asserting that these powers were meant to be used only in grave cases. The Government, Therefore, clarified the parameters within which it proposed to exercise its powers under s. 408 of the Act. Thus the Company Law Administration in its second and fourth annual reports of 1957-58 and 1959-60 laid down the policy as under :

"The power under the section are extraordinary and are exercised only where Government is satisfied that the affairs of a company are grossly mismanaged or where the minority shareholders are unduly oppressed, and where it is felt that quick action is needed - such as cannot be had under the necessarily protracted proceedings of a court of law. Government will take great care to see that the section is not invoked lightly by disgruntled shareholders to satisfy their own private ends." "Prejudice" to the interests of the company will be judged by the minimum standard of good management required of all companies." - (Extract from the 4th Annual Report on the Working and Administration of the Companies Act, 1956 - Year ended March 31, 1960).

5. The Company Law Board is constituted under s. 10(E) of the Act to exercise and discharge such powers and functions as may be delegated by the Government. The CLB was constituted by a notification dated February 1, 1964. The Central Govt. in exercise of the powers conferred by clause (a) of sub-s. (1) of s. 637 read with sub-s. (1) of s. 10E of the Companies Act, 1956 by means of Notification No. GSR 443(E) dated October 18, 1972, has delegated to the CLB the powers and functions of the Central Govt. under s. 408 of the Act.

6. It may be noted that the board of directors of the petitioner-company consisted of 9 persons previous to the passing of the impugned order. It appears that the books of the petitioner company were inspected as they are liable to be under s. 209(2) of the Act. The CLB in the course of examination apparently felt that there were about 13 irregularities which required to be looked into and asked the company by its letter of November 28, 1978, to give an Explanation for the alleged violation and irregularities failing which action against the company under the provisions of the Companies Act will be taken. Correspondence between the petitioner and the department in which the petitioner gave its Explanation for the various items and sought to justify them. However, the CLB informed the petitioner by its show cause notice of May 1, 1979, that having gone through the replies furnished by the petitioner-company it was not satisfied with the reply to five items specified in the show-cause notice. The petitioner was also told that prima facie there was indication to show that the affairs of the company were being conducted in a manner which was oppressive to the members of the company and the public interest and that there was a prima facie case for action under s. 408 of the Act. Accordingly a show-cause notice was being issued to the petitioner-company giving it an opportunity to show cause against the proposed action. The items on which the CLB sought Explanation from the petitioner are mentioned below :

1. Placing orders on M/s. Air Control and Chemical Engineering Company Ltd. (ACCEL) for purchase of machinery and equipment for Rs. 4.61 crores.
2. Appointment of Shri Ermando Soardo as buying agent of the company in Italy on a commission of 2 1/2% on the FOB value of import.
3. Payment of advance of Rs. 15 lakhs to M/s. SAE (India) Ltd. for purchase of shares by the company in SAE (India) Ltd.
4. Payment of Rs. 1,47,283.23 towards the medical expenses incurred by Shri G. K. Devarajulu, managing director, for his treatment in USA.
5. Appointment of Shri K. B. Shah of Bombay as agent for sale of wood pulp to M/s. National rayon Corporation Ltd. and payment of Rs. 10.06 lakhs as commission on sales; appointment of M/s. Kishore Textiles, Cloth Merchants of Bombay, as an agent for sale of wood pulp to M/s. Baroda Rayon Corporation Ltd. and payment of Rs. 3.75 lakhs as commission on sales; and appointment of Shri B. K. Venugopal of Bangalore as agent for sale of Anhydrous Sodium Sulphate to M/s. Mysore Paper Mills Ltd. and payment of commission of Rs. 2.20

lakhs on sales.

7. Long and detailed correspondence was exchanged between the petitioner and the CLB. There were a number of hearings also before the CLB with a view to clarify the various points raised with regard to the above five items. Ultimately, the impugned order dated February 18, 1980, was passed by respondent No. 5, the CLB under s. 408(1) by which it appointed two directors to the board of directors of the company for a period of 3 years. It is this order that is challenged in the present petition.

8. We may not that the Explanation of the petitioner-company with regard to item No. 2 has been found satisfactory. The impugned order Therefore, evidently rests on the assumption that the other four items stand proved as alleged. Now an exercise of the power under s. 408 of the Act is circumscribed by the limitation mentioned in the section itself. The power under s. 408 of the Act is not untrammelled and does not give absolute discretion to the Central Govt. to appoint directors only on its subjective opinion. The power under s. 408 of the Act is dependent on the establishment, in an objective manner of the requisite conditions. The satisfaction of the Central Govt. cannot be arbitrary and whimsical. Before the power can be exercised the satisfaction has to be established, that it is necessary to make the appointment in order to prevent the affairs of a company being conducted in a manner which is oppressive to any members of the company or in a manner which is the interest of the company or to public interest. It is true that if the Central Govt. bona fide, after enquiry, is satisfied that the affairs of the company are being conducted in a manner which is prejudicial to the interest of the company or to public interest, the said finding is not reviewable under art. 226 of the Constitution on merits, as if the court is hearing an appeal. Whether the evidence is sufficient to justify a finding that the affairs of the company are being conducted in a manner prejudicial to the interest of the company or to public interest, if based on relevant and admissible material, would be immune from challenge under the extraordinary jurisdiction of writ proceedings by this court. At the same time it must be recognised that the exercise of the powers under s. 408 of the Act has grave consequences and must inevitably have a serious effect on the reputation and credibility of the management of the company. Normally companies have directors elected by its members. The fact that a particular company has on its board of directors nominees appointed by the Government must reflect poorly on its management, skill and honesty. Indeed, this result must follow because s. 408 contemplates the appointment only if the Central Govt. is satisfied that the affairs of the company are being conducted in a manner which is prejudicial to the interest of company or to public interest. Such appointment will no doubt receive adequate press publicity as a result of which the reputation and prospects of company are likely to suffer. It is obvious that such a power must be exercised very sparingly and only when the requisite conditions of s. 408 are fully complied with.

9. Now, courts, even in interpreting a stricter and much narrower provision like s.

237(b)(i) of the Act, which empowers the central Govt. to hold an investigation if in the opinion of the Central Govt. there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose, have held that, "if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made. In other words, the existence of the circumstances in question is open to judicial review though the opinion formed by the Government is not amenable to review by the courts" : (See *Rohtas Industries Vs. S.D. Agarwal and Others*,). Therefore, simply because the exercise of power under s. 401 depends upon the satisfaction of the central Govt. It does not mean that its exercise cannot be subjected to judicial review and that the Government is the final arbiter of the conditions in which the power may be exercised. Reference may be made to *Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another*, . In that case the court was construing the power given to the Central Govt. under s. 326(2)(b), which imposes a duty on the Central Govt. not to accord its approval to appointment or reappointment of a proposed managing agent unless it is satisfied that the managing agent proposed is, in its opinion, a fit person to be appointed. Interpreting this provision the Supreme Court held that the satisfaction must be with reference to the conditions mentioned therein, and the satisfaction of the Government which is determinative is the satisfaction as to the existence of certain objective facts. The recital of satisfaction may be displaced by showing that the conditions did not exist, or that no reasonable body of persons properly versed in law could have reached the decisions that they did. The court further observed (p. 924) :

"The enquiry before the court, Therefore, is whether the Central Government was satisfied as to the existence of the conditions. The existence of the satisfactions cannot be challenged except probably on the ground that the authority acted mala fide. But if in reaching its satisfaction the Central Government misapprehends the nature of the conditions or proceeds upon irrelevant materials, or ignores relevant materials, the jurisdiction of the courts to examine the satisfaction is not excluded. The power, in our judgment, is a quasi-judicial power and not administrative and it necessarily implies a duty arising from the nature of the act empowered to be done, the object for which it is to be done, the conditions in which it is to be done, and its repercussion upon the power of the company, the shareholders, the creditors and the general public for whose benefit the power is to be exercised."

10. In our view, the limitations mentioned above must necessarily apply to the exercise of power under s. 408 of the Act. In order, Therefore, to justify the passing of the impugned order what has to be seen is whether the satisfaction of the central Govt. that the appointment of the Director was necessary in order to prevent the affairs of the company being conducted in a manner which was prejudicial to the interest of the company or to the public interest is based on

relevant and admissible material. If it is so, the court will go to further and examine whether the material is sufficient to arrive at such conclusion. But before the impugned order can be upheld it has to be shown that the decision of the Central Govt. was based on the existence of certain objective facts which are the conditions precedent for the exercise of power by the Central Govt. That is why Mr. Diwan, the learned counsel for the petitioner, took us through the material on record and urged that that this was a case of total non-application of mind by the CLB and of total absence of any material and there was no material on the basis on which the CLB has taken the impugned decision and the satisfaction of the Central Govt. was, Therefore, arrived at on the foundation of non-existing material, and the satisfaction was, Therefore, illusory because it had proceeded on an erroneous view of the scope and limitation of s. 408 of the Act.

11. It will be helpful to deal with each item to see whether the satisfaction of the Central Govt. is based on relevant material, because once that conclusion is reached the order of the Central Govt. will be immune from challenge. Now the substance of the first charge is that the petitioner-company placed an order with M/s. Air Control and Chemical Engineering Company (ACCEL) for purchase of machinery worth Rs. 4.51 crores. The irregularity pointed out by the CLB by its letter of November 28, 1978, suggested that the orders were placed with ACCEL because Mr. Venkataswamy Naidu, the managing director of the petitioner-company, is the chairman of ACCEL and Dr. C. Rossi, director of the petitioner-company, is also a director of the ACCEL. The objection was taken as to why the competitive quotations were not obtained for the purchase of an machinery of Rs. 4.51 crores. It appears that M/s. M. N. Dastur and Co. (hereinafter referred to as "Dasturs"), who are well reputed consultants had evaluated the orders covering major items of proprietary machinery of the ordered value of Rs. 3.99 crores and placed an aggregate value of only Rs. 34.4 lakhs for the said items. The CLB, Therefore, wanted an Explanation as to how and why the ACCEL was paid an excess amount of Rs. 55 lakhs on pro rata basis of the machinery covered by these items. The CLB, however, noted that, in evaluating, "Dasturs" have not taken into account the expenses to be incurred by ACCEL for the process, know-how, designs and drawings for the equipment, fee for foreign specialists, engineers and technicians specially called for manufacture of the equipments and the performance guarantee for want of details. Assessing the same at 2 1/2% on the entire ordered value of Rs. 4.51 crores an allowance of Rs. 12 lakhs for these items was allowed. Even on that basis the CLB pointed out that the price paid for the machinery ordered on ACCEL was on the high side by 50 lakhs. The petitioner-company by its reply on December 29, 1978, pointed out that in 1972 an application was made to the Government authorities for importing machinery and equipment required for expansion of the aggregate value of approximately seven crores. The government, however, permitted it to import machinery only up to the value of Rs. 3.65 crores. As the value of the import license was less the company approached the collaborators, IET, and were informed that IET were negotiating for collaboration with ACCEL for the

manufacture in India of machinery and equipment and if the collaboration agreement was entered into with ACCEL, they would be in position to supply the proprietary items to the company for implementing its expansion programmes. Subsequently, as the collaboration agreement between IET and ACCEL was finalised and the ACCEL was in a position to manufacture and supply in India proprietary items as per the designs, drawings, know-how and specifications of IET and as the company could not implement its expansion programme in excess of the import license for the value of Rs. 3.65 crores, the company negotiated with ACCEL for the supply of proprietary items and placed orders with ACCEL for the aggregate value of Rs. 4.61 crores (including 10 lakhs non-proprietary). The petitioner-company pointed out that the machinery and equipment for expansion had to be such as could be integrated with the existing plan and it was natural for the company to look for the specifications of IET. This 4.51 crores was said to include, (a) know-how; (b) equipment design and detailed drawings; (c) services of foreign specialist engineers and technicians specially recruited for the manufacture of proprietary equipment with performance guarantee. The petitioner pointed out that the assessment of the CLB that Dasturs had evaluated the proprietary machines at Rs. 3.44 crores was against the record as the Dasturs while evaluating the items had excluded the value of items mentioned above, i.e., know-how equipment, design and detailed drawings, etc. They sent to the Central Govt. a re-evaluation done by Dasturs, who certified the value of these extra items at Rs. 61 lakhs as per their letter of November 7, 1978.

12. It is important to note that Dasturs even in their letter of September 11, 1976, while evaluating the cost estimates had clearly stated that their estimate did not take into account the costs of the above said items of know-how, equipment, design, services of foreign specialists, engineers and technicians specially required for the manufacture of the proprietary equipment with performance guarantee. They had also indicated that about 13 items had not been evaluated and this could be done subsequently. The Central Govt. thereafter by its letter of February 2, 1979, asked for a break-up of the evaluation made by Dastur & Co. mentioned in its letter of November 7, 1978. The same was sent, which showed that the break-up relating to the four proprietary items had been evaluated at Rs. 47.37 lakhs by Dastur and Co. and the other Rs. 13.79 lakhs was on account of packing, transport and incidental charges. Apparently this did not satisfy the CLB because it issued a show-cause notice on May 1, 1979, as already mentioned. A detailed reply was sent by the petitioners on October 29, 1979, pointing out that expansion of wood pulp was not by duplicating the plant by doubling the capacity of the existing plant and for that purpose the drawing, design, etc., provided by IET, who were collaborating with ACCEL was the best possible step that could be taken by them and that if they had not done so and had to put up a separate pulp plant in order to increase the production capacity, the same would have cost 25.30 crores whereas the entire cost of the present expansion was likely to be only 17 crores. It was pointed out that the proprietary items had been evaluated by Dastur & Co.

at Rs. 4.43 crores Criticism was made on the evaluation by the CLB at a meagre rate of 2 1/2% of the ordered value of Rs. 4.51 crores for know-how, etc., as against the normal rate of 20% for such items as calculated by Dastur & Co. The suggestion by the CLB that the orders were placed with ACCEL because of any financial interest either of R. Venkataswamy Naidu or Dr. C. Ross who are common directors was repudiated by pointing out that Mr. R. V. S. Naidu was nominated as a director on the board of ACCEL by E. I. D. Parry, who are one of the largest shareholders in ACCEL and Dr. Rossi is on the board of directors of ACCEL by virtue of the collaboration agreement between IET and ACCEL. The CLB was apparently still not satisfied and by its letter of November 24, 1979, asked for some more details and asked whether any negotiations took place with the foreign suppliers and also any negotiations with ACCEL before finalising the deal. The petitioner-company on December 7, 1979, sent the details of the specifications and also pointed out that as the items were specifically designed to fit into the existing plant they could not possibly be manufactured or be available from any indigenous source since the know-how and engineering details were exclusively the property of IET and agree to be furnished only to ACCEL in India, by virtue of the collaboration agreement.

13. A reference to the impugned order will show that the CLB has held that the placing of these orders with the ACCEL cannot be considered proper and that the company did not follow the proper procedure in regard to the placing of order on ACCEL. Now this conclusion is based on the fact that though the company had been issued a license for Rs. 3.65 crores in June, 1974, against Rs. 7 crores applied for, it did not care to make local enquiries whether any other manufacturer could meet its requirement. The CLB found the conduct of the petitioner-company, in relying on ACCEL., improper, because the collaboration agreement between ACCEL and IET was concluded on May 4, 1975 and ACCEL was licensed to manufacture man-made fibre machinery during the year ending March 31, 1977. The suggestion obviously is that if in 1974, the collaboration of IET with ACCEL was at a formative stage the petitioner-company had no business to wait and then enter into any arrangement for the supply of equipment with ACCEL. This finding completely ignores the point which has been made by the petitioner-company that in 1972 it had sought for import license for Rs. 7 crores of which only Rs. 3.65 crores had been allowed in 1974; in the meanwhile price escalation had taken place and the permitted amount for import was no longer viable. What was even more important was that by that time it was informed by IET, whose equipments it was already using, that it was in a position to supply the equipments if its collaboration with ACCEL went through. No doubt the collaboration agreement would have taken some time to fructify and also the manufacturing process by the ACCEL would have taken time to start but what the CLB ignores is the Explanation by the petitioner-company that it could get the equipments locally because the equipment supplied by ACCEL were of proprietary nature and no other party had the know-how and specifications of IET for the manufacture of components supplied by ACCEL. Considering that the

IET had supplied its original machinery and the further expansion was to be dovetailed into the existing machinery the decision of the management to have the said machinery supplied through ACCEL which were going to have collaboration with IET (the original manufacturers) could not by any conceivable reason be said to be prejudicial to the interest of the company or to public interest. The approach of the CLB indicates as if it was sitting and reviewing the decision of the company as an appellate authority. Just as this court cannot re-evaluate the decision by the CLB as an appellate court, similarly the CLB exercising its powers under s. 408 cannot evaluate the decision of the company by the touch-stone of mere error of judgment or that, of the two courses open, the company have followed one alternative rather than the other, unless it can come to the conclusion that this was a course which was against the interest of the company or against public interest. Now, it would be certainly against public interest if the motivation of entering into agreement with ACCEL was shown to be as was the original suggestion that Naidu and Dr. Rossi had any financial or personal interest in placing this order. This allegation has been specifically denied. As a matter of fact it has been put on record that Naidu held only 50 equity shares jointly with EID Parry and Dr. C. Rossi holds 80 equity shares of Rs. 100 each in ACCEL. There was thus no personal motivation by those on the board to enter into such a deal. There is also no evidence at all to show that the averment of the petitioner-company that it was not possible for it to get the supply of the equipment from the indigenous local market was factually incorrect. There is not even a whiff of suggestion that any other indigenous manufacturer could have supplied equipments and that it would have cost the petitioner-company less than the order which it placed with ACCEL. The more serious infirmity is the assumption by the CLB that even the valuation done by Dastur & Co. showed an over payment of Rs. 50 lakhs. It is apparent that the CLB had relied on the earlier evaluation of Dastur & Co. even when it had mentioned specifically as far back as September 11, 1976, that the estimate excluded items of know-how, equipments, designs, etc. The latest evaluation done by Dasturs shows the valuation at Rs. 4.43 crores against the value of Rs. 4.51 crores for which the order was placed. Dasturs in their letter of December 3, 1979, had given a break-up of 4.43 crores worked out by them and had mentioned that they had allowed 4% on the evaluated items for the know-how and for the performance guarantee had allowed at 1/2 % and that ACCEL had incurred expenses on account of foreign specialists called for the development and working drawings of the proprietary equipment and that this account Rs. 30 lakhs had been spent which was certified by the chartered accountant and that this amount had been included in the final evaluation under the head "Fee against foreign specialists". It will thus be seen that even though in the impugned order the CLB chose to raise the total expenses under these 4 heads from 2 1/2 to 5% which necessarily still left a big margin it has given no reason at all as to how and in what manner have not been accepted. The only reason is the ipse dixit of the CLB that when any Indian company enters into a collaboration agreement with a foreign company and a lump sum payment is

made to the foreign company on account of know-how, technical designs and drawings, etc., this becomes a part of the price of the product and no separate payment is to be made. Now, Dasturs had said in their letter of December 3, 1979, that in carrying out the evaluation they had followed the procedure followed by them as well as other valuers. There is no challenge to the credibility or the expertise of M/s. M. N. Dastur & Co. who are independent valuers. One could understand if the CLB had found mis-statements in the calculations by Dasturs on expenses on foreign technicians which was said to have been certified by chartered accountant as not being an expense on account of the equipment or plant with regard to the petitioner-company. If for example it could have been shown that Rs. 30 lakhs certified by chartered accountant had not been spent on supply of petitioner's equipment then there may have been a case for rejecting this valuation. But there is no such suggestion in the CLB's order nor is there any challenge to the basis which has been adopted by Dasturs for making the evaluation. Evaluation is a matter for experts and if an expert has given his opinion as to the manner in which he was evaluated the amount, unless, Therefore, that basis was demolished by either questioning him or by producing some other value to indicate that the valuation basis adopted by Dasturs was totally undependable there would be no evidence or material on the basis of which the CLB could have come to the conclusion that the price paid was in excess of the actual value, which, if correct, may prima facie raise a presumption that such an order was prejudicial to the interest of the company and to the public interest. We are prepared to accept that if it could have been so shown, a prima facie case of acting prejudicially to the interest of the company and to the public interest could have been raised and the CLB's decision could not have been reviewed by this court sitting under art. 226 of the Constitution. But here is a case of total absence of any material. No suggestion is given that any of the board members or anybody else has personally benefited from such a deal. No material is there to show that this equipment was available in the Indian market at a much lesser price. No counter-valuation is given to show that the valuation of Rs. 443 crores made by Dasturs as against Rs. 4.51 crores of the value of the order placed by the petitioner-company is in any manner unacceptable. It must be remembered that the condition precedent for taking action must show that the affairs are being conducted in a manner which are oppressive or prejudicial to the company or public interest. Now it is well settled that conduct must be burdensome, harsh, wrongful and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. In the state of affairs it is impossible for us to uphold the finding of the CLB that this action was prejudicial to the interest of the company or to public interest. As a matter of fact even the CLB so far as the finding is concerned has only held that this could not be considered proper as the company did not follow the proper procedure in regard to the placing of orders with ACCEL. Surely the regularity of the procedure is per se not a matter which has any relevance to the determination under s. 408. If in the matter of placing the order with ACCEL the petitioner has not acted against probity, s. 408 is not

attracted.

14. As a result we must hold that item No. 1 could not be made the basis for action under s. 408 of the Act and it was wrongly made the basis for action.

15. As already mentioned item No. 2 of the show cause was not relied upon the by CLB.

16. The next item No. 3 related to the advance of Rs. 15 lakhs by the petitioner-company to SAE to wards purchase of shares. The undisputed facts are that the petitioner-company made the above-said payments as under :

(a) 30-3-1974 6 lakhs (b) 25-6-1974 4 lakhs (c) 1-7-1974 5 lakhs

towards subscription of shares of SAE. Shares, however, of the value of Rs. 7.50 lakhs were allotted in October, 1978. Earlier, SAE had refunded 3 lakhs on March 22, 1977, and Rs. 4.5 lakhs on August 16, 1978. The charge assumes a loss of interest for the money which remained with SAE during the period of four years which on calculation of interest at 12% is said to amount to about Rs. 7 lakhs. Objection is taken by CLB that the approval from the CLB was given only on May 17, 1977, while the advance was paid by the petitioner-company even before the prospects were issued by the SAE. In considering this allegation the Explanation given by the petitioners in their letter of October 29, 1979, seems to have been completely ignored by the CLB. In the Explanation the petitioner-company had stated, and this fact had not been denied in the counter-affidavit, that originally SAE in 1974 was almost a foreign owned shareholding company and at that time its capital was Rs. 5 lakhs though the annual turnover was over Rs. 3 to 4 crores. The SAE had educated financial capital being duly guaranteed by their foreign principals through their bankers. With the coming into force of the Foreign Exchange Regulation Act, 1973, the SAE was required to dilute its non-resident holding, and, Therefore, the SAE proposed to increase its share capital to an extent whereby the non-resident shareholding would be not more than 40 %. Initially SAE proposed to increase its capital and allot the shares in the increased capital only to the petitioner-company and Parry Ltd. and their existing non-resident shareholders. SAE had no intention to issue or offer shares to the public. It was for this reason that the petitioner-company offered to take Rs. 15 lakhs worth shares out of Rs. 18 lakhs shares to be issued for the purpose of the dilution. This matter of investment of Rs. 15 lakhs was placed before the members of the company at the annual general meeting held on June 28, 1974, and the same was approved. On August 16, 1974, the petitioner-company also applied to the CLB for sanction under s. 372 for investing Rs. 15 lakhs in the capital of SAE. The approval was delayed because the CLB took an inordinate time and at one time it had thought that the matter had to be referred to the MRTP Board/Dept. which view was later on withdrawn. It was only on March 15, 1977, that the Dept. of Company Affairs accepted that the matter need not be referred under s. 23(4) of the MRTP Act. The CLB by its letter of May 17, 1977, accorded its sanction under s. 372 of the Act to the petitioner-company to invest

a capital of Rs. 12 lakhs with the SAE. The time for allotment was extended by the CLB up to June 20, 1978, and later on up to April 30, 1979. The Controller of Capital issues who had accorded sanction in January 1977, for investment up to Rs. 10 lakhs reduced it to Rs. 7 1/2 lakhs on August 22, 1978. Accordingly SAE refunded the balance of Rs. 4.50 lakhs. Thus the shares of Rs. 7.5 lakhs were allotted to the petitioner-company in October, 1978, though time would have expired only on April 30, 1979. As a justification for this investment it is pointed out (and there is no denial by the respondents) that the shares of SAE were over-subscribed by 35 times and they are quoted in the market at about Rs. 25 per share against the issue price of Rs. 10 per share. In this connection it is also relevant to note that the RBI had given its approval on September 12, 1974, to the SAE to raise its capital and allot shares to the extent of Rs. 15 lakhs to the petitioner-company. It will thus be seen that the investment, even looking at it purely as a business transaction, and even looking at it in narrow terms of money, it cannot be said that the blocking of Rs. 15 lakhs for a period of four years and not earning interest on it has not been more than compensated by the allotment of Rs. 7.5 lakhs worth of shares in 1978 considering that the market value was 2 1/2 times the par value. In 1974 when the money was advanced it was expected that the petitioner-company would be amongst the two big shareholders, but because the Government later on took the decision to throw open the equity participation to the public, allotment could not be made before certain necessary formalities were completed. For these delays occasioned by the public authorities the petitioner could not be held responsible. The petitioner-company had within a month or two got approval at the general meeting. It applied under s. 372(4) in August, 1974. It had, Therefore, done all that it had to. Further steps were not in its control. It is curious that the CLB has conveniently ignored the vital fact that it took almost three years to approve the application for investment made by the petitioner-company. It may be that the application was made to the CLB on August 10, 1974, after the said amount had been advanced by July, 1974, for the purchase of shares to SAE. But it is undisputable that the CLB approved an investment up to Rs. 12 lakhs for which the Controller of Capital Issues had also given his sanction. This is proof enough of the soundness of the investment. In business matters the board of directors had evidently taken quick decision which it felt was for the benefit of the company and in the normal expectation that those would be approved by the company and the CLB. But the mere fact that the money was advanced without getting prior approval does not mean per se that there was some mala fide or collateral purpose unless facts are shown otherwise. There is no suggestion that any of the members of the board of directors of the petitioner-company had any personal interest in this investment in SAE. There is also no suggestion that a loss had been occasioned to the company by the deal in the sense that some commission or some money had been paid for the purchase of the shares which should not have been done. Only objection is as to why in 1974 money should have been advanced when the allotment was ultimately made in 1978. But this is finding fault for the remissness of delay by the CLB and other governmental authorities. Blue Chip

investments are under great demand and slow moving decision in business is a matter for legitimate criticism at the hands of the shareholders. How was the petitioner-company to know that there will be delay for all these years by public authority ? It is ironical that nothing is said about the investment being a bad one. Action is being taken with the benefit of finding out not on the soundness of the investment, but in the time taken by other authorities. This is proceeding to take action on irrelevant grounds. No lack of probity is alleged, much less proved. In such circumstances there was no material for taking action under s. 408 of the Act and it was impossible for the CLB to conclude that the affairs of the company were being conducted in a manner prejudicial to the company or to public interest. The finding that this advance payment was irregular, incompetent and imprudent is based on the total absence of any evidence and as such must be quashed and could not be permitted as action being taken under s. 408 of the Act.

17. The next charge relates to the company having paid Rs. 1,47,283.23 towards medical expenses incurred by Shri Devarajulu, managing director of the company, for his treatment in the USA. The only objection taken is that the payment is in contravention of the terms approved under the Act which entitled Mr. Devarajulu to be paid Rs. 15,000 in a block period of three years. The impugned order was passed on February 18, 1980. During the course of hearing an order passed by the Govt. of India on May 20, 1980, has been produced before us which shows that the Central Govt. had approved the reimbursement of Rs. 1,09,565.32 towards medical expenses to Shri Devarajulu. The said document has been marked as "X" and is being placed on record. This post facto approval justifies the stand of the petitioner which was explained by its reply of December 29, 1978. It was explained that on account of an emergency that required a heart surgery to be done on Shri Devarajulu in the USA he was allowed to draw by way of perquisites the said sum of Rs. 1,47,283.23 subject to the condition that if such drawing in excess of his permitted remuneration was not approved by the board, the company and the Central Govt., the same would be held by him in trust for the company and would be refunded to the company as per the requirements of s. 309 of the Act. It is also explained that Shri Devarajulu was one of the promoters of the company and had been associated with the company since its inception and it was in the interest of the company that to meet the emergency this amount should be sanctioned. In this connection it is relevant to note that the petitioner-company had also informed the CLB by its letter of November 16, 1979, and sent it a copy of the proceedings of the special medical board held at Coimbatore certifying that in spite of the best treatment available in India no improvement had taken place and it was necessary and in the interest of the health of the patient to seek treatment abroad. Certificate was also obtained from the Directorate of Health Services that the facilities for the treatment were not available in India. Similar certificate was also obtained from the Special Medical Board set up by the Director, Medical Education, Madras. Apparently it was in pursuance of this undoubted justifiable

material that the petitioner-company approved the medical expenses to the extent of Rs. 1.5 lakhs. The fact that now reimbursement of Rs. 1.9 lakhs has been approved, clearly proves that no basis for taking action on this count could be sustained. It is important to note that by an order of February 19, 1980. The Central Govt. approved the appointment of Mr. Venkataswamy as managing director for a period of three years from August 1, 1978, to July 31, 1981, and also of Mr. G. K. Devarajulu, as managing director from August 1, 1978, to June 16, 1979, when he resigned because of ill health. This decision will show the irony of the impugned order that the Central Govt. should give a finding that the affairs of the company are being conducted in a prejudicial manner against the interest of the company, while, at the same time, approving the appointment of managing directors for a further period thus suggesting that nothing is wrong with the management of the company. It is elementary that a matter of grant of medical expenses (though not originally approved, but still found justified later on by the CLB) could not form the basis for action under s. 408 of the Act. This charge, Therefore, must be held to be without any substance.

18. The last allegation relates to the payment of commission to three parties. The allegation is that, (a) during the year 1974-1975 the company paid Rs. 10.06 lakhs to one Shri K. B. Shah of Bombay by way of commission on sale of wood-pulp to M/s. National Rayon Corporation Ltd. (b) similarly a commission of Rs. 3.73 lakhs is said to have been paid to Kishore Textile, cloth merchants in Bombay, on sale of wood-pulp to M/s. Baroda Rayon Corporation Ltd. during the year 1976, (c) a sum of Rs. 2.20 lakhs is also said to have been paid to Shri K. B. Venugopal of Bangalore for sale of Anhydrous Sodium Sulphate to M/s. Mysore Paper Mills Ltd. during the year 1977. These transactions have been held to be not prudent on the part of the company. One fault mentioned is that as Dr. Rossi was a common director of National Rayon Corporation and Baroda Rayon Corporation as well as of the petitioner-company there was no necessity for introducing the intermediary for selling the goods. We can only marvel at the logic which seems to think that for such like transactions the director can act as intermediary. Dr. Rossi holds 50 shares in the National Rayon Corporation and 134 shares in the Baroda Rayon Corporation. It is not as if he controls the National Rayon Corporation and Baroda Rayon Corporation. Actually utilising the services of a director for sale of goods to the other company might even have been objectionable as raising a conflict of interest. Even the CLB, having made this point, realised the unreality of this assumption and was quick to realise from it by conceding that it is not the function of the common director to act as a broker or intermediary.

19. The Explanation furnished by the petitioner-company shows that up to 1973 the sale of wood pulp to the National Rayon Corporation was to the extent of 1,335.788 tonnes of the value of Rs. 38,51,912.62 as compared to the sale in 1974; 3,472.856 tonnes of the value of Rs. 1,30,34,554.83 in 1975 and 4,647.278 tonnes of the value of Rs. 2,18,24,811.19. With regard to the Baroda Rayon Corporation for the year 1976, sales were of Rs. 1,30,49,394.93 as

against Rs. 63,22,625.60 in 1975 and Rs. 50,47,585.45 in 1974. The CLB was, Therefore, finding against the record in saying that the intermediary had not played any significant role in increasing the sales of NRC and BRC. The figures speak otherwise. We are not mentioning these figures to show or to find as an objective fact how much the company has really benefited through the utilisation of the services of the intermediaries, because we do not have full facts nor is that our provide. We are mentioning this only to show that in the absence of any allegation, much less proof, that these were sham transactions and the intermediaries were dummies and that the funds were siphoned off otherwise than by way of transactions, no finding could be given that the affairs of the company were being conducted in an oppressive manner or were against the public interest or the interest of the company. This unfortunately is not the contour of the power of the CLB and is obviously in excess of its jurisdiction.

20. The Explanation given for utilising the services of Shri Venugopal for the sale of Sodium Sulphate was that on March 31, 1977, instead of the normal average storage capacity of 300 tons the company had accumulated a stock of 1,200 tons. The Sulphate is said to be subject to speedy deterioration and also causes storage problem. It was state that at this time Mr. Venugopal offered to clear of the company's entire stock of Na Sulphate and was able to procure an order for the company for the supply of 1,800 tons of Na Sulphate from the Mysore Paper Mills at the rate of Rs. 800, i.e., a higher price than at which the company was actually selling it, i.e., approximately Rs. 500 per ton. The record shows that the Sodium Sulphate was sold to the Mysore Paper Mills at the rate of Rs. 800 per ton which after paying the commission of Rs. 160 works out to Rs. 640 per ton, as against the rate of Rs. 661 per ton of the sales made to other parties. The CLB, however, wrongly worked out the average of the sales to the Mysore Papers at Rs. 540 per ton and found the commission paid to Venugopal as abnormally high compared to the price obtained from sales to others. The correct figure works out to an average price (Rs. 800 - 160) of Rs. 640 per ton. It is also relevant that prior to the present transaction the petitioner-company had never sold Sodium Sulphate to the Mysore Paper Mills Ltd. Considering that a bulk quantity of 900 tons was sold to one party, namely, the Mysore Paper Mills, the difference of Rs. 21 (in sales to others) can hardly be said to be such as to invite action under s. 408. How much discount should have been given for a bulk sale could be a matter of difference of opinion. It is possible to argue plausible that the price fetched could have been something more but unless the finding was supported further by the fact that the utilisation of Shri Venugopal's service was for a collateral purpose, a normal business transaction bona fide could not form the basis for taking action under s. 408 of the Act. It is not disputed in the impugned order that there was an accumulation of 1,200 tons of Sodium Sulphate against the normal 300 tons; nor was it disputed that the Sulphate, if allowed to stay on, is subject to speedy deterioration with the result that the quick sale was the essence of the matter. There was no material for the CLB to hold that this was anything but a normal business transaction. It is important to

not that no suggestion is given that any of these persons, namely, Shri K. B. Shah, Shri Venugopal and Kishore Textiles are in any way nominees of the petitioner-company or in any way related to any directors. There is no suggestion also that any of these persons have not been brokers have not been in the business lines or in their own right. The suggestion of the petitioner-company was that it was because of the utilisation of their services that the sales had increased and it was pointed out that the wooden pulp has to meet the competition from the imported stuff which gave better result and, Therefore, the services of the intermediaries were necessary to persuade the parties to buy indigenous goods. The commission works out at the rate of 3%. There is no suggestion that the rate given was in any manner out of the ordinary prevailing in the market. Even the CLB describes it not as a prudent act - this finding cannot permit action to be taken under s. 408 of the Act unless such oppression involves at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder, vide *Shanti Prasad Jain v. Kalinga Tubes* [1965] 35 Comp Cas 351. It will thus be seen that all the above said charges on the basis of which the impugned order has been passed under s. 408 are matters which do not suggest any lack of propriety or any personal gain by the management. Condition precedent to take action under s. 408 of the Act requires a satisfaction by the Central Govt. That the affairs of the company are being conducted in a manner prejudicial to the interest of the company are being conducted in a manner prejudicial to the interest of the company or the public interest. Here all that the CLB has found is that some transactions were not so wise or that certain transactions were not prudent or at the worst did not comply with the requirement of s. 372 or s. 269 or s. 309 of the Act. The serious misdirection in law that the CLB has committed is in assuming that if it was just shown that there was some contravention of some provisions of the Act (even when no personal gain was being made by the management) it was sufficient by itself to establish that the said actions were prejudicial to the interest of the company. This is not the position in law. Such an argument raised before Bhagwati J. (as his Lordship then was) was rejected in *Mohanlal Ganpatram Vs. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd.*, when he said (p. 831) :

"A resolution may be passed by the board of directors which may in the passing contravene a provision of law, but it may be very much in the interest of the company and of the shareholders. Such a resolution may be attacked as invalid in a suit or other appropriate proceeding, but not being oppressive to the minority shareholders or prejudicial to the interests of the company, it cannot be challenged in a petition u/s 397 or s. 398. I do not subscribe to the proposition that every action of the directors which is in contravention of a provision of law must necessarily be prejudicial to the interests of the company. These two represent different angles of view and one may exist without the other."

21. It is no doubt true as said above that this court does not sit as a court of appeal over the finding recorded by the CLB. But s. 408 permits the appointment of a director on the board only if first it is found that it is necessary to make the

appointment in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest, meaning that such a conduct must be burdensome, harsh and wrongful. We are clear that this power must be exercised sparingly and only in a clear case where the affairs of the company are being conducted so as to leave no manner of doubt that not taking action will be prejudicial to public interest. It is conceded that there is no charge or allegation against Devarajulu or the other directors of the company. We do not appreciate how in the absence of any material to show lack of probity in the dealing of the petitioner-company any action was called for. It is true that the satisfaction under s. 408 is that of the Central Govt. But that does not mean that it can act arbitrarily or whimsically. The said exercise of power is circumscribed by the condition precedent, namely, that it should be found necessary to make the appointment in order to prevent the affairs of the company being conducted in a manner which is prejudicial to the interests of the company or to public interest. It is true that this court will not examine on merits the order of the Central Govt. as a court of fact. But it is equally well settled that every public authority must act in accordance with and within the limits of the legislation and that its order can be challenged if it is beyond those limits of the legislation and that its order can be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. We have found above that there was no material on the basis of which the CLB could have found that the affairs of the company or to public interest. The CLB has, Therefore, acted in the absence of any relevant material and the impugned order by which it has appointed the directors on the board of the petitioner-company, Therefore, has been passed without satisfying the condition precedent as laid down by the statute and being, Therefore, in excess of jurisdiction cannot be upheld and is hereby quashed.

22. Internal management of the company should normally be left in the hands of the members. Of course if the management misuses its dominant position inasmuch as it oppresses the minority or conducts the affairs of the company in a manner which is prejudicial to its interest or public interests, the exercise of the power by the CLB would not only be permissible but would also be a duty. However, in the matter of exercise of these extraordinary powers, it would be apt to remember the observations of the high-powered expert committee for reviewing the working of the Companies Act, 1956, and MRTP Act, 1969, which submitted its report in August, 1978, and said in para. 2.3 :

"While the right of Government to regulate private management in the sphere of managerial appointment, and remuneration, inter-corporate investment, etc., might be sometimes necessary the committee is of the view that by and large the companies should be free to exercise functions without Government intervention within certain constraints which can be laid down statutorily. Our

approach in this report has, Therefore, been one of Government intervention only in exceptional cases, leaving corporate the sector otherwise free to exercise managerial functions within certain constraints and criteria to be laid down statutorily."

23. We may mention that there is enough power under the Act whether by way of inspection, investigation or giving directions or instructions or approval of the managerial personnel by which effective check can be kept over the companies. Those powers can be more effective than the exercise of putting in a couple of directors on the board which for practical purposes may not be of any more effect than putting a departmental representative on the board and sometimes may create avoidable friction.

24. There is one other aspect which we must mention and which has caused us some concern. About 28% of the equity capital in the petitioner-company is held by the three financial institutions like the Unit Trust of India, General Insurance Corporation and Life Insurance Corporation. Thus, it is not possible to pass any special resolution or take any important steps unless these three financial institutions which are obviously controlled by the Government assent to it. If these financial institutions take proper interest the scope for the companies to work against the public interest can almost totally be eliminated. In this connection we may aptly refer to the observations of the high-powered expert committee in its report in para. 17.106 :

"It is well known that the financial institutions have substantial stake by way of participation in share capital and loans and also have their nominees on the Board of Directors of various companies. Their role has become very vital for the industrialisation of this country. The mere investment in share capital as well as loans or having legal powers for conversion of loans into equity or nominating the directors have not proved to be enough. Instances are not wanting where the industries have become sick in spite of the substantial participation of the financial institutions. This is a matter of grave concern. It is very necessary, Therefore, that the role of the financial institutions should be re-oriented in a manner that there is an effective participation of a nature which encourages and achieves industrial growth and, at the same time, ensures confidence in the general public with the role played by the financial institutions. The role of financial institutions is not to be looked upon merely as an investor or a financing agency but more as a developmental agency For this purpose, the financial institutions must play a more participative and purposeful role in the development of various sectors of the economy, and the Government should lay down clearly well-defined policy on this aspect."

25. We may also note that Mr. Dewan had sought to challenge the constitutionality of s. 408 of the Act, more especially after its amendment by the Companies (Amendment) Act, 1974, by which in place of the original provision which permitted the Government to appoint not more than two persons on the board of a company, the law has been amended and now there is no limit to the number

to be appointed on the board of directors so that, technically speaking, the majority of the directors on the board can consist of Government directors. He wanted to urge that this power virtually amounts to taking over of the management by the Government and it infringes the vital rights of the shareholders of the company. In view of the fact that we are quashing the impugned order on the ground that it was not passed within the limits of the conditions laid down in the statute we do not think it is really necessary to opinion the constitutionality or otherwise of the said provision. We may, however, say that prima facie it seems to us that such constitutional challenge would be futile considering that a more rigorous provisions in the Industries (Development and Regulation) Act, 1951, which permits the taking over of the management of the undertaking under certain circumstances, has been held to be immune from the challenge to validity on the ground of constitutional infringement. The power under the said Act of 1951 is much wider than the powers under s. 408 of the Act. Under s. 18(b) of the Act of 1951, on the issue of a notification of an order under s. 18(a) authorising the taking over of the management of an industrial undertaking all persons in charge of the management before the issue of the notified order are to be deemed to have vacated their office. Under s. 18(e) of the Act of 1951, it shall not be lawful for the shareholders of such undertaking to nominate or appoint any person to be a director of the undertaking and no resolution passed at any meeting of the shareholders of such undertaking shall be given effect to unless approved by the Central Govt. As against this, the power under s. 408 is only limited to the appointment of the directors on the board of the company. It is true that the Government may appoint a majority on the board of directors, but the exercise of the powers under s. 408 does not take away the rights of the shareholders, either to elect their directors on the board or even to hold the general meeting of the company. Thus, prima facie, it appears to us that, in view of the Act of 1951 being constitutionally valid, the challenge to the constitutionality of s. 408 of the Companies Act would be futile. However, as we have said before, we are not giving any considered opinion on this aspect in view of our decision on merits and need not pursue this matter any further.

26. We are, however, prepared to accept the serious implications of the order passed under s. 408 of the Act. We do realise that this power may sometimes be passed for extraneous reasons. But nevertheless we feel that subject to certain safeguards the retention of this power in the Act is necessary and salutary. We may in this connection refer to the observations of the high-powered expert committee which while noticing the power to prevent oppression and mismanagement conferred on the courts under ss. 397 to 407 and the powers conferred on the Central Govt. under s. 408 and 409 stated as under :

"This distinction is, in our opinion, necessary to be maintained. But we consider that the overriding power in cases of alleged oppression and mismanagement should be that of the court and would accordingly recommend that all final orders passed by the Central Government u/s 408 and/or section 409 should be revisable in appeal by the High Court. We are at the same time conscious of the

fact that the emergent powers u/s 408 are on occasions necessary and unless shown to be exercised mala fide are really in the interest of the shareholders."

27. As a result, the writ petition is allowed and an appropriate writ is issued quashing the impugned order No. 4/302 CL. IX/78 dated February 18, 1980. The petitioner will have its costs.

28. We had given interim directions when the petition was admitted. As we are now allowing the writ petition, the interim direction given by us earlier will naturally stand vacated.