

(2001) 10 AP CK 0160

In the Andhra Pradesh High Court

Case No : Company Appeal No's. 4 and 5 of 1999

Sri Ramdas Motor Transport Ltd. and Others

APPELLANT

Vs

Karedla Suryanarayana and Others
 Devarapalli Surya
Rao and Others Vs Sri Ramdas Motor Transport Ltd. and
Others

RESPONDENT

Date of Decision : 18-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 10E, 10E(6), 10F, 163, 209
Company Law Board Regulations, 1991 — Regulation 44
Evidence Act, 1872 — Section 102, 114, 59

Citation : (2002) 110 CompCas 193

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : R. Raghunandan, in Company Appeal No. 4 of 1999 and T. Rajendra Prasad, in Company Appeal No. 5 of 1999, for the Appellant; R. Raghunandan, for respondents Nos. 1 to 4 in Company Appeal No. 5 of 1999, Keerthi Prabhakar, in Company Appeal No. 4 of 1999 and T. Rajendra Prasad, in Company Appeal No. 5 of 1999, for the Respondent

Judgement

B.S.A. Swamy, J.—To my mind if the parties adopted a give and take policy, the issue would have been amicably settled by the well wishers of both the parties. As the second respondent is adamant and not heeding the advice of well-wishers and the judicial forums as well, the parties are in the courts for nearly a decade wasting the precious time of the court. Even in this court the respondents did not heed the advice given to them and invited judgment on the merits.

2. To put forth their case both the parties engaged counsel from Madras and arguments in these appeals were heard for nearly three weeks.

3. Before considering the merits of the case, I feel it appropriate to refer to certain observations made by Honourable Justice Chinnappa Reddy exposing how

corporate giants rush to courts and how they are converting the courtrooms as their battle ground and fight under the attractive banners of fair play and public interest. While considering the conduct of the board of directors in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, . His Lordship observed as follows (page 560 of Comp Cas):

"In the case before us, as if to befit the might of the financial giants involved, innumerable documents were tiled in the High Court, a truly mountainous record was built up running to several thousand pages and more have been added in this court. In deed, and there was no way out, we also had the advantage of listening to learned and long drawn-out, intelligent and often ingenious arguments, advanced and dutifully heard by us. In the name of justice, we paid due homage to the causes of the high and mighty by devoting precious time to them, reduced, as we were, at times to the position of helpless spectators. Such is the nature of our judicial process that we do this with the knowledge that more worthy causes of lesser men who have been long waiting in the queue have been blocked thereby and the queue has consequently lengthened."

4. I am in a worse position than their Lordships of the Supreme Court in that case, in hearing marathon arguments addressed by counsel for the respondents on technicalities to injunct me from going into the merits of the case knowing fully well that he is having a bad case on the merits, over three weeks referring to voluminous record and the case law cited before me and the number of days for which I was forced to burn the midnight oil in assimilating the arguments and rendering the judgment running into several pages. Even then I cannot say that I have referred to each and every document or pages referred to by both the parties. I feel that I have considered the documents and case law to the extent of relevancy on the issues that have cropped up for consideration.

5. Both the appeals were filed against the order passed by the Company Law Board (for short "the Board") in C. P. No. 15 of 1994 filed under Sections 397 and 398 of the Companies Act, 1956 (for short "the Act") alleging oppression of the minority shareholders and mismanagement of the affairs of the company, to the extent the order went against their interests. Hence both the appeals can be disposed of by a common order.

6. For the sake of convenience the parties are referred to in this order as they are arrayed in the company petition.

7. Company Appeal No. 4 of 1999 is filed by the respondents in C. F. No. 15 of 1994, i.e., Sri Ramdas Motor Transport Ltd. (respondent No. 1), its managing director Mr. K.V.R. Choudary (second respondent), its joint managing director Mr. Saradhi (third respondent), son of the second respondent and the company secretary Mr. S. Rajeasekhara Rao (fourth respondent), aggrieved by the order of the Board directing the company or the party respondents to purchase the shares held by the petitioners having held that the petitioners have not been able to establish any of the allegations meriting grant of any of the prayers.

8. Company Appeal No. 5 of 1999 is filed by petitioners Nos. 4 to 9 in C. P. No. 15 of 1994 in dismissing their application by holding that some of the allegations have been made on mere suspicion and others have not been established.

9. Having opined that the disposal of the company petition by the Board is not in accordance with the provisions of the Act and unknown to common parlance of law, I repeatedly suggested that it is an eminently fit case for compromise and to settle the disputes amicably keeping the proximity of the relationship between the parties. Mr. K.V.R. Choudary (hereinafter referred to as "second respondent"), managing director of the company, happened to be the father of Chundru Manorama (petitioner No. 7), grandfather of Chundru Padma Chaitanya (petitioner No. 8) and Nandamuri Satya Lavanya (petitioner No. 6) and father-in-law of Chundru Sri Hari Rao (hereinafter referred to as "ninth petitioner"). When counsel for the second respondent conveyed the anguish of his client against his son-in-law (i.e.) the ninth petitioner in dragging the affairs of the company to the streets, may be because of the precarious situation in which he is placed, his son-in-law the ninth petitioner has gone to the extent of submitting before the court that he is prepared to give a written apology if the company purchases the shares held by the petitioners as directed by the Board and pay the amounts that are due to them and if they are relieved of their agony to which they are subjected for over ten years. But the offer was rejected outright and the father-in-law invited a judgment on the merits in this case. Hence I am left with no option except to proceed with the case and deliver judgment on the merits.

10. Before advertng to the various contentions raised by the parties, it is useful to refer to the factual background of the case. Sri Ramdas Motor Transport Ltd. was incorporated as a private limited company on December 1, 1944, under the provisions of the Act mainly to carry on business as carriers of passengers, freight and mail by using motor vehicles etc., and in the course of time it not only acquired name and fame as a reputed parcel lorry service in the State of Andhra Pradesh but also diversified its activities to other fields. As on today it is having six subsidiary companies under its management and its annual turnover exceeds rupees 100 crores. It became a deemed public company in terms of the provisions of Section 43A(1) of the Act. While 51 per cent. of the shares were held by the second respondent, his family members and his supporters, 11 per cent. of the shares were held by the ninth petitioner, and his family members. The ninth petitioner held the shares jointly with Annapurna Devi who died in the year 1984. The non-aligned members held the remaining 40 per cent. shares. It is also in the evidence of the ninth petitioner that the second respondent having joined as an employee on Rs. 250 per month rose to the level of managing director of the company very soon and as on today himself and his family members are holding majority shares in the company. From the above it is seen that majority of shares are held by the second respondent and his associates including the ninth petitioner till the disputes have arisen between them. As per Article 11 of the articles of association that were in force as on the date of dispute, the number of directors of the company shall not be less than three and

shall not exceed nine. At the time of dispute, the company was having seven directors out of whom four directors are from the second respondent's family. From this it is seen that the second respondents family is in full control of the affairs of the company. While the second respondent continued to be the managing director of the main company, the ninth petitioner was heading some of the subsidiary companies or firms (1) chairman of Bhavani Castings, (2) managing partner of Padmamalaya Finance, (3) director of K.V.R. Forgings having resigned the post of managing director on his election as Member of Parliament in 1984 (4) managing director of Vijaya Engineering Works and (5) director in the main company. From the above it is seen that the ninth petitioner was looking after the affairs of most of the subsidiary companies and enjoying the powers on par with his father-in-law, i.e., the second respondent in the first respondent-company. In and around 1993, some disputes seemed to have arisen between these two individuals. While it is the case of the ninth petitioner that disputes have arisen when he raised the issue of sale of lorries and closure of parcel offices in the board meeting held on March 3, 1993, the case of the respondents is that disputes have arisen between them as he refused to finance his political activity, I feel that both the versions may be far from the truth. The efforts made by the well wishers of the family did not yield fruitful results. On the other hand, misunderstanding developed between the father-in-law and the son-in-law, i.e., the second respondent and the ninth petitioner, reached a stage of no return. While the majority of the shareholders aligned with the second respondent, a few shareholders who figured as petitioners Nos. 1 to 5 in C. P. No. 15 of 1994 aligned with the ninth petitioner and his family members (petitioners Nos. 6 to 9). As and when some information with regard to the management of the affairs of the company was sought by the minority shareholders, the company secretary refused to furnish the same on the ground that he is not under an obligation to furnish any information. Ultimately the ninth petitioner was not only removed from the positions held by him in the subsidiary companies but also as director of the main company in its general body meeting held on January 21, 1994. In those circumstances the minority shareholders filed C.P. No. 7 of 1994 on February 24, 1994, on the file of the Board under Sections 397, 398, 403 and 406 read with Schedule 11 and Sections 539 - 544 and other applicable provisions of the Act for relief against oppression and mismanagement of the affairs of the first respondent-company and the ninth petitioner did not join as petitioner in this petition. The respondents seemed to have raised an objection to the maintainability of the petition on the ground that the petition was filed without obtaining the consent of the petitioners in writing. In those circumstances, the Board gave liberty to withdraw that petition and file a fresh petition and accordingly nine shareholders of the company filed C. P. No. 15 of 1994 on April 11, 1994. The main allegation of oppression and mismanagement of the affairs of the company relates to closure of parcel offices, sale of lorries and vehicles, removal of the ninth petitioner as director of the company, diversion of funds of the company to the other companies managed by the former employees, for personal gains and fabrication of the board's minutes by

respondents Nos. 2 and 3. The petitioners in the said company petition have sought the relief of supersession of the board and a declaration that respondents Nos. 2 and 3 are not fit to hold the post of directors of the company. Some other company appeals were also filed by the petitioners during the pendency of the company petition and they will be referred to later in the judgment.

11. During the pendency of the petition, the petitioners filed C. A. No. 134 of 1995 seeking permission of the Board to lead evidence by way of affidavit as per Order 19 of the Code of Civil Procedure. This application was contested by counsel for the respondent stating that Order 19 is applicable only when a specific fact has to be established but cannot be relied on for all purposes and examination-in-chief is a must followed by cross-examination in view of the allegations of misconduct and fraud. Accepting the contention of the respondents counsel the petition was dismissed by observing that if counsel for the petitioner desires to lead any evidence by the petitioners it may be done through personal appearance of such petitioners.

12. After some time, the petitioners filed C. A. No. 65 of 1996 on January 12, 1996, seeking appointment of an administrator for a period of five years and for production of minutes books, account books along with the vouchers for the period 1992-1995. In the said application, the petitioners have given some more instances relating to oppression of minority shareholders and mismanagement of the affairs of the company. Subsequently with the permission of the Board the petitioners filed another application, i.e., C. A. No. 115 of 1997 on March 13, 1997, seeking permission to amend C. A. No. 65 of 1996 by adding paragraphs 18A, 18B and 18C. The respondents contested these applications by contending that the petitioners cannot travel beyond the allegations made in the main petition and the subsequent events cannot be taken into consideration for considering the relief sought for in the main petition.

13. Having heard the arguments on both sides, the Board passed the following order on December 18, 1997 :

"A Section 397/398 petition has to stand on its own on the basis of allegations contained in the petition. Subsequent events brought on record alone in case the main petition fails on the merits cannot entitle a person to any relief. In case the allegations in the main petition are proved then the subsequent events may be taken into consideration by the Board in moulding suitable relief."

14. When the matter came up for hearing on September 5, 1997, the Board suggested to the parties to settle the disputes amicably and the respondents should inform the Board by September 21, 1997, whether they are agreeable for the appointment of an independent valuer to value the shares in respect of not only the two companies that are before the Board but also the other four companies in which the ninth petitioner is a shareholder. On September 29, 1997, learned counsel appearing for the second respondent sought for more time on the ground that other members of the board have to be consulted and the

case was adjourned to November 27, 1997. But the respondents did not agree for the proposal of the Board. Arguments on both the sides in C. A. No. 65 of 1996 were completed before the Board at its meeting held on November 28, 1997, and the Board passed the following docket order :

"Arguments on the application concluded. The petition will be heard on March 30 and 31, and April 15, 1998, and also August 27, 28 and 29, 1998 at 10.30 a.m. each day."

15. By an order dated December 18, 1997, in C. A. No. 65 of 1996, the Board rejected the prayer for appointment of an administrator for the reasons stated therein. In the said order having recorded a finding that the discrepancies in the stock as pointed out by learned counsel for the petitioner could not be taken as an act of such grave misconduct that would warrant appointment of an administrator at the interim stage, when the petition is still to be heard and the Board directed the company to furnish a statement of reconciliation on the discrepancies in stocks pointed out by the petitioners during the next hearing, as undertaken by learned counsel for the company, to enable them to take a view on this allegation. The ninth petitioner carried the matter in appeal to this court by filing C. A. No. 4 of 1998 and the same was dismissed by a Division Bench of this court in its order dated August 26, 1998, in, C. Sri Hart Rao v. Sri Ramdas Motor Transport Ltd. [1999] 97 Comp Cas 685. The court held as follows (page 687) :

"(1) None of the issues raised in the appeal can be said to be a question of law arising out of the order of the Company Law Board and as such the question of entertaining the appeal u/s 10F of the Act does not arise ; (2) the order under challenge is an interlocutory on for purpose of appointment of administrator at the interim stage and the Company Law Board in the contextual facts has exercised discretion and the user of discretion cannot by any stretch be termed to be so perverse in any event so as to warrant interference or intervention of the appellate court and (3) directed the Board to dispose of the matter with utmost expedition."

16. S. L. P. No. 16705 of 1998 filed against the said order was also dismissed on November 3, 1998.

17. Since the proceedings of the Board were not stayed during the pendency of the appeal, the following docket order was passed by the Board on April 1, 1998:

"Witnesses will be examined on April 18, 1998, at 9.30 a. m. at Chennai. Petition will be heard on the merits as already fixed on August 27, 28 and 29, 1998, at New Delhi, at 10.30 a. m. each day."

18. At this stage petitioner No. 9 filed an affidavit dated May 13, 1998, before the Board stating that though the Board handed over the summons to him on March 31, 1998, to be served on the list witnesses submitted by him for giving evidence on April 18, 1998, in the summons the date was shown as March 18,

1998, and the witnesses refused to take the summons apprehending that they may be taken to task for not appearing before the Board on the date mentioned in the summons for their appearance, i.e., March 18, 1998. In the meantime respondents Nos. 2 and 3 started creating a fear psychosis among the witnesses by implicating them in false criminal cases and also tried to assault him when he attended the annual general body meeting of the first respondent-company held on September 25, 1996. He brought to the notice of the Board not only various violent acts that were committed by the respondents on him but also filed documentary evidence to show that himself and the list witnesses were implicated in criminal cases. He also filed the orders passed by the High Court in W. P. No. 27324 of 1997 filed by him complaining on the inaction on the part of the police in not taking action on his complaint and the bail orders granted by this court to one of the list witness. In the last paragraph he stated as follows :

"In this background our witnesses have been terrorized and persuaded in all possible ways by the managing director and the joint director of the first respondent and their followers. The said witnesses are totally refusing to attend and give evidence before this Honourable Bench on June 9, 1998, at Chennai for fear of retaliation on the part of respondents Nos. 1 and 2. I am placing all these facts before this Honourable Bench so that it can appreciate the conduct of the respondents."

19. It is also seen from record that the first petitioner the late Karedla Suryanarayana filed an affidavit dated October 13, 1995, during his lifetime how respondent No. 2 and his men tried to silence him at the annual general body meeting held on September 27, 1995.

20. Learned counsel for the respondent did not bring to my notice that the allegations made in this affidavit were denied by the respondents by filing rebuttal evidence.

21. Thereafter when the matter was taken up for hearing on September 8, 1998, it was reported that the first petitioner died and his legal representatives were to be brought oft record. But they have not chosen to come on record. On the next date of hearing, i.e., December 2, 1998, the Board straightaway started hearing the arguments on the petition without completing the evidence of the ninth petitioner and without recording any evidence on the respondents side and without verifying the xerox copies of the documents filed by the respondents with the original records more so in the light of the allegations made by the petitioners that the second and third respondents fabricated the minutes of the board meetings etc., and completed the arguments by March 22, 1999. The Board by an order dated June 15, 1999, while dismissing the petition by holding that the petitioners have not been able to establish any of the allegations meriting the grant of any of the prayers in the petition, gave a direction u/s 402 of the Act to the first respondent-company to purchase the shares held by the petitioners by itself or the private individuals as may be decided by the respondents. Though I could not see from the attendance sheets that any one

was examined in this case at any point of time both the parties agreed that the ninth petitioner (Chundru Srihari Rao) was examined before the Board and relied upon the oral evidence given by the ninth petitioner before this court. The date on which the evidence of the ninth petitioner commenced is not seen anywhere but his cross-examination was completed on October 18, 1995. It gives me an impression that the Board started recording evidence after C. A. No. 134 of 1995 was dismissed and before C. A. No. 65 of 1996 was filed. From the evidence it is seen that his cross-examination was completed on the allegations in the main petition on October 18, 1995.

22. From the above factual narration, the first issue that falls for consideration of this court would be :

"Whether the procedure followed by the Board in disposing of C. P. No. 15 of 1994 is in accordance with law ?"

23. The power to deal with the allegations of oppression of minority shareholders and mismanagement of the affairs of the company under Chapter VI of the Act were originally vested in the High Court till the Companies (Amendment) Act, 1988, came into force with effect from May 31, 1991, whereunder the said power was conferred on the Board.

24. Learned counsel for the petitioners contends that the functions of the Board are akin to the functions of a court having stepped into the shoes of the High Court while discharging judicial functions, at worst a quasi-judicial authority and it is expected to follow the rules of procedure while adjudicating the lis. On the other hand, learned counsel for the respondent-company strenuously contends that the Board being an administrative body not vested with the judicial powers it need not follow the procedure prescribed in the CPC and it is at liberty to follow its own procedure as per Section 10E(6) of the Act.

Aims and objects of the Act :

25. To appreciate the rival contentions, we have to look into the aims and objects underlying the amending Act and the provisions introduced by the Amendment Act, 1988.

26. Prior to the Amendment Act, 1988, the judicial and quasi-judicial functions vested in the Central Government under Sections 17, 18, 79 and 144 were being exercised by the Board as its delegate apart from discharging statutory functions and the composition of the Board was from among the officers of the Central Government and the High Court was exercising powers under Chapter VI in granting relief against the acts of oppression and mismanagement of the affairs of the company apart from other powers conferred on it.

27. In the light of the overwhelming representations received from all the organizations and individuals for constitution of an independent Board without interference of the Central Government, the Central Government constituted the Sachar Committee to consider those representations and suggest suitable

amendments to the Act. Having considered the representations of several organizations, the Committee made the following recommendations :

"We therefore, feel that appropriate solution would lie in statutorily constituting an independent quasi-judicial Company law Board broadly on the lines of the Income Tax Appellate Tribunal as provided in Section 252 of the Income Tax Act."

28. The Committee also recommended modifications to the existing provisions relating to the constitution and functions of the Board. Under Clause (c) it recommended that the Company Law Board including its Regional Benches shall have powers of the court under the CPC not only in respect of matters specified in the present Sub-sections (4C) and (4D) of Section 10E, but also in respect of the powers conferred upon it or the Regional Benches by the Act.

29. Accepting the recommendations of the Committee, the Central Government amended the Act in 1988 and established an independent Company Law Board to exercise judicial and quasi-judicial functions hitherto exercised by the court or the Central Government till then besides the statutory powers vested in the Board by the Amendment Act, 1974. But the second recommendation of the Committee did not find a place in the amending Act. From the above, it can be safely concluded that the Board at the worst has to be declared as quasi-judicial functions while discharging functions under Chapter VI of the Act.

30. But learned counsel for the respondent-company in support of his case cited a judgment in *Prakash Timbers Pvt. Ltd. and other Vs. Smt. Sushma Shingla and another*, , while considering the status of the Company Law Board, their Lordships of the Allahabad High Court held as follows (page 781 of Comp Cas) :

"The Board has to perform the functions under the various provisions of the Act. Some of them are judicial in nature and some of them are quasi-judicial and some of the functions are more in administrative nature . . .

Broadly speaking, the Company Law Board has the trappings of a court in the sense that it has to determine a matter placed before it judicially, give fair opportunity of hearing to the parties who may be affected by the order, to accept the evidence and also to order for inspection and discovery of documents, compel the attendance of the witnesses and in the last, to pass a reasoned order which gives finality to its decision subject to right of appeal to a party u/s 10F of the Act or such other legal remedy which is available under law to a party."

31. The court then considering the scope, functions and jurisdiction conferred on the Company Law Board concluded that the Company Law Board can only be regarded as a Tribunal and not a court.

32. Even as per this judgment, the Tribunal is exercising judicial functions. Hence even if the Board is not court in the strict sense, it is definitely a quasi-judicial Tribunal and it has to follow the procedural laws to the extent possible and it cannot act at its whims and fancies while discharging judicial functions.

33. Though the apex court interpreted the words "observance of principles of natural justice to be followed by quasi-judicial/administrative bodies" to mean that even if the procedure laws prescribed in the CPC need not be strictly followed, yet they have to be guided by those provisions in discharge of their functions. But as learned counsel addressed marathon arguments justifying the procedure followed by the Board, I am forced to refer to his contentions to avoid criticism that the court did not consider various contentions raised on behalf of the respondents.

Now the question to be considered is :

Whether the Company Law Board is having inherent powers ?

34. It is seen that an independent Company Law Board is established to exercise judicial and quasi-judicial functions exercised by the courts or the Central Government till then and is not subjected to control of the Central Government. Under Sub-section (4C) of Section 10E of the Act, the powers of the civil court under the CPC while trying a suit were conferred on the Board to the extent indicated therein. Under Sub-section (5) without prejudice to the provisions of Sub-sections (4C) and (4D), the Board in discharge of its functions under the Act or any other law is "to be guided by principles of natural justice" and shall act in its discretion and under Sub-section (6) "subject to the foregoing provisions of this section, the Board shall have the power to regulate its own procedure". In exercise of this power the Board framed the Company Law Board Regulations, 1991. Under Regulation 44, the Board is empowered to exercise the inherent powers which are akin to Section 151 of the Civil Procedure Code, 1908 and which were till then exercised by the courts under rule 9 of the Companies (Court) Rules, 1959, while dealing with company matters. As the language used in Regulation 44 and rule 9 of the Courts Rules being one and the same, it is useful to extract the above provisions to know the scope, ambit and powers of the Tribunal. Regulation 44 of the Company Law Board Regulations, 1991, reads as under :

"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."

35. Further these Regulations deal with regard to the procedure to be adopted for regulating the business of the Board. The Regulations postulate that a fair opportunity should be given to the party who may be affected by the order and also to the person who files a petition before it.

36. Nextly, it is seen that u/s 402 of the Act, on an application filed u/s 397 or 398 of the Act, the Board is competent to pass any of the orders specified in that section without prejudice to the generality of the powers of the Board to pass any order under either Section 397 or 398 of the Act. Section 402(b) deals with the purchase of shares or interest of any member of the company by any other members thereof or by the company. In other words, the Board is competent to

pass orders directing the majority shareholders or the company to purchase the shares of minority shareholders. But Mr. Raghavan strenuously contended that the Board having dismissed the case on the merits is not expected to give the above directions. He placed reliance on a judgment reported in Suresh Kumar Sanghi Vs. Supreme Motors Ltd. and others, wherein it was held that jurisdiction u/s 402 of the Act to make an order would arise only when the Board records a finding that the requirements of the section are fulfilled, but not otherwise. To my mind even if the minority shareholders failed to establish the acts of mismanagement complained of by them, a reading of Section 398 of the Act makes it clear that even an apprehension in the minds of minority shareholders is sufficient to clothe the Board to give directions u/s 402 of the Act as the provisions of Sections 397, 398 and 402 of the Act are inter-related and they should not be read in isolation. A combined reading of the aforesaid three sections clearly brings out two aspects ; first, the very wide nature of the power conferred on the court and, secondly, the object sought to be achieved by the exercise of such power. 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. While Sections 397 and 398 of the Act are intended to protect the minority shareholders from acts of oppression and mismanagement or preventing its affairs from being conducted in a manner prejudicial to public interest or the interests of the company while avoiding winding up of the company if possible and keep it going the powers of the Board u/s 402 of the Act are wide enough to enable the court to put an end to the acts complained of. Likewise 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 considering 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 minority shareholders and majority shareholders. In other words, the interest of the company requires that the majority shareholders must have their say in the management.

37. 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 if the conditions prescribed by the sections are fulfilled, the court ought not to relegate the parties to a series of protracted and costly litigation.

38. Though the party approaching the Board seeking relief against acts of oppression is bound to prove the allegations levelled against the majority shareholders, as far as the relief in the case of mismanagement u/s 398 of the Act is concerned, the Board is competent to make any order as it thinks fit with a view to bringing to an end or preventing the matters complained of or

apprehended. From this it is seen that as far as acts of mismanagement are concerned, mere apprehension in the mind of any prudent person is sufficient for the Board to pass any of the orders specified in Section 402 of the Act.

39. He also conceded that if the court comes to the conclusion that the Board is having powers to give such a direction, he has no case in his appeal. In the light of the foregoing discussion, I hold that it is open to the Board to make just and equitable provision if situation demands apart from the orders that can be passed u/s 402 of the Act itself.

40. Even assuming for a moment that the Board cannot exercise its powers u/s 402 of the Act without proving the acts of oppression and mismanagement, under Regulation 9 the Board is fully empowered to exercise the inherent powers vested in it to do substantial justice and to put an end to the acts complained of. I am fortified in my view by the dicta laid down in the following cases.

41. In *Shoe Specialities P. Ltd. v. Standard Distilleries and Breweries (P.) Ltd.* [1997] 90 Comp Cas 1; [1997] 1 Comp LJ 243 (Mad) , a Division Bench of the Madras High Court held as follows (pp. 35 and 36) :

"Regulation 44 of the Company Law Board Regulations, 1991, 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. . . .

When a case of oppression is made out..., 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 matters complained of and when it is given the power to make any such order as it thinks fit to rectify the same, the Company Law Board is empowered to remove the board of directors so that the affairs of the company can be set right."

42. In *Standard Industries Ltd. v. Mafatlal Services Ltd.* [1994] 80 Comp Cas 764 the Principal Bench of the Company Law Board at New Delhi held that the modus operandi adopted by the majority shareholders fully subscribing to the rights issue is intended to reduce the voting of the petitioners by reducing their shareholding from 48 per cent. to 12 per cent. and suffers from lack of probity and fair play as evidenced by their resolution and in exercise of its powers u/s 402 of the Act the Board observed that the most equitable proposition is that the respondents should buy the shares of the petitioners so that their grievance of oppression was redressed and at the same time that the company's paid-up capital was also maintained. In this judgment, the Board observed that it was not the legality of the rights issue but the modus operandi adopted by the respondents that was the real issue.

43. In *Daulat Makanmal Luthria v. Keshav S. Naik* [1992] 3 Comp LJ 119 again the Principal Bench of the Board having noticed that a stage had come where the petitioners and the respondents had lost mutual trust necessary for working

together in managing the affairs of the company under the circumstances it has become impossible for the petitioners and the respondents to work together even if an independent chairman was appointed. In those circumstances, the Board passed order u/s 402 of the Act directing the respondents to purchase the shares of the petitioners or sell their shares to the petitioners so that the company came under the exclusive control and management of either the respondents or the petitioners.

44. Again the Principal Bench of the Board in *Yashovardhan Saboo v. Groz-Beckert Saboo Ltd.* [1993] 1 Comp LJ 20 ; [1995] 83 Comp Cas 371 observed that "on the facts of the case though the petitioners had failed to establish a case of oppression, yet reconciliation between the parties being difficult, with a view to do substantial justice between them and also to put an end to the dispute, the majority group was asked to pay the price for the shares of the minority group on fair terms in view of settled law that the majority should never be forced to sell their shares to the minority in exercise of its powers u/s 402 of the Act."

45. A learned single judge of this court in *R. Khemka v. Deccan Enterprises (P.) Ltd.* [1998] 16 SCL 1 held that though the case of oppression and mismanagement was not made out but on the facts, the petitioner could be directed to sell share"s to the respondent and on failure of the respondent to purchase he could be directed to sell his shares to the petitioners in the interest of company. The said judgment was confirmed by a Division Bench of this court reported in *Khemka v. Deccan Enterprises Pvt. Ltd.* [2000] 100 Comp Cas 211.

46. In *H.R. Harmer Ltd., In re* [1958] 3 All ER 689 ; [1959] 29 Comp Cas 305 (CA) Lord Denning in his separate judgment having observed that the object of the remedy u/s 210 of the English Act, 1948, similar to that of Section 397 of our Act is to bring to an end the matters complained of, i.e., oppression and one of the most useful orders mentioned in the section which will enable the court to do justice to the injured shareholders is to order the oppressor to buy their shares at fair price.

47. In *Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others*, , their Lordships of the Supreme Court at paragraph No. 172 held as follows (page 845) :

"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."

48. In fact, the Board, relying on this judgment gave a direction to the respondent-company to purchase the shares of the minority shareholders.

49. The complaint of learned counsel for the respondent is that the Supreme Court while exercising the inherent powers/plenary powers vested in it, has given

such direction and the Board not being a regular civil court is not empowered to exercise the inherent powers. In the light of the foregoing discussion, the contention of the respondents falls to the ground ; more so in the light of the judgment of the Madras High Court, which is directly on the issue apart from the other judgments referred above.

50. Next, Mr. Raghavan contended that having dismissed the case on the merits, the Board is not expected to give directions and he further contended that the Board misread the judgment of the Supreme Court in *Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others*, .

51. In support of his case, he relied on a judgment of the Delhi High Court in *Suresh Kumar Sanghi's case* [1983] 54 Comp Cas 235 wherein Justice Kirpal, as he then was, held that (p. 244): "the petitioner has not proved or shown that there have been any continuous acts of oppression by the majority on the minority shareholders and as such no relief can be granted u/s 397 of the Act. In that petition, the petitioner claimed oppression on the basis of a solitary incident of removing him from the management of the company."

52. Firstly, the facts of the case on hand are different from the facts of that case. A series of acts of oppression as well as mismanagement were alleged against respondent No. 2 and his group in this application. Further in this case nowhere it was held that the Board is not having inherent powers to do substantial justice between the parties. The relief sought for was simply refused on the ground that a solitary instance cannot form the basis for invoking the jurisdiction of the court u/s 397 of the Act. Hence, this judgment would not come to the rescue of the respondents.

53. To sum up the discussion on this aspect, I hold that the Board is having inherent powers under Regulation 44 of the Regulations, which are akin to the inherent powers of the civil court u/s 151 of the CPC to do substantial justice to the parties. Even assuming for a moment that the Board is not having inherent powers, the Board is fully competent to pass orders u/s 402 of the Act if the acts of mismanagement alleged against the majority shareholders creates an apprehension in the minds of the minority shareholders even if they fail to establish the allegations levelled against them.

Whether the procedure followed by the Board can be sustained in law :

54. Now let me examine the legal position to see whether the procedure followed by the Board can be sustained in law. In the main petition as well as in C. A. No. 69 of 1994 the petitioner prayed for summoning the records but the board did not pass orders. In fact in C. A. No. 65 of 1996 also similar prayer was made. But counsel might have felt that he will be in a position to convince the Board without summoning the originals, he did not press for summoning the originals at that stage. That does not mean that the Board can act arbitrarily at its whims and fancies.

Whether provisions of the CPC are applicable to proceedings before the Board ?

55. To my mind when the Board exercises judicial functions the elementary principle of adjudicatory process is observance of rules of procedure, i.e., pleadings supported by oral, and documentary evidence and respective parties have to get into the witness box to prove their case and also subject themselves to cross-examination to test the correctness or the veracity of his case apart from proving the authenticity of the documents. Keeping the above principles in mind if one looks into the facts of the case it is seen that serious allegations as extracted supra are made in the management of the affairs of the company as well as oppression of minority shareholders by respondents Nos. 2 and 3. But the Board simply extracted the arguments on the basis of xerox copies of the documents and recorded its findings without even discussing the oral evidence of the ninth petitioner by holding that the evidence is incomplete though it is not the case of the respondents and even without looking into the annual reports filed by -the petitioners to prove that huge amounts were swindled by not bringing all the spare parts manufactured by the company into the account books. The Board has neither summoned the original documents and audited accounts of the company nor given opportunity to the petitioners to peruse the records to prove the allegations of mismanagement and pronounced the impugned order.

56. The attendance sheets maintained in the case and the order of the Board dated July 21, 1995, in C. A. No. 134 of 1995 clinchingly establish that till December 4, 1998, the Board as well as the respondents took the stand that the provisions of the CPC are applicable and recording of evidence is a must in the case. The petitioner might have expressed his inability in securing the presence of list witnesses, but he never stated that he is not available for examination on the subsequent acts of mismanagement as the evidence of the ninth petitioner is complete in all respects on the allegations made in the main petition. Even assuming without admitting that the evidence on behalf of the petitioners is incomplete, no evidence on behalf of the respondents was recorded and pronounced the impugned order. Learned counsel for the respondent-company having taken an irrevocable stand that the provisions of the CPC are applicable and chief examination followed by cross-examination is a must, cannot take a round about turn to justify the illegal order by contending that the Board being an administrative body the provisions of the CPC are not applicable to the Board.

57. I am fortified in my view by a judgment of the Honourable Supreme Court reported in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, , Justice K. Subba Rao speaking for the Constitution Bench having held that the jurisdiction conferred u/s 33A(2) of the Indian Income Tax Act, 1922, prima facie is a judicial one and having reviewed the case law held that if an administrative body is empowered to determine questions affecting the rights of subjects and if it is having a duty to act judicially it is a clear case of judicial act and held as follows (page 356 of ITR) :

"In all these cases the Government, the Examination Committee and the Board of Revenue were administrative bodies, but the acts impugned were quasi-judicial ones, for they had a duty to act judicially in regard thereto. The law on the subject may be briefly stated thus : The provisions of a statute may enjoin on an administrative authority to act administratively or judicially. If the statute expressly imposes a duty on the administrative body to act judicially, it is a clear case of a judicial act. But the duty to act judicially may not be expressly conferred but may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred, or the duty imposed on the authority and other indicia afforded by the statute. In short, a duty to act judicially may arise in widely different circumstances and it is not possible or advisable to lay down a hard and fast rule or an inflexible rule of guidance."

58. u/s 141 of the CPC the procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction and in the light of the above judgment of the Supreme Court, the procedure prescribed in the CPC in regard to suits shall be followed, as far as it can be made applicable at least to the extent of pleadings, receiving documentary evidence and recording oral evidence in support of the case of the respective parties.

59. In JHABARMULL AGARWALLA Vs. KASHIRAM AGARWALLA AND OTHERS., a Division Bench of the Calcutta High Court while considering the effect of Section 131 of the Income Tax Act, 1961, which is in pari materia to Section 10E(4C) of the Act dealing with the powers of the officers of the Income Tax Department, held as follows (page 271) :

"The powers conferred on the Income Tax Officer u/s 131(1) of the Act have not been specified with reference to particular provisions of the CPC but all the powers which the civil court has under the Code have been conferred on the Income Tax Officer on some specified matters. One such matter is "compelling the production of books of account and other documents". Section 131(1) must, therefore, be construed to confer on the Income Tax Officer all the relevant powers, which the civil courts have under the CPC regarding the production of books of account and other documents. Since Order XIII, Rule 10, confers such power on the civil court to call for documents from other courts, the Income Tax Officer too has such powers u/s 131(1) of the Act."

60. From Section 131 of the Income Tax Act, it is seen that the officers of the Income Tax Department while exercising the powers of an Administrative tribunal were conferred with the powers of a civil court for certain purposes which are in pari materia the same as in Section 10E(4C) of this Act. But in this case, admittedly the Board is exercising judicial functions at worst, quasi-judicial functions.

61. Even in *Prakash Timbers Pvt. Ltd. and other Vs. Smt. Sushma Shingla and another*, their Lordships of the Allahabad High Court did not observe that the Board need not follow rules of procedure while discharging judicial functions.

62. Hence it cannot be said that the provisions of the CPC are not altogether applicable to proceedings of the Board. On the other hand, to the extent possible these Tribunals are guided by those principles when they are involved in the adjudicatory process.

The Board can regulate its own procedure subject to observance of rules of natural justice u/s 10E(5) and (6)--What does it mean ?

63. The contention of learned counsel for the respondent, that the Board is entitled to regulate its own procedure and it is not under an obligation to follow strict rules of evidence is answered by their Lordships of the Supreme Court in *The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others*, . Their Lordships of the Supreme Court while considering the procedural powers of a Debt Recovery Tribunal u/s 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, held as follows (page 123) :

"When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, it does not mean that it will not have jurisdiction to exercise powers of a court as contained in the Code of Civil Procedure, Rather, the Tribunal can travel beyond the CPC and the only fetter that is put on its powers is to observe the principles of natural justice."

64. Further, their Lordships of the Supreme Court while considering the powers of the adjudicating officer and the Appellate Board to summon witnesses, u/s 53 of the Foreign Exchange Regulation Act, 1973, held as follows (page 124) :

"... there are no limitations on the powers of the Tribunal under the Act, the Legislature has thought it fit to restrict the powers of the authorities under various enactments while exercising certain powers under those enactments. We have to give meaning to Section 22 of the Act as here the Tribunal is exercising powers of a civil court while trying a money suit."

Observation of principles of natural justice--Meaning :

65. Their Lordships of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , held in para. 20, as follows (page 156) :

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (*nemo debet esse judex propria causa*), and (2) no decision shall be given against a party without

affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Oftentimes it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry."

66. In *Fort William Jute Mills Co. Ltd. v. First Labour Court* [1963] 1 LLJ 734 (Cal) the Calcutta High Court ruled that "though the strict rules of law of evidence are not to be applied this does not mean that the proceedings can be held in an arbitrary manner. The rules of natural justice must be applied. Ordinarily, there must be a personal hearing. If a person is entitled to show cause he is entitled to a hearing and if he is entitled to hearing, he must be given an opportunity of being personally heard of calling his own evidence and cross-examining any witness called by the prosecution."

67. In *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, , their Lordships while considering the validity of Regulation 9-b of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 which provides for removal of employee from service without assigning any reasons, observed that (page 148 of 79 FJR): "in a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within the defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

68. From the above decisions, it can be safely held that even if the Board is exercising quasi-judicial powers it has to follow not only the rules of procedure prescribed in the CPC but it can also travel beyond it, in furtherance of cause of justice subject to observance of principles of justice and ordinarily there must be personal hearing and a party must be given an opportunity of putting forth his own case and cross-examining any witness called by the other side. Observance of principles of natural justice operates in areas not covered by any law validly

made and they do not supplant the law of land but supplement it. Even assuming that the Board is only an administrative tribunal and need not follow the rules of procedure, in a system governed by rule of law discretion when conferred on the authorities must be confined within defined limits and if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to a decision to be taken in accordance with rule of law.

69. Even assuming for a moment that the Board is competent to regulate its own procedure and it has to be guided by the principles of natural justice as conceded by learned counsel, it does not clothe the Board to act illegally, irregularly or irrationally without observing the rudiment of law more so while discharging quasi-judicial functions and it cannot function as it wishes. Any procedure prescribed or followed should be in consonance with the law of the land. It is beyond anybody's comprehension that the Board will deliver orders even without looking into the original records when the petitioners complained that the respondents have fabricated the records, which resulted in miscarriage of justice. Observance of the principles of natural justice does not mean that the Board can pass orders on the basis of xerox copies or typed copies, which were filed before the Board even without attestation.

70. Keeping the above principles in mind if one looks at the order of the Tribunal it is evident that the order suffers from serious infirmities and the order is ab initio void.

Board is following the same procedure :

71. Nextly, learned counsel for the second respondent having conceded that the procedure followed by the Board is not within the parameters of the procedural laws of the land, he tried to justify the conduct of the Board by contending that the Board is following this procedure for a long time. At the same time, the Supreme Court deprecated such a practice followed even by the courts way back in 1981 counsel placed reliance on the observations of the Supreme Court.

72. In *Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others*, , the Supreme Court held as follows (page 786) :

"We appreciate that it is generally unsatisfactory to record a finding involving grave consequences to a person on the basis of affidavits and documents without asking that person to submit to cross-examination. It is true that men may lie but documents will not and often, documents speak louder than words. But a total reliance on the written word, when probity and fairness of conduct are in issue, involves the risk that the person accused of wrongful conduct is denied an opportunity to controvert the inferences said to arise from the documents. But then, Sri Nariman's objection seem to us a belated attempt to avoid an inquiry into the conduct and motives of Devagnanam. The company petition was argued both in the trial court and in the appellate court on the basis of affidavits filed by the parties, the correspondence and the documents. The learned appellate judges of the High Court have observed in their judgment that it was admitted,

that before the learned trial judge, both sides had agreed to proceed with the matter on the basis of affidavits and correspondence only and neither party asked for a trial in the sense of examination of witnesses. In these circumstances, the High Court was right in holding that, having taken up the particular attitude, it was not open to Devagnanam and his group to contend that the allegation of mala fides could not be examined, on the basis of affidavits and the correspondence only. There is ample material on the record of this case in the form of affidavits, correspondence and other documents, on the basis of which proper and necessary inferences can safely and legitimately be drawn."

73. In that case their Lordships of the Supreme Court upheld the procedure followed by the trial court as well as the High Court in deciding the case on the basis of affidavits and documentary evidence as both the parties agreed to proceed with the matter on the basis of affidavits and correspondence and neither of the parties asked for a trial in the sense of examination of witnesses. Their Lordships further held that there is ample material on record, i.e., affidavits, correspondence and other documentary evidence on the basis of which proper and necessary inferences can safely and legitimately be drawn.

74. But in this case, the Board itself by an order dated July 21, 1995, rejected the request of the petitioners to lead affidavit evidence by observing that if learned counsel for the petitioner desires to lead any evidence by the petitioners it may be done through personal appearance of such petitioners. It is interesting to see from the order of the Board that learned counsel for the respondents strenuously contended that Order 19 is applicable only when a specific fact has to be established but cannot be used for all purposes. Examination-in-chief is a must followed by cross-examination in view of the allegations of misconduct and fraud. The Board upheld the objection raised by the respondent's counsel. But before this court learned counsel for the respondent-company has taken a round about turn and started pleading that the Board is justified in passing the orders without there being any oral evidence by the respondents in support of their plea and without proof of untested xerox copies of the documents.

75. In A.K.K. Nambiar Vs. Union of India (UOI) and Another, , their Lordships of the Supreme Court while considering clause (f) of Section 10E whereunder the Bench is empowered to receive evidence on affidavits held that the affidavits without verification are not admissible in evidence. Their Lordships of the Supreme Court emphasised the need for verification of the affidavits as hereunder (page 653) :

"The reasons for verification of affidavits are to enable the court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the court to find out as to whether it will be safe to act on

such affidavit evidence."

76. Admittedly in this case the affidavits of the third parties filed by the respondents are not verified. But the Board acted on these affidavits. At the same time, the Board did not refer to the affidavits filed by the petitioners, which are very much available on its file.

77. From the above whatever documents were relied on by the respondents they being only the xerox copies, they are not admissible in evidence. With the result, the respondents did not produce any evidence whatsoever either oral or documentary in support of their pleadings, and at the same time the Board did not consider the oral/affidavits/documentary evidence filed by the petitioners.

78. In the adjudicatory process if the authorities do not follow the procedural laws of the land and the basic principles of adjudication of disputes as stipulated u/s 10E(4C) of the Act, the common man will lose faith in the very system of administration of justice. I understand that a retired High Court judge is heading the Board. I am sure that had the Board observed minimum procedural laws and considered the case of the parties on the merits dispassionately the result would have been otherwise.

79. In *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , their Lordships of the Supreme Court held that (p. 2505) : "such discretion cannot be exercised which encourages illegality or perpetuates an illegality . . . Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

79. While considering the duty of the Mahapalika, a body corporate constituted under the U.P. Municipal Corporation Adhiniyam, 1959, to construct and maintain public places, parks and plant trees, their Lordships held that a Mahapalika a body corporate constituted under the Act being a trustee is under an obligation and duty to maintain public places, parks and plant trees. When the nature of the park, as it existed, is destroyed, it would be violative of the doctrine of public trust as expounded by this court in *M.C. Mehta Vs. Kamal Nath and Others*, . The public trust doctrine is part of Indian law.

80. Viewed from the above angle, the Company Law Board is bound to exercise its powers in a manner known to law. But it cannot act whimsically, fancifully and arbitrarily and adopt a procedure of its own unknown to law. It is the public trust reposed in the institution. If the Board acts in violation of the doctrine of public trust, it amounts to destroying the public confidence in the institution.

81. Further the Board as well as the respondents having proceeded on the assumption that the provisions of the CPC are applicable as seen from the order

of the Board dated July 21, 1995, in C. A. No. 134 of 1995 till December 2, 1998, the day on which the Board started hearing the matter cannot dispense with the procedure, they thought of at the initial stage, more so without assigning any reasons. As stated supra the Board is expected to be guided by the provisions of the CPC in discharge of its judicial functions, though it need not follow all the provisions of the CPC in its strict sense. If it is not following the law of the land it is committing the gravest illegality in discharge of its judicial functions. Even if it is following an illegal procedure for a long time the same cannot turn to be legal, and at the earliest it needs rectification. Otherwise, the interest of the litigant public will be completely jeopardized as seen in this case. Accordingly this contention is also rejected.

Documentary evidence :

82. u/s 61 of the Evidence Act the contents of documents may be proved either by primary or secondary evidence ; u/s 62 primary evidence means the document itself produced for the inspection of the court; Section 63 deals with secondary evidence and u/s 64 all the documents must be proved by primary evidence except in cases mentioned in Section 65 of the Evidence Act for which necessary foundation has to be laid in the pleadings itself for leading secondary evidence.

83. In this case only xerox copies of the documents were filed and it is not the case of the respondents that they are not having the original documents or the records with them.

84. On the other hand the petitioners have not only filed the original documents in their possession but also filed applications for summoning of the original records from the respondent-company. On behalf of the petitioners, petitioner No. 9 has gone to the witness box and spoken on all the allegations made in the main application. But at the same time the respondents neither filed the original records nor entered into the witness box to give evidence in support of their case.

85. u/s 114 of the Evidence Act, the court has to draw a presumption with regard to the existence of any fact which it thinks likely to have happened regard being had to the common cause of natural events, human conduct and public and private business, in their relation to the facts of the particular case. As per illustration (g) of Section 114, the evidence, which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it the court is expected to draw an adverse inference against the person who is in possession of the information and failed to produce the evidence.

86. Coming to the provisions of the Code of Civil Procedure, under Order 13, Rule 1, all parties shall produce all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in court, and all the documents, which the court has ordered to be produced. Under Order 39, Rule 4, the court should endorse on every document, which has been admitted in evidence in the suit with the

particulars contained therein. Under Order 13, Rule 5(3), where a copy of an entry is furnished, the court shall, after causing the copy to be examined, compared and certified in the manner mentioned in Order 13, Rule 17, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

87. A Division Bench of this court in *Badrunnisa Begum Vs. Mohamooda Begum*, held that a copy of the agreement without there being comparison of it with the original document, is not admissible in evidence as secondary evidence. Having considered the scope of Section 63 of the Evidence Act dealing with secondary evidence, their Lordships observed as follows (page 397) :

"Learned counsel for the appellant submits that under illustration [c] a copy transcribed from a copy but compared with the original is secondary evidence but the copy not so compared is not secondary evidence of the original although the copy from which it was transcribed was compared with the original. Now, if one goes by this illustration in the light of the evidence that is on record, one finds that there is no evidence whatsoever showing thereby that the copy taken from the copy was compared with the original. What the plaintiff has tried to do is that, she has tried to prove comparison of the copy of the copy by exhibiting exhibit A-32 which is a photo copy along with the negatives. The requirement of illustration (c) was that the copy taken from the copy should have been compared with the original. That could have not been done in view of the pleadings of the plaintiff herself as the original was not with her."

88. Even assuming that counsel did not object to the procedure, the respondents having filed xerox copies are bound to prove the authenticity of the documents filed by them in a manner known to law. If such a course is not adopted by the respondents, the Board is expected to eschew the documents filed by the respondents. But the Board acting on such inadmissible evidence dismissed the application.

89. In *The Roman Catholic Mission Vs. State of Madras and Another*, , the District Judge took into consideration the certified copies of certain leases from the record of an old case, i.e., O. S. No. 124 of 1944 on the file of the Sub-Court, Madurai. The Supreme Court while interpreting Section 65 of the Evidence Act held that those copies of the documents are not admissible in evidence, held that both Mailavaram and Kudivaram rights were included in Inam. Commenting on the act of the District Judge, their Lordships observed thus (page 1461) :

"These documents undoubtedly would have thrown light upon the matter but they were not admissible because they were only copies. The originals were not produced at any time nor was any foundation laid for the establishment of the rights to give secondary evidence. The High Court rejected them and it was plainly right in so deciding."

90. In *Pradip Kumar Sarkar v. Luxmi Tea Company Ltd.* [1990] 67 Comp Cas 491 the learned judge of the Calcutta High Court held as follows :

Since the audited accounts for the relevant period were not placed before the court for its perusal and for refusing the allegations of depressing the working results of the company, prima facie the allegation of the mismanagement of working results stood unrebutted and in such an event the court is empowered to supersede the board of directors if found to have acted illegally and appoint a receiver for a limited period and purpose.

91. In Abdul Rasheed and others Vs. Abdul Hakeem, , a learned single judge of this court held that the entries in the account books in favour of a party producing them have to be strictly proved. In a suit for specific performance filed on the basis of an oral agreement, the plaintiff therein produced a note book (exhibit A-44) maintained by him to show that he paid an amount of Rs. 10,000 to the defendant as advance and the version of the plaintiff was disbelieved by the learned judge by giving the following reasons ;

"(1) in the first place the entries are unsound; (2) the entries as such are not marked; (3) the accountant who made the entries was not examined. Thus observing the learned judge held that the entries in the note book relied upon by the plaintiff to prove the alleged payment of Rs. 10,000 as advance were not proved."

92. In arriving at the conclusion, his Lordship relied upon a judgment in Mathilda Sice and Another Vs. Fritz Gaebele and Others, . In the said case their Lordships of the Madras High Court held that (headnote) :

"mere laying down the account books without more does not prove anything and that it is for the party who prepared the accounts to explain them and support them in such a way as to convince the judge that there is a probability of their accuracy as to make it reasonable for a prudent man to accept them. The law requires the proof of not only account books generally but of each item that is in the interest of the person producing the books but with regard to admissions, i.e., entries against the producer's own pecuniary interest, the law dispenses with all proof save that the book has been kept by or under the authority of the producers."

93. From this it is seen that except in a case where the entries are against the interest of the producers of the account book, the law requires proof of not only account books generally but of each item. Admittedly that was not done in this case.

94. In Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., , their Lordships of the Supreme Court while considering the admissibility of the extracts from the account books, held that (headnote) : "the extracts from accounts are not "account books" falling within Section 34 of the Evidence Act and are inadmissible. Sanctity is attached in the law of evidence to books of account if the books are indeed "account books" i.e., in original and if they show, on their face, that they are kept in the "regular course of business". Such sanctity, cannot attach to private extracts of alleged account books where the

original accounts are not filed into court. This is because, from the extracts, it cannot be discovered whether the accounts are kept in the regular course of business or if there are any interpolations or whether the interpolations are in different ink or whether the accounts are in the form of a book with continuous page numbering. Hence, if the original books have not been produced, it is not possible to know whether the entries relating to payment of rent are entries made in the regular course of business. It is only in the case of the Bankers' Books Evidence Act, 1891, that certified copies are allowed or the case must come u/s 65(f) or (g) of the Evidence Act. Private extracts of accounts in other cases can only be secondary evidence and unless a proper foundation is laid for adducing such secondary evidence u/s 65 or other provisions of the Evidence Act, the privately handwritten copies of alleged account books cannot themselves be treated as secondary evidence."

95. In *United India Assurance Co. Ltd. Vs. Sri Satyanarayana Ghee Trading Co. and others*, , this court held thus :

"merely because the accounts are kept in regular course of business and entries have been made therein they cannot have any binding nature vis-a-vis the insurer against whom the plaintiff is making now the claim. In other words the respondent-firm has to prove the entries separately by independent evidence apart from the proof required u/s 34 of the Indian Evidence Act to the effect that the accounts have been kept in regular course of business inasmuch as the element of interestedness cannot be ruled out. The distinction between the relevancy and proof of entries and probative value thereof cannot be lost sight of."

96. In *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, , their Lordships of the Supreme Court while commenting on the conduct of the insurance company in not filing the copy of the policy before the Tribunal or before the High Court held as follows (page 853 of Comp Cas) :

"This court has consistently emphasised that it is the duty of the party which is in the possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof."

97. On the facts of the case, their Lordships held that "we accordingly wish to emphasise that in all such cases where the insurance company concerned wishes to take a defence in claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence." (page 853)

98. From the above it is seen that a party to a judicial proceeding in whose possession the document is, has to produce the same and having failed to do so, it cannot be permitted to take shelter behind the abstract doctrine of burden of proof.

99. In the case on hand, the Board under the guise of following its own procedure in adjudicating the dispute, passed the order under challenge without following any of the well known rules of procedure and the order is the result of non-application of mind to the issues in controversy with reference to the original records. Had the Board seen the original records, it is evident to the naked eye that the resolutions of the board were tampered with by the respondents.

100. A reading of the order shows that whatever is stated by the respondent is treated as gospel truth and the Board even went to the extent of placing reliance on the affidavits of the third parties without verification filed by the respondents retracting from the earlier affidavits given to the petitioners having held that the Board is not going to rely on the affidavit evidence in its order dated November 28, 1997. At the same time the Board did not consider the affidavits filed by the petitioners, for reasons best known to it though the respondents did not choose to rebut the same either by filing affidavits or by oral evidence. This action of the Board proves beyond doubt that it treated the parties differently and it has not acted dispassionately and in good faith. In one word the scales of justice heavily swung in favour of the respondents.

101. It is not the case of the respondents that the Board has at least followed the rudiments of law by summoning the original records and verifying with the documentary evidence filed by the respondents to test the veracity of the statements of the petitioners that the records were tampered with by the respondents or not. As stated supra, having summoned the original records and seen them I have no hesitation to hold that the records were tampered with by the respondents.

Petitioners themselves gave up the prayer for summoning the records in C. A. No. 65 of 1996.

102. Nextly, learned counsel for the second respondent contended that though the ninth petitioner filed C. A. No. 65 of 1996 for appointment of interim administrator and sought for production of the minutes books, account books along with the vouchers for the period 1992-1995 from the respondent-company, before the Board for verification, he did not press for the same as is evident from the order of the Board. He has drawn my attention to a passage in the order of the Board dated December 8, 1997, passed in the above C. A. wherein it was observed that :

"Dr. Prasad Paul, senior advocate appearing for the petitioners, even though the application contains various allegations, restricted his arguments on the following two allegations only for the appointment of an administrator" and contends that the ninth petitioner gave up his plea for summoning the records in the case.

103. Countering the above argument, counsel for the petitioners brought to my notice the observations of this court in C. Sri Hari Rao's case [1999] 97 Comp Cas 685. In this case itself on appeal filed by petitioner No. 9 against the order of the Board in C. A. No. 65 of 1996, this court observed that the order under

challenge is only an interlocutory order for the purpose of appointment of an administrator at the interim stage. Exercise of discretion by the Board cannot by any stretch be termed as so perverse.

104. Admittedly, the prayer for appointment of an administrator is only as an interim measure till the disposal of the main case but not in the main case, i.e., C. P. No. 15 of 1994. The passing of an interim order being a discretionary one, learned counsel might have felt that summoning of the records is a time-consuming process more so when the respondents are not co-operating with the Board for the disposal of the case. It is seen from the record that though the C. P. was filed in the year 1994 there was not much progress in the case.

105. The intention and purport of an interim order to be passed during the pendency of a case is to protect the interests of both the parties pending final adjudication of the dispute. Hence, on that ground the Board cannot give up the procedure to be followed by a court in adjudicating a lis more so without passing any orders on the prayer in the main petition as well as C. A. No. 69 of 1994 to call for the records.

106. In *Kanshi Ram Vs. Bansi Lal*, his Lordship Chief Justice Pathak, speaking for the Bench held as follows (page 63) :

"In every application for an interim injunction in a pending suit, it is necessary for the court to enter, to some degree, into the merits of the case in order to determine whether a prima facie case exists. To what degree the court will enter will vary, with the facts of each case. When the court declares that a prima facie case exists, it intends to say that the case of the plaintiff is not without merit. It is an opinion rendered on the state of the evidence then existing on the record, and it is open to the trial court to take a different view when all the evidence has been let in and the suit itself has to be decided. In some cases, a pure question of law alone may arise in the suit. In such a case when the court expresses an opinion on the question in order to determine in an injunction application whether a prima facie case exists, an impression can conceivably be gathered that the suit itself has been disposed of. But when the matter is considered in deeper perspective, it will be evident that the impression is a false one. The finding is limited to the context in which it has been given. It is a finding on an application for interim relief only. Any opinion expressed by the court, whether it be of the trial court or an appellate court or revisional court, cannot in law preclude the trial court from considering the issue afresh when deciding the suit, and for that purpose it must have regard to all the material then before it. In deciding that issue, it will properly have no regard to the finding rendered on the point while disposing of the application for interim injunction. No matter how superior the court rendering that finding--and we would include this court--the trial court is bound in the proper discharge of its duties to ignore the finding when it proceeds to dispose of the suit and to apply its mind independently to the decision of the issue. The trial court will bear in mind that the opinion expressed on the merits of the suit when deciding an application for interim

injunction does not operate as res judicata. Even in a case where the suit calls for the decision of a pure question of law alone, the trial court would be entitled to, and indeed is bound to, express its independent opinion on the issue of law and dispose of the suit accordingly."

107. In a recent case in *Amresh Tiwari Vs. Lalta Prasad Dubey and Another*, , the Supreme Court at para. 10 held as follows (page 444) :

"We have heard the parties at length. In our view the High Court has committed an error in setting aside the order of the Magistrate on the basis that the earlier order was final and binding. The earlier orders were interim orders. They were passed before any evidence or statements had been recorded. Those orders were passed only on the basis of the contentions of the parties. At that stage the first respondent had contended that the civil proceedings did not relate to the same properties in respect of which the proceedings u/s 145 of the Criminal Procedure Code were adopted. Thereafter statements were recorded in Section 145 proceedings. In her statement the first respondent admitted that proceedings u/s 145 of the Criminal Procedure Code were in respect of property which formed the subject matter of the civil suit and in respect of which an order for maintenance of status quo had been passed by the civil court. The SDM was bound to take a decision afresh based on the statements before him. It is settled law that interim orders, even though they may have been confirmed by the higher courts, never bind and do not prevent passing of the contrary order at the stage of final hearing. The learned single judge of the High Court appears to have lost sight of this."

108. In *Dr. B.L. Anand Vs. Jaffar Hussain*, , a Division Bench of this court while considering the plea whether an interlocutory order operates as res judicata held in para. 7 as follows :

"No doubt, the appellate court while considering an appeal has power to alter or modify an interlocutory order which does not decide the merits of the controversy in issue in the suit, but is only a step in reaching the decision in the dispute. In other words, all interlocutory orders will not operate as res judicata within the meaning of Section 11 of the Civil Procedure Code. For example, orders relating adjournment of the case, appointment of receiver or commissioner, stay of proceedings, casting of issues, summoning witnesses, calling for documents, remanding the case and many more such orders cannot operate as res judicata since they do not decide any matter in dispute arising in the suit. Even the same court in respect of such orders has power to alter or vary them by subsequent applications on proof of new facts and subsequent events."

109. In *Palika Sathiraju Vs. Pydah Soma Malleswara Rao and others*, , a learned single judge of this court while considering the effect of an interim order, held "that the finding given by the courts in interlocutory applications are ephemeral and are coterminous with the result of the main proceedings and as such no importance can be attached to those findings since those findings have been

arrived at in a summary proceeding."

110. Accordingly this contention is rejected as devoid of merit.

Oral evidence :

111. u/s 59 of the Evidence Act all facts except the contents may be proved by oral evidence; u/s 60 any oral evidence must be direct in all cases. u/s 101 of the Evidence Act whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. u/s 102 of the Evidence Act the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

112. Under Order 18, Rule 2(1) on the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. Sub-rule (2) of Rule 2 says that the other part) shall then state his case and produce his evidence (if any) and may then address the court, generally on the whole case. Sub-rule (3) says that the party beginning the case may then reply generally on the whole issue. Under Sub-rule (4) notwithstanding anything contained in this rule, the court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage.

113. To the surprise of the court, learned counsel for the respondent-company having vehemently contended before the Board, that examination-in-chief is a must followed by cross-examination in view of the allegations of misconduct and fraud did not choose to examine the witnesses on his side before the Board.

114. In Palika Sathiraju Vs. Pydah Soma Malleswara Rao and others, , this court held "that u/s 102 of the Evidence Act even if there is no evidence on the side of the plaintiff, if the defendant fails to prove the specific plea taken by him he would fail."

115. In Ishwar Bhai C. Patel v. Hari Har Behera [1999] 2 ALD 19 their Lordships of the Supreme Court while considering the effect of Section 114(g) of the Evidence Act observed that "if the defendant fails to appear as witness to substantiate his evidence, it can be presumed that his pleas in the written statement are not established and suit can be decreed on the basis of the evidence adduced by the plaintiff."

116. In that case, respondent No. 2, father of the first respondent, issued a cheque for a sum of Rs. 7,000 from the account of his son as a loan to the appellant. When the amount was not repaid, the son filed a suit. The trial court dismissed the suit against the borrower, but decreed against the father. On an appeal, the High Court decreed the suit against the borrower also. Aggrieved by the said decree and judgment, the appellant (borrower) approached the Supreme Court. Their Lordships of the Supreme Court held "that since the

appellant did not enter into the witness box nor made any statement on oath in support of his pleading, an adverse presumption has to be drawn against him."

117. Even after passing the order in C. A. No. 65 of 1996, the Board in its meeting held on April 1, 1998, passed the following order :

"Witnesses will be examined on April 18, 1998, at 9.30 a.m. at Chennai. The petition will be heard on the merits as already fixed on April 27, 28 and 29, 1998, at New Delhi."

118. On April 27, 1998, also the Board observed that oral evidence will be taken on June 9, 1998, at 10.30 a.m. at Chennai. I do not know how the Board can hear the petition on the merits even without completion of trial.

119. Thereafter the Board started hearing the matter on January 4, 1998, without recording any evidence, perhaps on the basis of an affidavit filed by petitioner No. 9 dated May 13, 1998, wherein he expressed his inability to produce list witnesses as they are being terrorized and pressurized in all possible ways by respondents Nos. 2 and 3 by the money power at their command and taking advantage of their position as managing director and joint managing director of the first respondent-company. It has not considered even the oral evidence that was adduced on behalf of the petitioners by observing that it is incomplete. The Board recorded the evidence of the ninth petitioner prior to filing of Application No. 65 of 1996 he did not depose on the subsequent events. But at the same time as he is very much conducting the case personally, and it is not known why he was not examined on subsequent events and the attendance sheets of the Board do not throw on this aspect any light having posted the case for adducing evidence after disposing of C. A. No. 65 of 1996. Be that as it may it is not known why the respondents were not examined to prove their case ; more so to prove the authenticity of the xerox documents on which they placed reliance.

120. As the examination of the ninth petitioner was prior to the filing of C. A. No. 65 of 1996, wherein fresh acts of oppression and mismanagement were brought to the notice of the Board, his evidence is complete on the main allegations in the company petition. It is not known why he was not examined on those aspects though he is conducting the case. But the Board brushed aside his evidence by observing that it is incomplete. At the same time, Mr. Raghavan tried to defend his client's case by relying on that evidence. The law of the land is that when no rebuttal evidence is produced by the opposite party and the version spoken by the witness remained undisturbed, the natural presumption that arises is that whatever the witness spoke should be regarded as true and an adverse inference has to be drawn against the opposite party who did not choose to go into the witness box and subject himself to the cross examination on the documents and material relied on by him before the court as held by the Supreme Court in *Iswar Bhai C. Patel v. Hari Har Behera* [1999] 2 ALD 19.

121. While confirming the judgment of the High Court, that the findings of the

first appellate court were not based on proper appreciation of evidence, their Lordships of the Supreme Court in *Rajappa Hanamantha Ranoji Vs. Sri Mahadev Channabasappa and Others*, , observed that (headnote): "though the High Court has observed that findings arrived at by the first appellate court are not based on proper appreciation of the evidence on record and the same are set aside but for all intents and purposes and in substance the conclusion of the High Court is that the decision of the first appellate court is based on no evidence and is perverse. The High Court has rightly drawn an adverse inference on account of non-examination of respondent No. 4, the tenant, as a witness by the appellant. On the facts and circumstances of the case that was vital and was rather the heart of the entire matter going to the root of the whole case. There was no explanation for non-examination of respondent No. 4. Clearly, the decree of the first appellate court is based on no evidence and is perverse."

122. In *Habeeb Khan and others Vs. Valasula Devi and others*, , this court drew an adverse inference against the defendant/appellant for with-holding important and material witnesses viz., the fourth defendant Shahbaz Khan and their employee, Abdul Ahmed. In recording the above finding, the learned single judge relied upon a judgment of the Supreme Court in *Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others*, and *Patel Naranbhai Marghabhai and others Vs. Deceased Dhulabhai Galbabhai and others*, . In this case, neither the respondents have gone into the witness box nor their employees who maintained the records were made to depose to prove the documents filed by the respondents.

123. In the light of the foregoing discussion, I find that there is no substance in the contention of learned counsel for the respondent that the petitioner has given up his plea for summoning the original documents in this case forgetting the prayer in the company petition and C. A. No. 68 of 1994 for the purpose on which the Board did not pass any orders.

124. To my mind to the extent of allegations in the main petition the evidence of the ninth petitioner stood un rebutted and in the normal course the petition would have been allowed.

Any amount of proof cannot substitute the pleadings :

125. Nextly, counsel for the respondents contended that any amount of proof on a plea not raised in the pleadings can substitute pleadings, which are the foundation of the claim of a litigating party and he placed reliance on *Abubakar Abdul Inamdar (dead) by LRs. and others Vs. Harun Abdul Inamdar and Others*, and a judgment of the Privy Council reported in AIR 1930 57 (Privy Council)

126. I have gone through these judgments and I have no hesitation to reject the contention of counsel, as these two decisions referred to a situation, where evidence was let in without there being a basic foundation in the pleadings. But, the facts of this case are converse to the facts of those cases. Here pleadings on both the sides are complete, while some evidence was let in by the petitioners

apart from filing original documents in their possession, and requested the Board to call for the original record from the company the respondents simply filed xerox copies of the documents on which they are placing reliance and no one was examined on their behalf to prove their case. Hence the above judgments cannot come to the aid of the respondents.

Non-examination of respondents is not fatal as no documents were marked on behalf of the petitioners :

127. Counsel for the respondents contended that the ninth petitioner though was examined on behalf of the petitioners did not speak to a single document filed on behalf of the petitioner and as such the non-examination of the witnesses on behalf of the respondents is not fatal. It is true that the documents were not marked and it is definitely a lapse on the part of the Board as well as counsel who are expected to know the procedural laws. I have no manner of doubt, had counsel for the petitioners conducted the case properly, the hands of the Board would have been tied in this case. It is not known whether counsel for the petitioners is a party to the grave illegalities committed by the Board wantonly or otherwise. But at the same time, the ninth petitioner spoke in crystal clear terms in his evidence on the acts complained of by the petitioners and in fact learned counsel appearing for the respondents could not and did not elicit anything contrary to what the ninth petitioner has spoken in his chief examination and he stuck to his version except for some minor discrepancies which did not matter much. Even the respondents counsel did not cross-examine the witness with reference to the documents. He being sufficiently a senior counsel, at least he would have cross-examined the witness with reference to the documents filed by him or examined his witnesses in the manner in which counsel for the petitioners examined his witness. That was also not done. Having pleaded before the Board that recording oral evidence is a must he cannot now turn round and contend at this belated stage that as the petitioner failed to mark the documents, non-examination of witnesses by the respondents is not fatal to the case.

128. In counter to these arguments of the petitioners, learned counsel for the respondent-company contended that the order of the Board cannot be held as bad on the ground that the procedural law is not followed and relied upon a judgment of the Supreme Court in Union of India (UOI) Vs. T.R. Varma, , wherein their Lordships observed as follows (page 885) :

"Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by Tribunals, even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a court of law . . .

If these rules are satisfied, the enquiry is not open to attack on the ground that

the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

129. But this contention of learned counsel runs counter to his argument addressed before the Board in C. A. No. 134 of 1995 to the effect that the provisions of the CPC are applicable before the Board, which were already referred to supra. In this appeal having contended that the Board need not follow the rules of procedure, now contends that non-examination of respondents is not fatal as no documents were marked on behalf of the petitioners. This conduct of the respondents is nothing but blowing hot and cold ; more so in a judicial forum and it is nothing but an abuse of the process and a vexatious litigation.

130. In *Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar*, , their Lordships of the Supreme Court considered the effect of Order 8, Rule 5(1), where-under the defendant is duty-bound to deny the plaint allegations specifically or by necessary implication and held as follows : "Order 8, Rule 5(1) reads as follows :

"Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Provided that the court may in its discretion require any fact so admitted to be provided otherwise than by such admission."

What is stated in the above is, what amounts to admitting a fact on a pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth ... Non-traverse would constitute an implied admission. In the facts of this case the findings of the trial court and that of the first appellate court could be upheld on this admission. Thus, we find the High Court was wrong in interfering with this finding. Accordingly, the appeal will stand allowed. No costs."

131. In *Smt. Naseem Bano Vs. State of U.P. and others*, , their Lordships of the Supreme Court held that since the respondents did not dispute that 40 per cent. of the total number of posts had not been filled up by promotion, as pleaded by the appellants, in as much as the said averments had not been controverted, the High Court should have proceeded on the basis that the said averments had been admitted by the respondents.

132. In this case, except filing the written statement and some xerox copies of the records, no semblance of fair trial has taken place. Even assuming what learned counsel for the respondents submits is true, the Board is expected to observe the rules of natural justice. What is meant by observance of rules of natural justice was considered by the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and *The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others*, .

Summary of the lapses :

133. Now I sum up the procedural illegalities or lapses committed by the Board and the manifest errors evident on the face of the record are :

(1) The Board having taken the stand that the averments made by the parties in the petition and the counter have to be proved by letting oral evidence on both sides and the provisions of the CPC are applicable to the proceedings, without giving any reasons, the Board heard the arguments on December 4, 1998, and February 16, 1999, and pronounced orders on March 22, 1999. I have carefully examined the order passed by the Board as well as the attendance sheets to know the mind of the Board why it has changed its attitude and pronounced the orders by hearing learned counsel on both sides. Neither could I cull out anything from the record nor the respondent's/counsel who appeared before the Board was able to offer any explanation for the sudden change in the mind of the members of the Board. To my mind, the procedure followed by the Board, completely vitiated the proceedings.

(2) Next, it is seen that in the main petition itself the petitioners prayed for summoning the original records. In fact in the notice served on the respondents, it is clearly stated that they shall appear with original records to answer the allegations but the respondents filed only xerox copies of the records. When the records have not been produced by the respondents after receiving the summons, the petitioners filed another application, i.e., C.A. No. 69 of 1994 on April 11, 1994, to summon these records. Without calling for original records, the Board passed the orders even after the petitioners brought to the notice of the Board, by filing documentary evidence, that the respondents are refusing to furnish information by stating under what law they are entitled for the information. It is yet another illegality.

(3) Petitioner No. 9 went into the witness box and his cross examination was completed on October 18, 1995. This evidence is complete on all aspects on the allegations made in the main petition. The Board started hearing the case without completing his evidence.

(4) Be that as it may only to the extent of subsequent allegations, though he did not depose, he proved the allegations by filing necessary documents. But his evidence was discarded stating that it is incomplete.

(5) On the other hand, the respondents completely failed to prove their case in a manner known to law.

(6) The Board relied on xerox copies of documents, which are not admissible in evidence in dismissing the case of the petitioners without summoning the original records though serious allegations of fabrication of documents and accounts etc., are made against the respondents.

(7) Assuming for a moment that the petitioner failed to examine the witnesses, u/s 59 of the Evidence Act, the respondents are expected to lead oral evidence in support of their contentions. Further, u/s 102 of the Evidence Act, the burden of

proof lies on the respondents to prove that there is neither mismanagement in running the affairs of the company prejudicial to the public interest nor is there oppression of the minority shareholders as alleged in the petition with documentary as well as oral evidence. That was also not done in this case.

(8) u/s 114(g) of the Evidence Act, the Board is expected to draw adverse inference against the respondents for not leading any evidence and also for not producing original records, which are in their possession before the Board.

(9) The Board having rejected the plea of the petitioners to lead evidence by affidavits, relied on the retracted affidavits of those persons who initially gave affidavits in favour of the petitioners, filed by the respondents, more so without verification in dismissing the case of the petitioners without reference to the affidavits filed by the petitioners in support of their plea.

(10) Petitioner No. 9 filed an affidavit expressing his inability to secure the presence of the list witnesses by stating that respondents Nos. 2 and 3 started influencing the witnesses with the money power at their end and also falsely implicated him as well as others in criminal cases with documentary evidence. The Board failed to consider whether the acts of the respondents constitute acts of oppression of minority shareholders or not.

(11) The other illegalities committed by the Board will be considered while dealing with the merits of the case.

Question of law :

134. Nextly, learned counsel for the respondents strenuously contended that u/s 10F of the Act, the High Court can entertain an appeal only on a question of law arising out of the order and this provision is more stringent than that of Section 100 of the CPC whereunder the High Court can entertain the second appeals only on questions of law. It is further contended that even if the Board failed to follow the procedure known to law, it cannot be said that any question of law will arise for consideration in the appeals before the court and they are liable to be dismissed. In support of his contention, he cited a plethora of decisions on this aspect.

(1) In Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., their Lordships of the Supreme Court while considering Section 66(1) of the Income Tax Act, which is in pari materia the same as Section 10F of the Act to find out whether a question of law has arisen out of the order or not summarized the discussion in the judgment at page 611 as hereunder :

"the result of the facts and circumstances of the case,

(1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal, but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it and is, therefore,

one arising out of its order.

(3) When a question is not raised before the Tribunal, but the Tribunal deals with it, that will also be a question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise"

This case cannot be an authority for the proposition that whether the procedural illegalities committed by the Tribunal constitute a question of law arising out of the order of the Board or not.

(2) In Union of India (UOI) Vs. T.R. Varma, , their Lordships of the Supreme Court having held the Evidence Act is not applicable to the enquiries conducted by Tribunals even though they may be judicial in character observed (p. 885) : "The law requires that such Tribunals should observe the rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law."

(3) Malleswara Finance and Investments Company (P.) Ltd. v. Company Law Board [1995] 82 Comp Cas 836 ; [1995] 1 CLJ 1 (Mad) wherein the Madras High Court in para. 124 of the judgment held that (p. 890): "an appeal u/s 10F of the Companies Act before this court can be entertained only on a question of law which arises from that order."

(4) C. Sri Hari Rao's case [1999] 97 Comp Cas 685 this court in the same case, on an appeal filed by the petitioners against the order of the Board in C. A. No. 65 of 1996 held when the matter is pending before the Company Law Board for final adjudication of the disputes, we do not see any reasons to entertain an appeal in view of the provisions of Section 10F of the Act.

135. None of the above cases can be considered as an authoritative pronouncement on the issue before this court, i.e., whether the procedure adopted by the Board and the perverse finding recorded by it can be sustained in law. If not, whether a question of law will arise for consideration by the court from out of the order of the Board.

136. On the other hand a Constitution Bench of the Supreme Court in The Printers (Mysore) Private Ltd. Vs. Pothan Joseph, , while holding that the discretion vested in the court to grant stay is judicial, made the following observations (p. 1159) :

"If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial judge ; but if it appears to the appellate

court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts and has adopted an unjudicial approach then it would certainly be open to the appellate court--and in many cases it may be its duty--to interfere with the trial court's exercise of discretion. In cases falling under this class the exercise of discretion by the trial court is in law wrongful and improper and that would certainly justify and call for interference from the appellate court. These principles are well established."

137. The Supreme Court has taken a similar view with regard to the observance of principles of natural justice by Tribunals exercising quasi-judicial powers in a decision reported in A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

138. In Shri Bhagwan Sharma Vs. Smt. Bani Ghosh, , a Constitution Bench of the Supreme Court held that : "the High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the first appellate court which was the final court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature".

139. To the same effect is the judgment of the Supreme Court in Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., , where their Lordships of the Supreme Court held that (p. 429) :

"the court (the first appellate court) is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorised to set aside the finding. This is the situation in the present case." Their Lordships further held that : "where the findings by the court of facts are vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings".

140. Nextly in Dilbagrai Punjabi Vs. Sharad Chandra, , their Lordships of the Supreme Court held that "the court is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorized to set aside the finding."

141. Similar is the view taken by the Supreme Court in Sundra Naicka Vadiyar (dead) by LRs. and another Vs. Ramaswami Ayyar (dead) by his LRs., , wherein it held that "ignoring some of the documents which were vital for deciding the question of possession also vitiated the finding on the question of possession recorded by the trial court as well as the first appellate court."

142. In Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, , their Lordships of the Supreme Court while interpreting Section 66(1) and (2) of the Indian Income Tax Act, 1922, under which a reference has to be made to the

High Court only on a question of law, observed that (pp. 36 and 37) : "(1) finding on a question of fact is open to attack as erroneous in law only if it is not supported by any evidence or if it is unreasonable and perverse ; (2) when a conclusion has been reached on an appreciation of a number of facts established by the evidence, whether that is sound or not must be determined not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their setting in the picture as a whole.

143. Lastly their Lordships observed (pp. 42 and 36) : "inference from the facts would be a question of fact or of law according as the point for determination is one of pure fact or mixed question of law and fact..... u/s 66(1) of the Act it is only a question of law that can be referred for decision of the court and it is impossible to argue that the conclusion of the Tribunal is anything but one of fact, it has been held on the corresponding provisions in the English Income Tax statutes that a finding on a question of fact is open to attack as erroneous in law only if it is not supported by any evidence or if it is unreasonable and perverse".

144. In *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others*, , their Lordships of the Supreme Court while interpreting Section 100 of the CPC held that the High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the apex court, or was based upon inadmissible evidence or arrived at without evidence.

145. In *Ashwinkumar K. Patel Vs. Upendra J. Patel and Others*, , their Lordships of the Supreme Court posed a question and answered as follows (pages 164 and 165) :

"The point for consideration is whether the order of the High Court in remitting the matter to the trial court was necessary. Question also is whether this court should remand the case to the High Court in the event of this court holding that the remand by the High Court was not called for. If not, whether the order of the trial court is to be sustained.

In our view, the High Court should not ordinarily remand a case under Order 41, Rule 23 of the CPC to the lower court merely because it considered that the reasoning of the lower court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself decided the appeal one way or the other. It could have considered the various aspects of the case mentioned in the order of the trial court and considered whether the order of the trial court ought to be confirmed or reversed or modified. It could have easily considered the documents and affidavits and decided about the prima facie case on the material available. In matters involving agreements of 1980 (and

1996) on the one hand and an agreement of 1991 on the other, as in this case, such remand orders would lead to further delay and uncertainty. We are, therefore, of the view that the remand by the High Court was not necessary.

We have also considered whether, on that account, we should send back the matter to the High Court for consideration of the appeal. We are of the view that on the facts of this case, this court can decide whether the temporary injunction granted by the trial court should be confirmed or not. We are, therefore, not remitting the matter to the High Court because a further remand would lead to delay and perhaps one more SLP to this court."

146. In the light of the preponderant view of the Supreme Court, I have no hesitation to hold that the order passed by the Board is neither in accordance with the rules of procedure prescribed under the provisions of the CPC nor based on the principles of natural justice. The Board passed the impugned order in a manner unknown to law and in an arbitrary manner apart from the fact that the findings recorded by it on the merits of the case are not only perverse but unknown to adjudicatory process of the land as discussed below. There being an error apparent on the face of the orders of the Board, as pointed out supra, definitely a question of law has arisen from out of the order of the Board to be decided by this court u/s 10F of the Act.

Whether matter to be remitted back for fresh disposal in accordance with law :

147. In the normal course, the matter has to go back to the Board for fresh disposal in accordance with law. If I adopt such a course, a dispute pending for over a decade will be in the courts for another decade or two as there is every possibility of carrying the matter in appeal till all the forums that are involved in the adjudicatory process are exhausted by one or the other party.

148. Secondly, the ninth petitioner in the open court expressed that he is not even being paid dividends all these years and he will be satisfied if the value of the shares held by his family members and his friends is paid to them and they are not interested in continuing as shareholders in the first respondent-company and it is for respondent No. 2 to administer the affairs of the company in a manner he likes as long as the majority shareholders approve his actions. In opposition to the claim of petitioners, counsel for respondent No. 2 strenuously contended that the direction given by the Company Law Board is not supported by any reasons and as such the company cannot be compelled to purchase the shares. In the light of this contention, I directed counsel to argue the case on the merits to find out whether cogent reasons can be given for the direction given by the Board on the basis of the material available on record including the documents, which were not looked into by the Board. I am fortified in my view by several judgments of the superior courts.

149. In *Bechan Pandey and Others Vs. Dulhin Janki Devi and Others*, , their Lordships of the Supreme Court while considering the plea of the plaintiff/appellant for remand of the case, in a suit for declaration of title and possession,

partly decreed by the trial court, but dismissed in its entirety by the High Court, held as follows (page 869) :

"To remand the suit to the trial court would necessarily have the effect of keeping alive the strife between the parties and prolonging this long-drawn litigation by another round of legal battle in the trial court and thereafter in appeal. It is time, in our opinion, that we draw the final curtain and put an end to this long meandering course of litigation between the parties. If the passage of time and the laws of nature bring to an end the lives of men and women, it would perhaps be the demand of reason and dictate of prudence not to keep alive after so many years the strife and conflict started by the dead. To do so would in effect be defying the laws of nature and offering a futile resistance to the ravages of time. If human life has a short span, it would be irrational to entertain a taller claim for disputes and conflicts which are a manifestation of human frailty. The courts should be loath to entertain a plea in a case like the present which would have the effect of condemning succeeding generations of families to spend major part of their lives in protracted litigation".

150. In *Ashwinkumar K. Patel Vs. Upendra J. Patel and Others*, , their Lordships of the Supreme Court held as follows (page 165) ;

"that the High Court should not ordinarily remand a case under Order 41, Rule 23 of the CPC to the lower court merely because it considered that the reasoning of the lower court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself decided the appeal one way or other. It could have considered the various aspects of the case mentioned in the order of the trial court and considered whether the order of trial court ought to be confirmed or reversed or modified. It could have easily considered the documents and affidavits and decided about the prima facie case on the material available."

151. In *Shri Bhagwan Sharma Vs. Smt. Bani Ghosh*, , their Lordships of the Supreme Court held as follows (headnote) :

"The High Court is certainly entitled to go into the question as to whether the findings of fact recorded by the first appellate court which was the final court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature. But, after setting aside the findings of fact on that ground the court had either to remand the matter to the first appellate court for a rehearing of the first appeal and decision in accordance with law after taking into consideration the entire relevant evidence on the records, or in the alternative to decide the case finally in accordance with the provisions of Section 103(b). If in an appropriate case the High Court decides to follow the second course, it must hear the parties fully with reference to the entire evidence on the records relevant to the issue in question and this is possible if only a proper paper book is prepared for hearing of facts and notice is given to the parties. The

grounds which may be available in support of a plea that the finding of fact by the court below is vitiated in law does not by itself lead to the further conclusion that a contrary finding has to be finally arrived at on the disputed issue. On a reappraisal of the entire evidence the ultimate conclusion may go in favour of either party and it cannot be prejudged."

152. In *Sundra Naicka Vadiyar (dead) by LRs. and another Vs. Ramaswami Ayyar (dead) by his LRs.*, , their Lordships of the Supreme Court held that (headnote) : "concurrent findings of fact--Reappraisal--Findings on possession by ignoring documents evidencing the compromise documents containing recitals of surrender of possession and other material evidence, such as dismissal of eviction proceedings between same parties in terms of compromise before the Revenue Court--Interference in second appeal justified".

153. In *Dilbagrai Punjabi Vs. Sharad Chandra*, , their Lordships of the Supreme Court observed that (headnote) : "the court is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorised to set aside the finding".

154. In *Bhairab Chandra Nandan Vs. Ranadhir Chandra Dutta*, , their Lordships of the Supreme Court held that even though formally an issue not framed but if parties went to trial and adduced evidence keeping that issue in mind and drew attention of the court in that regard, appeal need not be remanded for a finding on that question.

155. In *Thamma Ramachandra Rao v. Madras State* [1956] ALT 24 (NRC), it is held that an appellate court is not bound to remand the case for trial of an issue on which no finding was recorded but is entitled to give its own decision, if the evidence on record is sufficient.

156. I am satisfied that even with the scant evidence that is available on record in this case, whether admissible or inadmissible, the dispute can be adjudicated without remanding the matter for fresh disposal by the Board by verifying the xerox copies of the records by summoning the originals, more so in the light of the submission of the ninth petitioner that their group is satisfied with the direction given by the Board.

157. But, counsel for the respondents contended that if the court feels that the order of the Board is cryptic, it has to remand the matter. In support of his plea, he placed reliance on *Shree Consultants and Services Pvt. Ltd. v. K. N. Sankaranarayanan* [1995] 84 Comp Cas 473 wherein their Lordships of the Madras High Court held as follows (page 485) :

"We have carefully considered the submissions of learned counsel appearing on either side. A perusal of the memorandum of grounds of appeal filed in this court against the order of the Company Law Board also shows that the appellants

before the learned single judge (respondents Nos. 1 and 2 before us) were equally aggrieved against the manner of disposal of the preliminary objection and contended that the Company Law Board ought not to have decided the issue in such a summary fashion and the laconic order passed without objective consideration or assigning any reasons therefore cannot be sustained. That apart, several factual issues such as discrepancies in the signatures found in the consenting letter, the varying numbers of such persons who subscribed their signature to the letter of consent are very serious as also vital questions of fact which deserve a proper and effective enquiry or trial at the hands of the Company Law Board. That apart, the locus standi or authority of Mr. C. P. Sodhani, to present the application in the absence of a resolution of the board of directors authorizing him to do so was also raised. We also find from the order of the Company Law Board challenged on appeal before the learned single judge that the Company Law Board has passed a cryptic order holding that after carefully considering the views of both counsel and the facts of the case they came to the conclusion that the consent given in annexure 2 meets the requirement of Section 399 and, therefore, the petition was maintainable. No reasons or judicious discussion or consideration of any of the contentions or the facts and circumstances of the case have been assigned or made in the order which involve serious consequences. In the background of such contentions and serious lapse and omission on the part of the Company Law Board the learned single judge ought to have in our opinion, set aside the order of the Company Law Board and remitted the matter for fresh consideration of the Company Law Board instead of undertaking an adjudication of some of the legal issues which depend very much on vital issues of facts."

158. I have already recorded the reasons for reappreciating the evidence on record. Hence, this contention is also rejected.

Subsequent events :

159. Counsel for the respondents nextly contended that the court must confine itself to the case as made out in the petition and the subsequent events, if any, brought to the notice of the court cannot be looked into. In support of his plea, he relied on a judgment of the Supreme Court in *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, . In that case counsel for the appellants raised a new plea stating that the subject temple was originally founded for the benefit of five families of Gowd Saraswath Brahmins and it cannot be treated as a public institution by contending that it is purely a question of law. Rejecting the contention of counsel their Lordships of the Supreme Court held that we are unable to agree with the submission. (Page 263) : "The object of requiring a party to put forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case. And it would be neither legal nor just to refer to evidence adduced with reference to a matter, which was actually in issue and on the basis of that evidence, come to a finding on a matter which was not in issue and decide the rights of parties

on the basis of that finding".

160. I have no manner of doubt that the above judgment cannot be pressed into service by counsel for the simple reason that the issue was sought to be raised at the level of the apex court without there being any foundation in the pleadings and without adducing any evidence on that aspect. The facts of this case are altogether different. The subsequent events were brought to the notice of" the Board, before it has taken up the company petition for hearing.

161. He also relied on a judgment of the Calcutta High Court in *Mohta Bros (P.) Ltd. v. Calcutta Landing and Shipping Company Ltd.* [1970] 40 Comp Cas 119 wherein the Division Bench of the Calcutta High Court held that (headnote) : "when dealing with a petition for relief from oppression or mismanagement made under Sections 397 and 398 of the Companies Act, 1956, the court must confine itself to the case as made out in the petition and to the allegations made therein and the supporting affidavits and not to look at the other evidence with regard to events that might have happened subsequent to the petition".

162. I am not inclined to agree with the reasoning given by the Calcutta High Court for the reason that the apex court in many a case held that the court is bound to take subsequent events into consideration even at the appellate stage as the proceedings being a continuous one and should mould the relief.

163. In *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, , Justice V. R. Krishna Iyer speaking for the Full Bench, while rejecting the argument of counsel for the appellant that the High Court committed illegality in taking cognizance of subsequent events, disastrous as they proved to be, summarized the legal position as hereunder (p. 1410) :

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the Tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice--subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations or applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually

in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out a material bearing on the right to evict, in view of the inhibition written into Section 10(3)(iii) itself. We are not disposed to disturb this approach in law or finding of fact."

164. In fact, the Board itself in its order dated December 18, 1997, held that since now the matters relating to Section 397 or 398 of the Act are solely within the jurisdiction of the Company Law Board, we would like to settle this issue once for all in the following terms :

"(a) Section 397 or 398 of the Act has to stand on its own on the basis of the allegations contained in the petition. Subsequent events brought on record alone, in case the main petition fails on merits, cannot entail a person to any relief. In case the allegations in the main petition are placed, then subsequent events may be taken into consideration by the board in moulding the suitable relief."

165. From this it is seen that the Board did not close the doors for the ninth petitioner to raise subsequent events also during the course of the arguments in the main case. In fact the Board considered these two new issues that were brought to the notice of the Board in C. A. No, 65 of 1996 in the impugned orders. Hence, it is too late in the day to contend that subsequent events that have taken place after the filing of the petition cannot be taken into consideration, more so, when the subsequent events were brought to the notice of the Board even before the case was taken up for hearing i.e., when the petitioner is still at the preliminary stage of completing the formalities before taking up the petition for trial. Hence, the contention of counsel that subsequent events brought to the notice of the Board in C. A. No. 65 of 1997 cannot be looked into for moulding the relief has no legs to stand.

Vague allegations :

166. Learned counsel for the respondents strenuously contended that the allegations of oppression and mismanagement are very vague and the petitioners have not given full particulars of the acts alleged by them. Hence the company appeal is liable to be dismissed. In support of his contention, he placed reliance on a judgment of the Calcutta High Court in *Mohta Bros. (P.) Ltd.* 's case [1970] 40 Comp Cas 119 wherein it was held that (p. 128) : "vague and uncertain allegations of oppression and mismanagement although they may constitute grounds for suspicion, do not entitle a petitioner to ask the court to embark upon an investigation into the affairs of the company in the hope that, in consequence of such investigation, something will turn up which will enable the court to grant relief to the petitioner and the petitioner must prove prima facie, at any rate, that on those facts, an investigation is called for".

167. In *R. Khemka v. Deccan Enterprises (P.) Ltd.*'s case [1998] 16 SCL 1 (AP) after considering the case law, a learned judge of this court observed that "it is now beyond controversy that in a petition under Sections 397 and 398, it is to be specifically pleaded and established by the party not only the existence of circumstances, warranting winding up of the company under the "just and equitable" clause, but also it should be further established that winding up order if passed would act adverse to the interest of the shareholders. Further, when this clause is invoked, there must be material to show that it is just and equitable not only for the persons applying for winding up but also to the company and all its shareholders. Even in certain cases, violation of statutory provisions was held to be not oppressive act warranting interference u/s 402 of the Companies Act".

168. In *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, , the Supreme Court held that "the object of requiring a party to put forward his pleas in the pleading is to enable the opposite party to controvert them and to adduce evidence in support of his case and it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence".

169. In *S. Seetharaman v. Stick Fast Chemicals (P.) Ltd.* [1998] 93 Comp Cas 507 the Madras High Court held that in a petition filed u/s 397 of the Companies Act, 1956, the petition should contain all material facts. In the case of fraud, mismanagement, oppression, etc., full and complete particulars must be alleged in the petition. Subsequent affidavits are not enough. The petitioner must plead all material facts necessary for granting the relief as prayed for.

170. Countering the arguments of counsel for the respondents, counsel for the petitioners placed reliance on *M. Harichandra Prasad Vs. Chitturi Krishnamurthy and Others*, , wherein this court held as follows :

"Pleading should receive a liberal construction. There may be many instances wherein the pleadings are incomplete, but during trial the parties place many materials before the court either directly touching the actual controversies between them or incidentally touching upon such questions, where the court could draw inferences and render justice. If a plea is not specifically made and yet it is covered by an issue by implication and the parties knew that the said plea was involved in the trial then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. That is how even by invoking its powers under Order VI, Rule 2 of the CPC the court will mould the relief taking the subsequent events as judicial notice."

171. In *Hari Singh Vs. Kanhaiya Lal*, , the Supreme Court reversed the concurrent findings of the courts below on the ground of lack of details in pleadings. Their Lordships of the Supreme Court observed (p. 3330) : "it is not in dispute that there is pleading that the disputed premises was sublet. Details if

any can be supplemented through evidence. Mere lack of details in the pleadings cannot be reason to set aside concurrent finding of facts".

172. In *Mir Niyamath Ali Khan Vs. Commercial and Industrial Bank Ltd. and Others*, , a Division Bench of this court held that "normally the court will not grant the relief to the plaintiff on a case for which there was no foundation laid in the pleadings and which the defendant was not called upon to meet. But when the alternative case which the plaintiff could have made was admitted by the defendant either in his written statement or in his evidence and the parties adduced evidence relating to such an alternative claim, there would be nothing improper in giving the plaintiff a decree upon such alternative claim."

173. In *Kalka Prasad Ram Charan Vs. Harish Chandra*, , the Allahabad High Court held that (headnote) : "even though no issue was framed on certain point by the court below when both parties adduced evidence relating to it, each party knows what its case is and avails of the opportunity of producing evidence on the point, the High Court can, in an appeal from the decision, record a finding on the point under Order 41, Rule 24 of the Civil Procedure Code".

174. I have seen the order of the Board, the evidence and the written arguments submitted by both the parties. I have no hesitation to hold that sufficient details of the allegations of oppression and mismanagement were given in the petition. The ninth petitioner not only deposed on those allegations but he was also subjected to cross-examination by counsel for the respondents. From the written arguments submitted by counsel for the respondents and the order of the Board it is seen that both counsel addressed arguments very elaborately and the Board recorded findings on some of the issues and reference was made to some other issues without giving a finding and certain other issues were not at all considered for reasons best known to it. Hence I hold that there is no vagueness in the allegations in the petition, at any rate, parties addressed arguments on all the issues knowing fully well the issues in controversy and in fact the Board recorded findings advertent to their arguments. To my mind the respondents are blowing hot and cold in the judicial proceedings. With regard to the findings of the Board that are in their favour they are trying to take advantage of it knowing fully well that the Board conducted the proceedings in a very shabby manner unknown to law and on the findings that are inconvenient to them they are raising all sorts of pleas. In the result, I do not find any substance in this contention.

If the action of the board is illegal the same has to be questioned in a court of law and petition under Sections 397 and 398 of the Act is not an appropriate remedy :

175. Nextly, counsel for the respondents contended that if any of the actions of the board of directors is illegal or invalid, the appropriate remedy for the shareholders would be to question the validity of such action in a court of law, but a petition under Sections 397 and 398 of the Act is not an appropriate action for the purpose. In support of his contention learned counsel relied on a decision

of the Delhi High Court reported in Suresh Kumar Sanghi's case [1983] 54 Comp Cas 235. His Lordship Justice Kripal as he then was, observed that (headnote) : "the powers of the court while deciding a petition u/s 397 or 398 of the Act, are very wide and in exercise of the powers under these sections, the court has further been given powers to pass orders in terms of Section 402 of the Act. However, no orders u/s 402 of the Act can be issued or relief granted u/s 397 or 398 of the Act unless the case can be brought by the petitioner within the ambit of Section 397 or 398 of the Act. His Lordships further held that relief u/s 398 of the Act can be obtained only if (1) the affairs of the company are being conducted in a manner prejudicial to public interest or the interests of the company, or (2) if there is a material change which has taken place in the management or control of the company in the manner set out in the said section, and that by reason of such change 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. Section 397 of the Act would be applicable only in the case of oppression by the majority shareholders on the minority shareholders. Section 397 of the Act does not come into play in the case of wrongful acts being done by the management. That may be a ground for winding up. One of the prerequisites of the applicability of Section 397 of the Act is that the complaint of oppression has to be by the minority shareholders. If an action of the directors is illegal or invalid then the company or the shareholders may take appropriate action in a court of law by challenging the validity of such an action, but a petition u/s 397 or Section 398 of the Act is not an appropriate remedy for the purpose. In order to constitute oppression within the meaning of Section 397 of the Act there must be continuous acts on the part of the majority shareholders, continuing up to the date of the petition showing that the affairs of the company were being conducted in a manner oppressive to some part of the members.

176. The conducting of affairs prejudicial to the interests of the company by the persons who are in the control or the management gives the court jurisdiction to pass appropriate orders to bring to an end the matter complained of. Neither Section 398 of the Act nor Section 402 of the Act provides that only such orders can be passed which will result in handing over the management of the company to the aggrieved persons. In granting relief u/s 398 and Section 402 of the Act not only is the interest of the company to be kept in view, but also other equitable considerations have to be taken into account". From the above, it is seen that while certain actions of the directors are illegal or invalid, the shareholders can question the validity of such an action in a court of law. But Section 397 of the Act comes into play when minority share-holders allege oppression by the majority shareholders and Section 398 of the Act comes into play when the affairs of the company are being conducted in a manner prejudicial to public interest and not in the interest of the company. To constitute oppression within the meaning of Section 397 of the Act, the acts must be continuous on the part of the majority shareholders and continuing up to the

date of the petition. From the pleadings, it is seen that a series of instances, not only continuous acts of oppression, but also the acts of mismanagement were alleged. I have absolutely no quarrel with the proposition laid down in this case. But, I would like to see whether my investigation into the facts of the case satisfy the tests laid down in various cases referred to supra on acts of suppression.

177. To the same effect counsel cited another judgment of the Gujarat High Court in *Sheth Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd.* [1964] 34 Comp Cas 777. In that case a textile mill run by the company having entered into an adat agreement with a firm for supply of working capital for running the mill and to purchase yarn for the company on commission basis. The mill run by the company started incurring losses and the majority of the shareholders sold the mill both on the ground of losses incurred by the company and also on the ground that machinery of the mill became old and obsolete. After the sale was concluded, a minority of shareholders of the company applied to the court under Sections 397 and 398 of the Act alleging that the termination of the adat agreement and sale of the mill were oppressive acts, prejudicial to the interests of the company and claimed that the sale should be set aside. His Lordship Justice Bhagawati, as he then was, ruled "neither the termination of adat agreement nor sale of assets of the mill are prejudicial to the interests of the company and it could not be said to be a continuing wrong. Hence, a petition to set aside the sale under Sections 397 and 398 of the Act is not maintainable".

178. In this case the minority shareholders complained against a solitary act of mismanagement, that too selling the mill as it is continuously incurring losses.

179. But in this case not only a series of acts of mismanagement but also acts of oppression were alleged and if the petitioners are able to prove them, this case will definitely attract the provisions of Sections 397, 398 and 402 of the Act. Hence any of the cases cited by him will not come in aid of his contention. Accordingly, this contention also has no legs to stand and is accordingly rejected.

All the directors were not made party respondents :

180. The next contention of counsel was that out of nine board of directors, only the managing director and joint managing director were impleaded and as the board has to be treated as an independent one and as all the decisions were taken by the board, apart from respondents Nos. 2 and 3 a petition under Sections 397 and 398 of the Act is not maintainable without impleading them as party respondents to the proceedings.

181. This contention is answered by their Lordships of the Madras High Court in *Shoe Specialities Ltd.*'s case [1997] 90 Comp Cas 1 ; [1997] 1 Comp LJ 243 wherein they held as follows (page 22) :

"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 for 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 proper 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."

182. In *Nalam Satya Prasada Rao v. Vinupamula Lakshmi Narasimha Sastry* [1991] 70 Comp Cas 303 this court adverting to the preliminary objection of respondents Nos. 1 to 4 as to the maintainability of the company petition in view of the death of the first respondent during the pendency of the company petition having held that respondents Nos. 2 to 4 who are already on record represented the first respondent, observed as follows (page 310) :

"At any rate, the relief prayed for under Sections 397 and 398 of the Act is against the company as such and there can be no variation in the number of shares. Even assuming that the unmarried daughter in the first respondent is entitled to any shares, the estate of the deceased first respondent is amply represented by respondents Nos. 2 to 4 who are already on record, and hence I hold that the interests of the first respondent are amply safeguarded. As such, the decision of the Allahabad High Court in *J. K. Investment Trust Ltd. v. Muir Mills Company Ltd.* [1962] 32 Comp Cas 893 has no application because, the alleged acts of oppression and mismanagement are directed not merely against the first respondent but against respondents Nos. 2 to 4 also. Inasmuch as respondents Nos. 2 to 4 were already on record in the company petition, I hold that there can be no objection in continuing the proceedings against them. I, therefore, hold that this objection cannot be sustained."

183. In *Malleswara Finance and Investments Company (P.) Ltd.*'s case [1995] 82 Comp Cas 836 ; [1995] 1 CLJ 1 (Mad) the question that fell for consideration before the Madras High Court was whether the order of the Company Law Board passed on an application filed by respondents Nos. 4 to 7, under Sections 397 and 398 of the Companies Act was violative of the principles of natural justice as the petitioner was not given an opportunity to present its case. Answering the said contention, a Division Bench of the Madras High Court held as follows (page 855) :

"In a proceeding under Sections 397 and 398 of the Companies Act, the only question to be decided is, whether the affairs of the company are being conducted in a manner prejudicial to the interest of the company, or in any manner prejudicial to its member, or whether there is any material change that has taken place in the management and control of the company, and whether such constitution has affected or (is) likely to affect the affairs of the company. When we read these two sections, it is clear that the Company Law Board has taken into consideration how the company has been managed. It is not the

individual's right or the right of the individual/shareholder or creditor that is the subject matter of the litigation. The proceedings under Sections 397 and 398 are like a declaratory suit. It is for that reason, the Companies Act provides that any person who is not a party can get himself impleaded in the proceedings. Section 405 of the Companies Act says :

"If the managing director or any other director, the managing agents, secretaries and treasurers or the manager, of a company, or any other person, who has not been impleaded as a respondent to any application, u/s 397 or 398 applies to be added as a respondent thereto, the Company Law Board shall, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly."

A reading of the said section will make it clear that if sufficient cause is shown, any person who has not been impleaded as a respondent to any application u/s 397 or 398 can get himself impleaded, if he desires."

184. Further under Order 29, Rule 1 of the Civil Procedure Code, a company being a juristic entity it can sue and be sued in its own name. In *United Bank of India v. Naresh Kumar* [1997] 90 Comp Cas 329 ; AIR 1997 SC 3 the Supreme Court held as follows (page 333) :

"It cannot be disputed that a company like the bank can sue and be sued in its own name. Under Order 6, Rule 14 of the Civil Procedure Code, a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company, Order 29, Rule 1 of the Civil Procedure Code, therefore, provides that in a suit by or against a corporation the secretary or any director or other principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6, Rule 14, together with Order 29, Rule 1 of the CPC would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29, Rule 1 as a company is a juristic entity, it can duly authorize any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6, Rule 14."

185. From the above it is seen that the first respondent-company having been incorporated under the provisions of the Companies Act and being the corporate body it can sue and be sued in its name and it can duly authorize any person to sign the plaint or written statement on its behalf and it should be regarded as sufficient compliance with the provisions of Order 6, Rule 14 of the Civil Procedure Code. Secondly, in any application filed under Sections 397 and 398 of the Act, the only question that falls for consideration is whether the affairs of the company are being conducted in a manner prejudicial to the public or the

interests of the company itself or in a manner oppressive to the minority shareholders.

186. Admittedly, in this case, the company, the juristic person having been incorporated under the provisions of the Act, is a juristic person and the same is represented by its secretary. In fact the managing director and the joint managing director who are responsible in conducting the affairs of the company, according to the petitioners, in bad faith were also impleaded as an abundant precaution. Hence the contention of learned counsel for the respondents that the company petition is not maintainable on the ground that all the board directors were not made parties to the proceedings has no legs to stand. Accordingly, this contention was also rejected.

The procedure followed by the Board was not questioned in the appeal :

187. Nextly, Mr. Raghavan contended that the petitioners did not raise any objection for the procedure followed by the Board even in the grounds of appeal and, therefore, this court is not justified in interfering with the order of the Board on the ground of procedural lapses ; at any rate the same cannot be a ground for interference by the appellate court. It is true that the petitioners did not question the procedure followed by the Board specifically. But at the same time, when it has come to the notice of the court that the orders suffer from serious infirmities, and the Board committed a manifest error which vitiated the entire proceedings before the Board and that being a pure question of law, the court is expected to take judicial notice and rectify the same to prevent miscarriage of justice. Even on the merits, I have no hesitation to hold that the findings recorded by the Board are perverse and contrary to the record. Hence, the order suffers from serious infirmities in not following the well established procedure in adjudicating the disputes apart from the fact that the findings recorded by the Board cannot be sustained in law. In fact, the respondents did not raise the objection with regard to maintainability of C. C. on the ground that all the directors were not made party respondents either before the Board or in the appeal filed by them in this court. Even then I permitted counsel to raise the issue and answered the same.

188. I am fortified in my view by a judgment of the honourable Supreme Court in *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others*, , wherein their Lordships of the Supreme Court in para. 3 held as follows (p. 724) :

"3. After the amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such a question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the question so formulated. However, the respondent at the time of the hearing of the appeal has a right to argue that the case in the court did not involve any substantial question of law. The proviso

to the section acknowledges the powers of the High Court to hear the appeal on a substantial point of law, though not formulated by it with the object of ensuring that no injustice is done to the litigant where such a question was not formulated at the time of admission either by mistake or by inadvertence."

189. Hence, this contention is also rejected.

Whether one tenth of the shareholders should be there to continue the proceedings :

190. Next, counsel tried to make a feeble attempt by contending that unless one tenth of the shareholders join the appeal, the same is not maintainable by pointing out that some of the petitioners withdrew from the petition. While counsel admits the fact that on the day when the application was filed, the petitioners in the petition were holding more than 11 per cent. shares, he contends that after withdrawal of the legal representatives of the first petitioner and the other two petitioners, the shares held by the petitioners fell short of 10 per cent. of the shares. But counsel himself conceded that there would not be any impediment for continuing the proceedings even if the shareholding of the petitioners is less than 10 per cent. of the shareholding of the company.

191. Be that as it may, this issue is covered by a judgment of the Supreme Court in *Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others*, . In the above case, while considering the objections of the chairman of the company that, though the petitioner stated that he obtained consent of 80 shareholders for filing an application u/s 162(vi) of the old Act for winding up of the company, only 52 persons consented for filing of the applications and therefore the condition laid down in Section 153C(3)(a)(i) of the old Act is not complied with. Repelling the said contention their Lordships of the Supreme Court held (p. 95) : "that the validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. Thus, where the applicant u/s 153C of the Act has obtained the consent of not less than one tenth of the members of the company and has presented the application, the withdrawal of consent by some of those members subsequent to the presentation of the application cannot affect either the right of the applicant to proceed with the application or the jurisdiction of the court to dispose of it on its own merits."

192. This contention was not pressed by counsel, though he raised the same initially. Accordingly this contention is also rejected.

Issues in controversy :

193. Now coming to the controversy apart from seeking the relief of winding up of the company for its mismanagement, under Chapter VI, the minority shareholders are given the right to complain to the Board 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 provided they hold not less than one tenth of the total number of the shares and if the board is of the opinion that the affairs of the company are being conducted, as aforesaid. u/s 402 without prejudice to the generality of the powers of the Board, the order to be passed u/s 397 or 398 of the Act may grant one or more reliefs mentioned in this section including the purchase of the shares or interests of any members of the company by other members thereof or by the company itself with a view to bringing to an end or prevent the matters complained of or apprehended. The other reliefs that can be granted u/s 402 of the Act are not being referred to, as the ninth petitioner is satisfied with the relief given by the Board, which is being opposed by the respondents.

194. In the light of serious contest put forth by the respondents, it has to be seen whether the directions given by the Board can be sustained in law or not.

195. Now I would proceed to examine whether the findings recorded by the Board on the alleged acts of oppression and mismanagement can be sustained in law. Even if the findings of the Board cannot be sustained whether the acts alleged by the minority shareholders against the majority shareholders can constitute an apprehension in the mind of a prudent person so as to enable the Board to exercise the powers vested in it. The issues in controversy are referred to seriatim.

Merits of the case :

Mismanagement :

1. Closure of parcel offices :

(a) Fabrication of the minutes of the board meeting dated August 7, 1992 :

The case of the petitioners is that during the year 1992, respondents Nos. 2 and 3 closed as many as sixty parcel offices without the knowledge or sanction of the board of directors. The motive behind such closure is to release the lorries connected to these parcel offices and to dispose of them and pocket the sale proceeds by showing nominal price i.e., around the book value in the books of account. When the issue was raised by petitioner No. 9 at the board meeting held on March 3, 1993, the respondents not only fabricated the resolutions of the meeting of the board of directors dated August 7, 1992, to show that the closure of parcel offices was effected as per the resolution under item 12.2 i.e., under any other item with the permission of the chair and also replaced the minutes of the board of directors held on March 3, 1993, as if the board meeting was held on February 27, 1993.

196. The case of the company is that it is having about 300 parcel offices all over the country and that the board at its meeting held on August 7, 1992, under Item 12.2 i.e., under any other subject with the permission of the chairman the board has taken a decision to close down the uneconomic parcel offices as per

the details furnished by the chairman with immediate effect for efficient running of the company and to reduce further losses from the branches in future. The board further resolved to authorise the chairman to effect the closure of uneconomic branches. Unfortunately though the issue was very much raised in the pleadings and the ninth petitioner spoke about the fabrication of the minutes of the meeting dated August 7, 1992, for reasons best known to the Board, it has given a clean chit by stating that "we are not in a position to doubt the genuineness of the resolution inasmuch as in the next board meeting held on September 29, 1992, which the petitioner attended, the minutes of the meeting held on August 7, 1992, were reportedly confirmed" without taking into consideration the explanation offered by the petitioner that generally such a resolution will be adopted without reading out the details of the resolutions adopted in the previous meeting, in his oral evidence. The fallacy of the reasoning is exploded from the replies given by the company to the letters of the petitioners stating that it was a managerial act, during day-to-day business. If the parcel offices were closed under a resolution of the board nothing prevented them from stating so while giving reply to the first petitioner, for the first time the respondents came up with this plea in the counter filed before the board.

197. Firstly from the agenda for the board meeting it is seen that closure of parcel offices was not included in the agenda for discussion. The minutes of this meeting were recorded from page 248 onwards to 262 in the minutes book from June 24, 1986, to August 7, 1992, and pages 263 to 272 were left blank. For the next board meeting a new book was opened. While the first page of the minutes i.e., 248 to 250 were written with one pen, the minutes from page 251 from where the new form of 16 pages started in the book, the minutes were written with a separate pen and the same is visible to the naked eye. Further this form is restitched with the support of a piece of a cloth. While it is the case of the ninth petitioner that this form was introduced by removing the original form, the company says that as the binding has become loose in the ordinary course of business this form was restitched by using the cloth for strength. In the normal course this version of the respondents was to be proved by adducing oral evidence. As the record is speaking for itself, I am proceeding to test the veracity of the statement. From the resolution of the board dated August 7, 1992, it is seen not only a decision was taken to close down the unremunerative parcel offices with immediate effect as per the statement given by the chairman, but also authorized him to take decision with regard to closure of uneconomic branches. But it is not known for what purpose this subject was again included in the agenda for discussion in the notices for the meetings dated December 19, 1992, and March 3, 1993/February 27, 1993, nearly seven months after the board passed the resolution. Next, it is the case of the respondents that at the meeting of the board dated February 27, 1993, eighteen parcel offices including the offices at Mandya and Gobi-chettipalayam in the State of Karnataka were closed. While going through the original minutes book I found that these two parcel offices were closed under item No. 5(e) in the board meeting held on

December 19, 1992. When these offices were closed under an earlier resolution, how these two offices again figured in the meeting dated February 27, 1993, and they were closed again. Nextly, it is seen that in the minutes of the board held on December 29, 1992, and February 27, 1993, the names of the offices that were closed were specified. But in the resolution dated August 7, 1992, the list of offices closed was not mentioned. Further it is seen such an important issue was taken up for discussion under any other subject with the permission of the chair. Nextly the note said to have been submitted by the chairman to the board has not seen the light either before the Board or this court. Likewise, no information was placed before the Board when each of the parcel office was opened, the extent of losses the company suffered, more so, when 20 per cent. of the parcel offices relating to one of the main activities of the company are sought to be closed.

198. As per the version of the ninth petitioner in the annual general body meeting held on November 25, 1993, himself and the late K. Suryanarayana raised the issue and sought for the list of parcel offices that were closed. Further, it is not in dispute that the late K. Suryanarayana as well as the ninth petitioner in their letters dated November 2, 1993, and November 10, 1993, specifically addressed letters to the company as well as the other board of directors to furnish the list of places where the offices were closed with full reasons for closing the parcel offices and from which date they were closed. The reply of the company secretary dated December 3, 1993, sent to K. Suryanarayana is interesting and it will be useful to extract the same.

199. "Dear Sir, we have received your letter dated November 2, 1993, and the contents have been noted. The matters referred to by you are matters to be dealt with by the management during the day-to-day business. Hence, we are unable to accede to your request." If closure of offices relates to day-to-day business of the company, why was the same placed in the board meeting dated August 7, 1992, more so under any other item and in other meetings as discussed above having taken blanket authority to close down the offices. Nextly, when the board passed a resolution way back on August 7, 1992, how the company failed to inform the shareholder that under a resolution of the board, the parcel offices were closed. Yet at the same time no reply was sent to the ninth petitioner to his letter. As he happened to be the director of the company on that day, and they cannot refuse to give information to him, before the Board a photostat copy of the acknowledgment which is said to have been signed by the ninth petitioner on December 27, 1993, is filed as annexure 6-B by stating that a reply was sent to him on December 3, 1993, asking him to come to the office and inspect the same during 2.00 p.m. to 4.30 p.m. on any working day with prior intimation to them. The ninth petitioner in the above letter not only asked for the information, but also requested respondent No. 2 to convene the board meeting or put those issues on the agenda at the ensuing board meeting for discussions and proper considerations thereon and the reply of respondent No. 1 does not throw any light on this aspect. It is his specific case that he has

not received any reply from the respondent-company to his letter (ans. to Q. 131 in cross). The falsity of the case of respondent No. 2 is exposed from the fact that the registered letter sent on December 4, 1993, remained undelivered till December 27, 1993, in the same town. As per postal rules, if a registered letter remained undelivered for seven days, it has to be redirected to the sender. It is not known how this letter remained undelivered in the same town for about 23 days. Further, the respondent-company did not file the original acknowledgment before the Board to prove that this acknowledgment relates to the registered letter emanating from the company on December 4, 1993, and addressed to the ninth petitioner. A photostat copy of one side of the acknowledgment containing the signature of the ninth petitioner was filed but not the reverse side of the acknowledgment, wherein the addressee's name is shown but not the sender's name.

200. From the above discussion, I have no manner of doubt in holding that the minutes of the board meeting dated August 7, 1992, are fabricated with a view to take shelter under the board resolution and to see that the Board may not hold against the respondents by rejecting their contention that closure of parcel offices cannot be termed as managerial function in the day-to-day business of the company as contended by the respondents.

(B) Whether the board meeting was held on March 3, 1993 or February 27, 1993 ?

201. While the case of the petitioners is that the meeting of the board of directors was held on March 3, 1993, and the minutes of the board meeting held on March 3, 1993, were replaced with new minutes and the case of respondents is that the meeting slated for March 3, 1993, was advanced and it was held on February 27, 1993, and no meeting took place on March 3, 1993, as contemplated by the petitioners. The Board held that the meeting was held on February 27, 1993, and the ninth petitioner applied for leave.

202. u/s 286 of the Act notice of every meeting of the board shall be given in writing to every director at his usual address.

203. The company seemed to be not in the practice of sending notices by registered post or maintaining notice register to prove that the notices were served on the board of directors in a manner known to law. The specific case of the ninth petitioner is that he received the notice on February 20, 1993, saying that the board meeting will be held on March 3, 1993, and he attended the meeting and signed in the minutes book. It is his case that he raised the issue of closure of parcel offices and sale of lorries, which lead to misunderstanding between him and respondent No. 2. On the other hand, the case of respondent No. 2 is that on the same day, i.e., February 20, 1993, another meeting notice was sent advancing the board meeting to February 27, 1993, and the ninth petitioner applied leave from attending the meeting. At the same time, the ninth petitioner denied the receipt of the notice advancing the meeting to February 27,

1993, and the leave letter pressed into service by the respondents is a fabricated one. It is his specific case that while he was functioning as Member of Parliament he left blank signed papers with the manager at Hyderabad for railway reservation purpose and on one such paper the leave letter was brought into existence. A xerox copy of the letter seemed to have been produced before the Board and the Board without summoning the original came to the conclusion that the ninth petitioner applied for leave.

204. To know the truth or otherwise of the rival contentions, I directed the respondents to produce the original leave letter. It is not original but only a carbon copy. The respondents did not offer any explanation for not producing the original leave letter.

205. Be that as it may, for better appreciation of the contentions of the parties, the letter in dispute was scanned below.

From

Ch. Srihari Rao,

Kakinada. BM 27-2-93

To

The Board of Directors, Ms. S. R. M. T. Ltd., P. B. No. 42, Subhash Road, Kakinada 533 001.

Dear Sirs,

Due to preoccupation I will not be able to attend the board meeting of the company to be held on 27.2.93 at 10 a.m.

I, therefore, request you to kindly grant me leave of absence for the said board meeting.

Thanking you,

Yours faithfully,

(Sd.).....

Station : Kakinada. Leave of absence granted. Date : 23-2-1993.
(Sd.).....

206. From the above it is seen while the body was typed on one typewriter, "Mr. Sri Hari Rao" and "station" was typed on a different typewriter. Further, it is seen that the name, station and signature are found in original and the body of the letter is copied by carbon. Nextly, it is seen that the size of the leave letter and letterhead after tearing away the printed portion are of the same size. The ninth petitioner in his evidence categorically stated that the leave letter was fabricated. In the absence of any rebuttal, the Board ought to have held that the leave letter is a fabricated one.

207. Having entertained a doubt whether the minutes of the meeting dated March 3, 1993, were replaced with the minutes of the meeting said to have been held on February 27, 1993, wherein the ninth petitioner has not participated in the meeting, I have verified the minutes book maintained by the company from September 29, 1992, to February 23, 1994, and it does not infuse much confidence and the authenticity of the proceedings could have been tested with oral evidence. The notices for both the meetings, i.e., March 3, 1993, and February 27, 1993, emanated from respondent No. 1 office on the same day and there seems to be not much difference in the agenda. Further the notice for February 27, 1993, meeting did not say that in supersession of earlier notice convening the board meeting on March 3, 1993, that notice was issued. At the same time the notice dated December 22, 1993, for the board meeting held on December 27, 1993, to consider the requisition resolution for removal of the ninth petitioner as director, a note is seen as hereunder :

"Note : The meeting to consider these items was originally fixed on November 18, 1993, but due to the order of the Principal Sub-court, Kakinada in I. A. Nos. 5351 of 1993 and 5352 on November 17, 1993, the same could not be considered and have been deferred till the disposal of the said petitions. These petitions are disposed of on December 21, 1993, and the order dated November 17, 1993, has been vacated. Hence these items are being considered now."

208. But such a note is not there in the notice for the advanced meeting. The only suggestion made by counsel for the respondents for convening the meeting on February 27, 1993, in cross-examination of the ninth petitioner in questions Nos. 28 and 29 is that the company has to furnish board resolution to the banks for deferred payment guarantee before the end of February, 1993. But the same was denied by the ninth petitioner and stated that all the documents and agenda were forged. The next suggestion made to the ninth petitioner is that the minutes of this meeting were confirmed in the meeting held on June 9, 1993. The answer given by the ninth petitioner to question No. 31 is that the practice is that the agenda used to be discussed and the minutes were never discussed. The minutes used to be noted on a small paper and subsequently they used to be carried out in the minutes book and he acted in good faith. In the cross-examination counsel suggested to the ninth petitioner that since no meeting took place on March 3, no sitting fee was paid to him. The ninth petitioner said that now and then he used to be paid the sitting fees and he did not remember for which meeting he received the sitting fee. While going through the minutes book, I noticed that the board at its meeting held on July 29, 1993, in resolution No. 6 resolved to amend Article 13 of the articles of association enabling the company to pay sitting fee after the Amending Act 1988 came into force. The said resolution is extracted hereunder :

"Resolved that the existing Article 13 of the articles of association of the company be and is hereby substituted by the following article :

13. The directors of the company may be paid a sitting fee not exceeding Rs. 500

per sitting with a daily allowance and travelling allowance at such rates as the board may decide in that behalf. If any director shall be appointed to advise the board as an expert or be called upon to perform extra service or make special exertions for any of the purposes of the company, the board may reimburse all his expenses and may, subject to the provisions of Section 314 of the Act, pay to such director such special remuneration as they may think fit, which remuneration may be in the form of either salary, commission or profits and may be either in addition to or in substitution of the remuneration specified in the articles."

209. In the light of the above resolution the question of payment of sitting fee to the directors prior to that date does not arise.

210. Further, it is the case of the ninth petitioner throughout that he attended the meeting on March 3, 1993, along with some other directors. In the answer to Q. No. 38 in the cross-examination he stated that five directors including himself, respondents Nos. 2 and 3, Ananda Rao and another director whose name he could not remember attended the meeting. Neither the managing director nor any of the directors came to the witness box to disprove the statement of the ninth petitioner. In the absence of any proof to show that the notice for the board meeting dated February 27, 1993, was served on the ninth petitioner and the notice is not in cancellation of the earlier notice convening the board meeting on March 3, 1993, and the fabricated letter of leave of absence alleged to have been given by the ninth petitioner throws any amount of suspicion on the version spoken by the respondents that the board meeting has taken place on February 27, 1993. Likewise in the absence of any evidence that the minutes of the board meeting dated February 27, 1993, were specifically read over and then only the minutes were confirmed, the explanation offered by the ninth petitioner in his evidence stands un rebutted and it has to be accepted.

211. In (1995) 82 CompCas 563 the Principal Bench of CLB held "that the action of the company in passing a resolution that the petitioner consented for transfer of her holding of 50 per cent. shares by fabricating minutes showing her presence, though she did not attend the meeting and other resolutions passed in such a meeting are null and void and non-operative."

212. In the case on hand also I hold that the alleged leave letter and meeting notice were brought into existence to cover up the illegal action of respondent No. 2 in closing the parcel offices unilaterally without the approval of the board and they are fabricated. Likewise, I have no hesitation in holding that the resolutions of the board meeting dated March 3, 1993, were replaced with new minutes as if the board meeting was held on February 27, 1993. As the resolutions said to have been adopted at the meeting of the board held on February 27, 1993, are proved to be fabricated they have to be declared as null and void.

213. Sale of lorries :

It is an admitted fact that the company sold 22 and 15 vehicles during the financial years 1992-93 and 1993-94 respectively. The case of the ninth petitioner is that the company from its inception never sold so many lorries in a span of one or two years and respondents Nos. 2 and 3 pitched upon the plan to swindle the monies of the company. Further no auction of lorries even took place to his knowledge and the auction slips were brought into existence by the respondents to justify their illegal action in selling the lorries for a throw away price to meet the case of the petitioners. It is also his case that these vehicles were sold even before the lifetime of the vehicles as fixed in the Motor Vehicles Act is over and these vehicles were sold for a song i.e., from Rs. 18,000 to Rs. 30,000 practically at the book value of the vehicles and as per the auction slips filed before the Board, mostly ten people participated in the auctions held on different dates. In support of his case he filed affidavits of some of the purchasers of the vehicles and also hire-purchase agreements entered into by them with Lakshmi Devi Finance Company to show that the vehicles fetched much higher amounts than the price shown in the auction slips. It is also his case that if the auction slips are carefully analysed, the same party signed differently at different points of time apart from the fact that only one person had written all the auction slips. The auction slips do not contain any serial number, though the word "Sri. No." is shown therein. All these facts will prove that no auctions of lorries have taken place. The respondents admit that the lorries sold were of ten to eleven years old and the company was in the habit of selling old and unserviceable vehicles in order to maintain a good fleet. The company is to make additions and deletions to its fleet and the same is in the normal course of business. Hence it is not correct to contend that large scale misappropriation in sale of lorries has taken place. The Board accepted the plea of the respondents by placing reliance on the retracted affidavits of the purchasers of the vehicles filed by the respondents and rejected the contention of the petitioners. At the same time the Board in its order observed as follows (p. 530 of 98 Comp Cas) :

"The average price of lorries sold in the later years was found to be higher by 15 to 20 per cent. Perhaps the higher price was taken on account of the direction that we gave that there should be more transparency in sale of lorries. Any way we do not find the gap to be such a huge amount of Rs. 1 lakh as alleged by the petitioner ... Since we ourselves felt that the present system was not a fool proof system we advised the company that a more transparent system should be evolved in disposal of lorries by fixing a reserve price and getting approval of the board and giving wide publicity before conducting the auction. We feel that as far as this allegation is concerned it is sufficient that we reiterate the above advice for future adherence and accordingly to do so."

214. The order neither referred to the directions given nor verified whether the procedure followed by the company in disposing of the vehicles is in accordance with the directions given by the Board. Even before this court, the respondents did not choose to place the directions as well as the procedure followed by them to show that the disposal of lorries is in accordance with the directions given by

the Board. The Board expressed satisfaction by observing that the vehicles fetched 15 to 20 per cent. higher price in the subsequent years.

215. Nextly, the Board did not advert to any of the contentions of the petitioners, more so the contention that the company never sold so many vehicles in a year, that the company never auctioned the vehicles and the auction slips were brought into existence for the purpose of this case. The Board did not even look into the auction slips.

216. I have gone through the xerox copies of the auction slips available on record and the facts emerging on analysis, are given in a tabular form for better understanding of the case.

A Grade Officers

B Grade Asst. Managers (Junior Mgmt.)

C Grade Dy. Managers

D Grade Managers

E Grade Senior Manager (Middle Mgmt.)

F Grade Chief Managers

G Grade Dy. General Managers

H Grade General Manager (Senior Mgmt.)

I Grade Executive Directors

J Grade Directors.

SHAIK AHAMMED

Sl. No.	Vehicle Number	Model	Rank	How he signed	Value in Rs.	Comments
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(1)	(2)	(3)	(4)	(5)	(6)	(7)
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1.	ATP 1212	1981	7th Rank	26,000		
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2.	MEK 8343	1983	6th Rank	English (S.K.Ahamed)	29,000	Second Highest Bidder Rs. 28,500
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3.	ABP 1202	1983	4th Rank	30,000		
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4.	AEP 6746	1976	3rd Rank	Telugu	25,000	First Highest Bidder
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ANNEXURE III

M. D. gouse

Sl. No.	Vehicle Number	Model	Rank	How he signed	Value in Rs.	Comments
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(1)	(2)	(3)	(4)	(5)	(6)	(7)
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1. ATP 1455 1981 3rd Rank 25,000
2. ATP 1554 1981 1st Rank 25,000
3. ATP 1445 1981 7th Rank 27,000
4. ATP 6979 1982 5th Rank 29,000
5. AP 5T 1988 6th Rank 60,000
6. ATP 1221 1981 4th Rank 22,000
7. ATP 7566 1982 6th Rank 27,500
8. ADI 9969 1981 3rd Rank 22,000
9. AP 5T 2928 1983 1st Rank English (Md. Gouse) 28,000 First Highest Bidder
10. ABP 6286 1983 8th Rank English 25,000 Second Highest Bidder Rs. 24,900
11. ABP 1220 1983 4th Rank 26,000
12. ATB 5234 1982 5th Rank 29,000
13. AP5T 2612" 1983 4th Rank 22,000
14. Ap5T2620 1982 6th Rank 29,000
15. APST 2230 1982 5th Rank 30,000

Last year Year before last year 2 years before last year Total

Outstanding 7 7 6 20

Very good 6 6 6 18

Satisfactory 5 5 4 14

ANNEXURE V

MD. AYUB KHAN

Sl. No. Vehicle Number Model Rank How he signed Value in Rs. Comments

(1) (2) (3) (4) (5) (6) (7)

1. ATP 969 1981 3rd Rank 25,000
2. MEK8343 1983 3rd Rank 29,000
3. ABP 1202 1983 7th Rank 30,000
4. ABP 1194 1983 3rd Rank 25,000
5. ADI 9969 1981 6th Rank Telugu 22,000 First Highest Bidder
6. ABP 6286 1983 5th Rank 25,000

7. AP5T2802 1982 4th Rank 24,000

ANNEXURE VI

D. SEETHARAMAIAH

Sl. No. Vehicle Number Model Rank How he signed Value in Rs. Comments

(1) (2) (3) (4) (5) (6) (7)

1. ATP 1554 1981 2nd Rank 25,000

2. ATP1445 1981 8th Rank 27,000

3. A8P 5424 1983 3rd Rank 30,000

4. ATP1122 1981 1st Rank 26,000

5. ADP 6693 1984 5th Rank 25,000

6. ATP 6979 1982 4th Rank 29,000

7. AP5T 2226 1983 1st Rank Telugu 25,500 Second Highest Bidder Rs. 25,450

8. AEP6746 1976 9th Rank Telugu 25,000 Second Highest Bidder Rs. 24,899

9. ABP 6286 1983 3rd Rank 25,000

10. ABP 1256 1983 5th Rank 30,000

17. AP5T 2612 1983 7th Rank Telugu 22,000 Second Highest Bidder Rs. 21,900

12. Ap5T 2220 1982 3rd Rank 29,000

13. AIQ 5524 1988 1st Rank Telugu 18,000 Second Highest Bidder Rs. 17,900

14. AP5T 2801 1982 7th Rank 29,500

ANNEXURE VII

K. ANANDA PRASAD

Sl. No. Vehicle Number Model Rank How he signed value in Rs. Comments

(1) (2) (3) (4) (5) (6) (7)

1. ATP 1455 1981 7th Rank English (K. Anand Prasad) 25,000 Second Highest Bidder Rs. 24,950

2. ATP 1554 1981 4th Rank 25,000

3. ATP 1445 1981 9th Rank English 27,000 Second Highest Bidder Rs. 26,900

4. ATP 3245 1981 7th Rank English 39,000 Second Highest Bidder Rs. 38,950

5. ABP 1202 1983 3rd Rank 30,000

6. ABP 6286 1983 7th Rank 25,000
7. ABP 1220 1983 6th Rank 26,000
8. AP5T 2220 1982 5th Rank 29,000
9. AP5T 2360 1981 1st Rank English 25,000 Second Highest Bidder Rs. 24,900
10. AP 5T 2620 1982 7th Rank 29,000
11. AP5T 2230 1982 6th Rank English 30,000 Second Highest Bidder Rs.29,500

ANNEXURE VIII

B.RAMA RAO

Sl No Vehicle Model Model Rank How he signed Value in Rs Comments

(1) (2) (3) (4) (5) (6) (7)

- 1 ATP 1445 1981 5th Rank 27,000
- 2 ABP 5424 1983 5th Rank 30,000
- 3 ATP 6979 1982 1st Rank 29,000
- 4 AP5T 2226 1983 2nd Rank 25,000
- 5 ATP 7566 1982 1st Rank 27,500
- 6 ADI 9969 1981 5th Rank 22,000
- 7 AP5T 2928 1983 3rd Rank 28,000
- 8 ATB 5234 1982 2nd Rank 29,000
- 9 AP5T 2612 1983 1st Rank 22,000
- 10 AP5T 2802 1982 6th Rank 24,000
- 11 AP5H 2552 2nd Rank 2,70,000

ANNEXURE IX

S. K. ANWAR

Sl.No. Vehicle No. Model Rank How he signed Value in Rs. Comments

(1) (2) (3) (4) (5) (6) (7)

1. ATP 3245 1981 6th Rank 39,000
2. AP5T 2683 1983 2nd Rank 30,000
3. ADP 6693 1984 6th Rank 25,000

4. AP5T 3354 1988 3rd Rank 60,000
5. AP5T 2226 1983 4th Rank 25,500
6. AEP 6746 1976 5th Rank 25,000
7. ATP 7566 1982 2nd Rank 27,500
8. AP 5T 2928 1983 2nd Rank 28,000
9. ATE 5234 1982 4th Rank 29,000
10. AP5T 26I2 1983 6th Rank 22,000
11. AP5T 2802 1982 5th Rank 24,000
12. AP5T 2620 1982 4th Rank 29,000
13. AIQ 5524 1988 5th Rank 18,000
14. AP5T 2230 1982 4th Rank 30,000
15. AP5T 2801 1982 4th Rank 29,500
16. AP 5H 2552 3rd Rank 2,70,000

ANNEXURE X

K. SATYANARAYANA RAJU

Sl. No. Vehicle Number Model Rank How he signed Value in Rs. Comments

(1) (2) (3) (4) (5) (6) (7)

1. ATP 1554 1981 5th Rank English (K. Satya-narayana Raju) 25,000 Second Highest Bidder Rs. 24,950
2. ABP 2318 1983 2nd Rank 30,000
3. ATP 1122 1981 6th Rank 26,000
4. ATP 3245 1981 1st Rank 39,000
5. MEK 8343 1983 2nd Rank 29,000
6. ABP 1202 1983 8th Rank 30,000
7. AP5T 3354 1988 4th Rank 60,000
8. AEP 6746 1976 4th Rank 25,000
9. AP5T 2360 1981 7th Rank 25,000
10. ADI 9969 1981 2nd Rank 22,000
11. AP5T 2928 1983 6th Rank 28,000
12. ABP 6286 1983 2nd Rank 25,000

13. ABP 1256 1983 3rd Rank 30,000
14. AP 5T 2802 1982 2nd Rank 24,000
15. AP5T2620 1982 2nd Rank 29,000
16. AIQ 5524 1988 3rd Rank 18,000
17. AP5T2230 1982 1st Rank 30,000
18. AP5T2801 1982 5th Rank 29,500
19. AP5H2552 4th Rank 2,70,000
20. ATP 969 1981 4th Rank English 25,000 Second Highest Bidder Rs.24,975
21. ATP 1212 1981 6th Rank English 26,000 First Highest Bidder

217. From the above tables it is seen that (1) several individuals not only participated in the auction alleged to have been held on different dates as per the information furnished by the respondents but also signed differently. (2) From the auction slips it is seen that only the first two highest bids were given but neither the upset price nor the offers given by the others were shown in the auction slips--apart from not showing the progress in the bids in the process of auction and the difference between the first and the second bidder is marginal and they do not exceed Rs. 100 generally. (3) From the information furnished by the first respondent-company the date of auction of three lorries bearing Nos. ATP 1455, ATP 1212 and ABP 1220 are not tallying with the dates on which auction slips were prepared. (4) In the case of certain lorries originally they were shown as condemned lorries but later on corrected as old lorries. (5) In the auction slips for lorry No. ATP 6979 the highest bid amount was corrected. (6) No serial numbers are found on the auction slips though a column is there.

218. It is not known how all these people could know of the auction dates though the company never notified the auctions in any manner. Secondly from the dates of auction, it is seen that the company was auctioning one lorry at a time in selling about forty lorries in a span of two years as per the version of the respondents, a procedure unknown to corporate sales.

219. From the above it is seen that there is some truth in the contention of the petitioners that the auction slips were brought into existence to meet the case of the petitioners. After differences arose, both the late Suryanarayana and the ninth petitioner in their letters dated November 2, 1993, and November 10, 1993, in respect of sale of lorries sought full particulars of the vehicles sold like make of the vehicle, model and year of purchase, to whom they were sold and at what price they were sold, the nature of sale whether it is by public auction or private sale. While a reply was sent to Suryanarayana stating that the matters referred to by him are the matters to be dealt with, by the management during day-to-day business, the company produced xerox copy of an acknowledgment dated December 27, 1993, for the alleged registered letter sent on December 4,

1993. This aspect d already adverted to while considering the closure of parcel offices. The specific case of the petitioner is that the issue of sale of lorries came up for discussion in the meeting held on March 3, 1993, under any other item and when he asked for the information, the same was not furnished, and he requested that his objection should be noted in the minutes of the meeting. On that the chairman informed that the details would be sent later. It is also his case that in the board's meeting held on March 23, 1993, also, this issue was raised. It is his further case that this issue was raised in the annual general body meeting held on November 25, 1993. The case of the respondents is that the sale of lorries is a managerial function while carrying on day-to-day affairs of the company. The further case of the company is that on September 23, 1993, the ninth petitioner participated in the board meeting and approved the profit and loss account as on March 31, 1993, to be placed before the annual general body meeting. The petitioner categorically stated that no issues were discussed in the board meeting held on September 23, 1993, (answer to question No. 29 in chief). With regard to the approval of profit and loss account by the general body, the case of the petitioners is that when the chairman refused to give information he walked out of the meeting (answer to questions 25 to 27 in chief). Be that as it may it is not known why the company refused to furnish the required information sought for by petitioner No. 9 as well as the late Suryanarayana in their letters. When a suggestion (question No. 136 in cross-examination) was made to him that he is having every right to inspect the books and records of the company, the answer given was that since the information asked for was not given, it is not possible to go through the records of the company and find out the misappropriation. But at the same time the court should not miss the fact that the ill feelings have reached to a point of no return by that time and petitioner No. 9 was also manhandled by the employees of the company (answer to question No. 86 in chief). The respondents elicited from the witness that after July 29, 1993, he was given further powers to operate the bank accounts and the answer given by him is that such a thing was done by the second respondent to see that he should not oppose him in any manner. From the record it is seen that some of the shareholders gave notice to convene annual general body meeting to remove the ninth petitioner as director of the company. In fact he was not only removed as director at the annual general body meeting dated January 21, 1994, but also from all the positions held by him in subsidiary companies. It is also elicited that he signed one transfer form relating to one of the vehicles that were sold.

220. Coming to the affidavits, initially the petitioners filed the affidavit of Adigarla Raghava, Desetti Narayana Rao and J. V. Raghavulu, to prove that they purchased the vehicles at much higher price and also the hire-purchase agreements entered into by them with the third parties. But later they gave affidavits stating that they purchased the vehicles for the value shown in the auction slips and they have raised these loans for effecting massive repairs to the vehicles. Firstly, the Board having rejected the prayer of the petitioners to lead

evidence by affidavits, it is not known how it can rely on these retracted affidavits filed by the respondents. Secondly the Board committed grave illegality in giving credence to the affidavits filed by the respondents when there are two affidavits of one and the same individual contradicting each other without examining him. Thirdly, the affidavits are not verified which is a must as held by the Supreme Court in A.K.K. Nambiar Vs. Union of India (UOI) and Another, . Fourthly, as the amount spent for repairs on the vehicles is too high they neither stated what type of repairs they got done to the vehicles in their affidavits nor at least filed semblance of evidence in support of their claim. Fifthly, they have neither stated in their affidavits in which work shop they got their vehicles repaired nor filed letters given by the workshops to that effect where they got the vehicles repaired. The specific case of the petitioners is that by threatening the purchasers and by involving them in criminal cases the company obtained these affidavits and they filed documents to that effect. Without going into these aspects when a person gives two affidavits contradicting each other, in the normal course the respondents having filed the later affidavits would have produced them before the Board to test which of their statements are true and would have provided an opportunity to the petitioner to cross-examine them on the retracted affidavits. If the Board wanted to rely on these affidavits the Board should have directed the respondents to produce these individuals for examination. That was also not done.

221. Though no material was placed before the Board that the parties have taken loans for attending to major repairs, the Board simply jumped at the retracted affidavit and held that they have borrowed the amounts for attending to major repairs of the vehicles more so in the absence of any evidence that these vehicles have become so unserviceable.

222. Nextly, it is seen that though these parties went back on their earlier statement in the affidavits filed by the respondent-company, the fact remains that they have borrowed the amounts from the financial company, i.e., Laxmi Devi Finance Corporation. In the hire-purchase agreement they entered with that corporation they never stated that they are borrowing these monies for effecting repairs. The ninth petitioner in his evidence categorically stated that he obtained hire-purchase documents from Laxmi Devi Finance Corporation apart from the affidavits given by the purchasers and the Board in its order did not refer to the hire-purchase agreements at all. Further, it is to be seen that generally companies will be certifying about the roadworthiness of the vehicles and then a paper advertisement will be given to secure a higher price. Both the things were not done in this case. Nextly, it is to be seen that the company is having automobile workshop and involved in manufacturing spare parts for over a number of years apart from being a dealer in spares for Tata vehicles. In this background have we to presume that the vehicles became so unroadworthy even before their life span as fixed under the M. V. Act expired though no iota of evidence on the condition of the vehicles is produced by the respondent-company ? Further if the Board takes judicial note of market trends, even second-

hand two-wheelers are fetching a much higher price than the lorries sold by the company. I am sure that even if the lorries were sold as scrap, they would have fetched a much higher price. Can it be said that the company maintained the vehicles in such a worse condition and they are not able to fetch reasonable price when they were sold in an auction ? If we keep the market trend in mind though the book value of the vehicles comes down year after year on account of depreciation, in reality their value in the market will be much higher. In fact, the Board also felt that the procedure followed by the company is not transparent. Further the case of the petitioners is that all the auction slips were written by one P. Krishna Murthy, the sales manager in Tata show room, and those slips were not even numbered though a column is provided to that effect. This Krishna Murthy is none other than the father-in-law of the managing director of Hastina Auto Dealers Pvt. Ltd., Delhi, which was appointed as sole selling agents for North India for marketing the spare parts of the company. But neither Narayana Murthy who seemed to have conducted the auction nor Krishna Murthy who prepared the auction slips were examined to prove that auctions in fact did take place. Nextly, if there is any truth in the contention of the respondents that to maintain a good fleet the vehicles were sold, why have they not added even a single lorry during those years though the company was paying hire charges for private lorries to a tune of rupees three crores.

223. From this the inevitable conclusion to be drawn is that the sale proceeds of the vehicles shown in the books of account by the company are in and around the book value of those vehicles, but not the real price fetched by these vehicles and the inevitable presumption to be drawn is, the excess amount realized by the company over and above the amounts shown in the books of account were embezzled by respondents Nos. 2 and 3.

224. Payment of hire charges to private lorries :

The case of the petitioner is that, while he was the managing partner of the Padmalaya Finance Corporation, it used to give its lorries on hire to SRMT and the average hire charges used to be Rs. 6,000 to Rs. 7,000 per month. But during 1993-94 and 1994-95 an amount of Rs. 2,90,83,525 and Rs. 3,19,37,496 were paid to private lorry owners towards hire charges as seen from Schedule "S" to the 50th annual report for the year 1994-95. The case of the petitioners is that all the payments to the lorry owners were paid in cash, but not by way of cheques. In that process, respondents Nos. 2 and 3 obtained receipts from the owners for much higher amounts and the same were misappropriated and in the year 1994-95 there was a shortfall of Rs. 1.55 crores in the cash flow. The contention of the respondents is that it is a common trade practice to engage outside vehicles as and when the situation demands. The Board adverted to these contentions of both the parties on this issue under "other acts of mismanagement". But without giving a finding on the issue expressed its satisfaction over the payment of increased dividends and recorded the following finding : "An analysis of the allegations would show, as rightly pointed out by Sri

Raghavan, that other than the allegation relating to issue of rights shares, no other acts of oppression qua shareholders has been agitated in this petition." This finding runs counter to the record and the oral evidence of the ninth petitioner who spoke on this issue. More so, when the respondent contended that it is a common trade practice in transport business to engage outside vehicles as and when required in addition to own vehicles without producing the original records and also without reference to the letter of the company secretary dated March 5, 1999, that the contracts register to be maintained statutorily u/s 301 of the Act for the years 1989 to 1992-93 are not traceable. Here we should keep in mind that the company is engaged in parcel lorry service for transportation of goods in and closed lorries. Closed lorries will not be owned by private persons, unless they enter into a contract on permanent or semi-permanent basis with parcel lorry service companies. The company did not place any material with regard to engagement of a number of closed lorries and open lorries. We should also keep in mind that the vehicles sold are less than ten years, i.e., before the expiry of the life of the vehicles as fixed under the M. V. Act and no evidence whatsoever was placed before the Board to show that they have become so unroadworthy and they were damaged to such an extent, that they cannot be made roadworthy by a company having dealership for spare parts of Tata vehicles apart from having an automobile workshop and involved in the manufacturing of automobile spare parts. From the retracted affidavits of the purchasers of the vehicles, filed by the respondents they stated that they have taken loans for repairs of the vehicles. According to them, they spent about a lakh of rupees for repairs on each of the vehicles. If the respondent-company repaired the vehicles on their own, they would have saved a lot of money not only in effecting the repairs to the vehicles but also in payment of hire charges to others. Further, the case of the respondents that the contracts register, containing the particulars of the vehicles hired, to be maintained statutorily is not traceable. To my mind the self-same vehicles sold might have been hired and the contract register was purposely withheld by the company. Instead of drawing an adverse inference against the respondents, the Board observed that this issue was not raised. Further the Board did not consider the aspect, whether the respondent-company was subjected to audit and payment of Income Tax, can pay hire charges in crores of rupees in cash though the evidence of the ninth petitioner on this aspect stood unrebutted (see answers to questions Nos. 55, 62, 82, 83 in chief and questions Nos. 160 to 165 in cross).

225. The issue can be looked at from another angle also. One of the main activities of the company being a parcel lorry service and in the absence of denial, of the evidence of the ninth petitioner that previously one or two vehicles used to be sold, the company did not offer any explanation for not purchasing new vehicles having sold a considerable number of alleged old vehicles in those two years, when the case of the respondents is that addition and deletion of the vehicles is intended to maintain good fleet. The reason is obvious. Engaging private vehicles and paying hire charges in cash, serves the interests of the

second respondent. Hence the finding recorded by the Board that no other issue except rights issues was raised by the petitioners having extracted the contentions of both the parties is nothing but arbitrary exercise of powers.

226. In the light of the foregoing discussion, I find sufficient justification in the complaint of the petitioners that the respondents were obtaining receipts for higher amounts from the owners of the vehicles and the income derived therefrom is being misappropriated by respondents Nos. 2 and 3.

227. Diversion of funds :

The specific case of the petitioners is that the second respondent is in the habit of diverting the funds by way payment of exorbitant commissions with kickback arrangements and in a raid conducted in the year 1988 by the Income Tax Department it was noticed that certain firms in the benami names of these respondents have been paid substantial commission and as such all this expenditure was disallowed. Subsequently those firms were dissolved and the company appointed Hastina Auto Dealers Pvt. Ltd., New Delhi, for the northern region in the year 1989 and V. K. Automotive Pvt. Ltd., Madras, for the southern region as sole selling agents for the sale of about 400 automobile products manufactured by the company by a make believe process of selection by a private consultancy agencies and huge commissions are being paid to these companies whose share capital is in the thousands. He has also questioned the genuineness of the reports filed by the consultant companies.

228. In answer to these allegations, learned counsel for the respondents contends that the Income Tax Tribunal and the High Court upheld the payment of the commission to those firms. The fact remains that in the written arguments the company admitted dissolution of those three partnership firms against whom the Income Tax authorities made adverse comments and that necessitated the company to appoint new agents. The respondents contend that the above two agents were appointed validly as per the recommendations of the consultants and the ninth petitioner was on the board of directors at the time of appointment and he never raised any objection. Finally the company contended that it can appoint only those in whom it has confidence. Except making vague allegations, the petitioners have not furnished any evidence to show that respondents Nos. 2 and 3 have received kickbacks from the commission paid to those companies. The Board held against the petitioners on the ground that "he was a director of the company for nearly three years after appointment of these firms as their sole selling agents for North and South India and the fact that he has not raised this issue in any of the board meetings during this period, giving us an impression that he has no grievance in this regard till the same was raised in this petition".

229. To my mind, the Board cannot reject the plea of the petitioners solely on the ground that the ninth petitioner was on the board when the agents were appointed without examining whether there is any truth or not in the allegations. Even assuming that the ninth petitioner is a party to the decision of the board, if

the decision is ultimately found to be illegal and the alleged silence on the part of the ninth petitioner is of no avail and as held by the Supreme Court in B.R. Kapoor v. State of Tamil Nadu, AIR 2001 SCW 3720. Further he might not have visualized at that point of time that huge amounts will be paid as commission to the companies whose share capital is only in a few lakhs of rupees. The real issue before the Board is whether the two agencies are benami agencies of respondents Nos. 2 and 3 and whether there is transparency required in selecting the agencies and whether such an action would be prejudicial to public interest. From that angle I would like to examine the issue in controversy.

230. Agency for South India :

V. K. Automotive Pvt. Ltd., was appointed as the sole selling agent of the company for southern region on March 28, 1989. The case of the respondents is that an advertisement was given in The Hindu on December 21, 1998, inviting applications for dealership and Ram Associates was appointed as a consultant to select the agent.

231. It is not in dispute that the managing director of V. K. Automotive Pvt. Ltd., Madras, Vijaya Kumar was earlier an employee of the company. From the record it is seen that while the authorised share capital of V. K. Automotive is Rs. 1,30,200 it was paid a commission of Rs. 38,23,000 for the financial year 1992-93. I have gone through the report of Ram Associates filed in the court. In their report they did not say how many applications they have received and with how many people they held discussions. The report of the consultant dealing with Vijay Kumar was only filed in the court. The reasons given for selecting him were that : (1) he is having inherent strengths, (2) he is having exposure to automobile spares for over a decade ; (3) he is going to form a private limited company with an authorised capital of Rs. 5,00,000 to give the business adequate capital base ; (4) the serious and methodical way he seems to be going about establishing a marketing organization lends fur ther credibility. It is useful to extract preliminary evaluation of this firm. Client : S R M T Limited Assignment/Dealership : Evaluation of applications for stockists Name and address of applicant : Mr. C. Vijaykumar, C-39 LIG Flats, 7th Avenue, Ashok Nagar, Madras 600 083.

Present business and other relevant data.

232. Appears to be serious about the business. Has stated that he is augmenting his resources and streamlining the organisation. May be able to devolve full time for a major product line like SRMT and market its products. To meet for further discussion

A B C D

1. Location

2. Present business

3. Intensity of interest

4. Overall (including presentation) Preliminary decision

Shortlist for further discussions.

Certified true copy.

233. The columns relating to corporation, present business, intensity of interest, overall presentation are shown as "nil". As per the balance-sheet of that company that its capital is Rs. 1,30,000 but he was able to earn Rs. 38,23,000 as commission. It is not known how the consultant felt that the amount which he is going to invest, i.e., Rs. 5,00,000 would be sufficient to market about 400 spare parts of the company in the whole of South India. Be that as it may 3 years after its establishment, the share capital of the company is only Rs. 1,30,200. It is not known whether he established any shops of his own or appointed dealers all over the South for marketing the spare parts. To my mind the capital invested by him is not sufficient even to establish one wholesale shop at Madras leave about other places. In the light of the above factual position, the question that falls for consideration of the court would be, whether the company with the meagre money at its disposal can earn such a huge commission to a tune of Rs. 38,23,000, i.e., practically 36 times the capital invested by it. He did not even mobilize Rs. 5 lakhs as undertaken by him before the consultant. In response to the letter of the fourth petitioner dated September 19, 1996, the second respondent in his letter dated September 24, 1996, informed him that the sales commission includes target commission to the dealers who directly deal with the company. Target commission varies between 2 and 10 per cent. depending upon the turnover achieved by each dealer. During the year of account the realization out of the business done through various dealers has gone up and similarly the dealers who directly deal with the company achieved the targets in the higher rate of commission group. Hence the target commission paid to them was more than that of the last year. The company did not place any material with regard to sale of spare parts to this company and the details of the commission paid to it. The Board completely missed these aspects. Further it is not known when he resigned his job in the company. The fact remains that he registered the company after he was selected and the company was incorporated on the same day under the provisions of the Act and entered into an agreement with the respondent-company on the same day, i.e., March 28, 1989.

234. Agency for North India :

Likewise the company appointed Hastina Automobile Dealer for North India. The managing director of Hastina Automobile Dealers, New Delhi, Mr. P. Venkata Siva Anjaneya Prasad, is none other than the son-in-law of P. Krishna Murthy, sales manager in the company and who prepared the auction slips for the sale of lorries. A notification seemed to have been issued in The Hindustan Times dated July 16, 1990, and as per the report of Techma Engineers dated October 16, 1990, they have received thirty-one applications and three applicants could meet

the evaluation criteria and rankwise details are given. While Hastina Automobile Pvt. Ltd., stands at Serial No. 1 the other experienced companies like Manik Motor Works established in 1932 at Calcutta having branch at Kasmiri Gate, New Delhi and C. S. Arban Singh Sabar-wal and sons with its head office at Bombay and having a branch officer at Kasmiri Gate, New Delhi, partnership concerns having vast experience in the field with abundant money flow and with show room facility at Delhi were shown at serials Nos. 2 and 3 respectively. The list of the other applicants was not filed before the court. The consultant recommended the name of this company with a paid up share capital of Rs. 4,55,000 though newly incorporated on the ground that the promoters are well experienced in auto parts technically as well as marketingwise ignoring the well experienced firms and this company earned a commission of Rs. 45,56,000 in the financial year 1992-93 as seen from its balance-sheet. While the petitioners filed some letters from the dealers, who according to the respondents, have responded to the notifications inviting applications both for South India and North India stating that they never applied for the agency, the respondents got letters from those dealers saying that they have not given such letters to the petitioners. I need not go into that controversy.

235. Now it is evident that this company appointed as the sole selling agent for North India with a paid-up capital of Rs. 4,55,000 received a commission of Rs. 45,56,000 i.e., ten times its share capital while the V. K. Automative (Pvt) Ltd., sole selling agent for South India earned commission 36 times its share capital investment, i.e., Rs. 38,23,000. In all the commission paid to these two companies is Rs. 85,00,000 during 1992-93. To my mind unless the turnover of these companies is in crores of rupees, such a huge commission cannot be earned by these companies. Nextly it is seen that appointment of consultants and selection of candidates is intended to select a person having knowledge and experience in dealing with automobile spare parts with sufficient financial resources to meet the magnitude of the agency for substantial areas of the country and should have a wide network for supply of spare parts throughout the area for which they are appointed as agents and their marketing skills. While the managing director of V. K. Automotive Pvt. Ltd., was at least an employee of the respondent-company for some time, the managing director of Hastina Automobiles Pvt. Ltd., is only the son-in-law of one Krishna Murthy, sales manager in the first respondent-company, without any knowledge in marketing automobile spare parts. Although the report of the consultant with regard to Hastina Automobiles Pvt. Ltd., says that they are experienced entrepreneurs nowhere it is stated what type of experience the entrepreneurs had. On the other hand the company was initially incorporated with two directors, namely P. A. A. Prasad and another Smt. Y. Rajeswari, w/o Y. V. Subba Rao on September 25, 1990.

236. Admittedly though no evidence was produced to show that these directors had any experience in the marketing field or manufacturing automobile spare parts, for reasons best known to the consultants they recommended to the

company for their appointment as sole agents. Without discussing all these aspects the Board brushed aside the complaint of petitioner No. 9 on the ground that he was on the board for nearly three years after they were appointed as dealers. The court should not miss the point that petitioner No. 9 is none other than the son-in-law of the managing director of the company and he himself was heading several subsidiary companies and more or less the whole family including petitioner No. 9 was holding about 60 per cent of the shares and other shareholders being individual shareholders they cannot raise their voice in the company as it may be difficult for them to muster necessary strength to oppose the second respondent and perhaps they might be satisfied with the dividends that are being paid to them for the investment they made. Now because of the differences between the family members, these underhand dealings came to light. If they are together things would not have gone in this manner to the detriment of the interest of the other shareholders apart from causing loss to the exchequer by avoiding payment of sales tax, excise duty, Income Tax, etc. When the acts of mismanagement brought to the notice of the court are ignored, it amounts to giving a seal of approval for the mismanagement of the affairs that are being conducted by the company which are prejudicial to public interest.

237. Persons of confidence :

Coming to the other contention of the respondents that they can appoint only those in whom they have confidence, I can only observe that if the respondents want to appoint people of their confidence without undertaking any such process they would have straightaway appointed these companies as their sole agents. I have no manner of doubt in holding that the respondents introduced this make believe process of selection by inviting applications and appointing consulting agencies to justify their action in paying huge amounts, before the Income Tax authorities by taking a stand that they are independent agencies and they have nothing to do with the company and to save themselves from any criticism from the Income Tax Department as happened in the case of three firms which were closed after Income Tax raids which necessitated the company in opening these companies as their sole selling agents. The ninth petitioner brought to the notice of the public that the managing directors of these two companies are none other than the blue-eyed people that are close and dear to the second respondent in his underhand dealings.

238. Donation to a non-existing trust :

In C. A. No. 65 of 1996 the petitioner brought to the notice of the Board that during the financial year 1995-96 the company gave a donation of Rs. 10 lakhs to Srinivasa Charity Trust in which the second respondent and his family members were trustees which was wound up on May 30, 1992, and in the guise of giving this amount as a donation the second and third respondents used this amount for their personal benefits. This contention was refuted by the respondent company stating that it is a subsequent event and the Board having dealt with it in C. A. No. 65 of 1996 rejected the said contention, which has

become final. Therefore, according to the respondent-company, the matter cannot be opened now. The said contention of the respondent found favour with the Board. The law is well settled on this aspect that any orders passed by a judicial forum at the interlocutory stage is only intended to make interim arrangements during the pendency of the main case and any such order is subject to the orders to be passed in the main case. I have already taken a view that though it is an event that has taken place after the filing of the application the issue can be canvassed as the main petition is still pending. I have seen the interim order passed by the Board on November 28, 1997. The Board refused to grant interim relief by holding that it is an existing trust on the ground/ basis of (1) the resolution produced by the respondents wherein the second respondent was authorised to take steps and transfer the assets to Srinivasa Educational Society ; (2) the exemption certificate issued by the Income Tax authorities and (3) the assessment order for the financial year ending with March 31, 1996, on the basis of a nil return without giving a finding on the contention of the petitioners, that the later para, of the resolution dated May 30, 1992, (annexure A) filed along with the counter of the respondents is a fabricated one. Be that as it may after considering the events the Board recorded a finding that the application filed under Sections 397 and 398 of the Act has to stand on the allegations contained in the petition and subsequent events brought on record alone cannot entitle any person to a relief in case the main petition fails. In other words in case the allegations in the main petition are held proved then the subsequent events may be taken into consideration by the Board in moulding relief suitably. In the normal course as the second respondent being the managing trustee of the trust, the Board would have directed him to produce the original records of the trust to see which of the resolutions produced by the parties are true and genuine. From the material available on record and as per the version of the petitioners that the trustees passed a resolution on May 30, 1992, to wind up the trust and he also filed copy of the resolution. On the other hand, the case of the respondent is that the trust resolved to transfer the assets of the trust to Srinivasa Educational Society but not to wind up the trust. It is useful to extract the resolutions filed by the parties.

239. Copy of the resolution filed by the petitioners :

"true copy of the resolution passed at the meeting of the board of trustees of Sri Srinivasa Charity Trust, Kakinada, held on May 30, 1992, at 20-6-2, Sitapatirao Street, Kakinada 533 -1.

The chairman placed before the meeting a photostat copy of the registered deed of memorandum and articles of association of Sri Srinivasa Educational Society, Kakinada. The said society was registered with the Registrar E. G. District, Kakinada, on April 24, 1992.

The chairman suggested that in view of our trust being not able to achieve the desired objects on its own in spite of best efforts and also on being satisfied that the said desired objects of our trust can be attained through Sri Srinivasa

Educational Society, Kakinada, which was registered with the similar and identical objects as that of ours, it is desirable to wind up our trust and pass over the moveable and immovable properties to Sri Srinivasa Educational Society. In this regard he brought to the notice of members the resolution passed on April 20, 1992, a copy of which is also placed before the meeting.

After thorough discussion the following resolution is unanimously passed :

"Resolved that our trust Sri Srinivasa Charity Trust be and is hereby wound up today i.e. May 30, 1992, and all the assets and liabilities as on today (list enclosed) be and are hereby transferred/handed over to Sri Srinivasa Educational Society--Regd. Kakinada. Further Sri K. V. R. Choudary, Managing Trustee be and is hereby authorised to complete the necessary formalities in this regard".

240. Copy of the resolution filed by the respondents :

"Meeting of the board of trustees of Sri Srinivasa Charity Trust, Kakinada, held on May 30, 1992, at Ram Nivas, Sitapatirao Street, Kakinada, at 10 a.m.

The chairman placed before the meeting a photostat copy of the registered deed of memorandum and articles of association of Sri Srinivasa Educational Society, Kakinada. The said society was registered with the Registrar E, G. District, Kakinada, on April 24, 1992.

The chairman suggested that in view of our trust being not able to achieve the desired objects on its own in spite of best efforts and also on being satisfied that the said desired objects of our trust can be attained through Sri Srinivasa Educational Society, Kakinada, which was registered with the similar and identical objects as that of ours, it is desirable to wind up our trust and pass over the moveable and Immovable properties to Sri Srinivasa Educational Society. In this regard he brought to the notice of members the resolution passed on April 20, 1992, a copy of which is also placed before the meeting.

After discussion the following resolution is unanimously passed :

"Resolved that Sri K. V. R. Choudary, managing trustee be and is hereby authorised to take all steps to become a sponsor patron in Sri Srinivasa Educational Society and for which purpose, do all such things that" are necessary such as advancing/transferring moveable and immovable properties to Sri Srinivasa Educational Society.

Resolved that Sri K. V. R. Choudary, managing trustee be and is hereby authorised to take necessary permission from the Income Tax authorities and do all acts that are necessary for finally transferring the properties of our trust to Sri Srinivasa Educational Society."

The meeting terminated with a vote of thanks to chairman."

241. From these resolutions, it is seen that while the preamble to both the resolutions is one and the same the resolutions said to have been adopted are

different as per the version of the parties. The Board did not feel the necessity of summoning the minutes book of the trust to find out which of the resolutions is true. Even as per the version of the respondents themselves, the managing trustee opined that the trust was not able to achieve the desired objects on its own in spite of best efforts ... and it is desirable to wind up the trust and pass over the movable and immovable property to Srinivasa Educational Society. While acceding to the request of the managing trustee, the trustees resolved to take necessary permission from the Income Tax authority and do all acts that are necessary for finally transferring the property of the trust to Srinivasa Educational Society. It is not known why the trustees, who are none other than the family members of respondent No. 2 passed such a resolution, when the managing trustee himself suggested winding up of the trust.

242. Be that as it may, on April 27, 1992, the secretary of Srinivasa Educational Society applied for permission for establishment of Sri K. V. R. College of Engineering in Kakinada in an extent of Ac. 31.96 cents of land situated in the backward area of Ponnamanda village of Kothapally Mandal, East Godavari District. This land was shown in the name of the trust in the list of properties of the trust as on May 30, 1992, with the signature of the second respondent. The Board without examining the need and purpose in donating Rs. 10 lakhs to this trust owned by the second respondents family out of a total donation of Rs. 11,01,382 given by the company during that year, simply upheld the donation on the basis of exemption certificate granted by the Commissioner of Income Tax on March 6, 1995, for a period of five years and on the basis of the assessment order for the assessment year 1995-96 passed on the basis of nil return. When once a decision was taken to transfer the assets of the trust to the society way back in 1992 on the ground that the trust failed to achieve the desired results and the society to which the trust thought of transferring its assets, started functioning, it is not known why the second respondent got Income Tax exemption in 1994 for a period of five years for a defunct trust in contravention of the alleged resolution passed by the board, whereunder he was authorized to take necessary permission from the Income Tax authorities for effecting transfer of properties of the trust to the society. Be that as it may it is not the case of the respondent that this amount was in any way required for carrying on the activities of the trust. In fact they have not shown utilization of this amount in the Income Tax return. Nextly, it is to be seen that normally the donee will be approaching the donor for donation by specifying the purpose. There is absolute silence on the part of the respondents, as to - who approached the company for donation or at least how this donation was utilised by the trust belonging to the family of the second respondent. By diverting the funds in this manner to a non-functioning trust if not non-existent trust belonging to the second respondent family, the company avoided payment of Income Tax and claimed exemption. The Board has not applied its mind to the crux of the matter and simply washed its hands by saying that the contribution is to an existing trust. Hence it cannot be said that the affairs of the company are being run not in a manner prejudicial

to public interest.

243. Discrepancies in the stock of finished products :

This issue was not raised in the company petition. But it was raised by filing C. A. No. 65 of 1996 and C. A. No. 115 of 1997 seeking amendment to the main petition. The allegation of the petitioners is that respondents Nos. 2 and 3 are misappropriating huge funds of the company by not bringing major quantities of automobile parts manufactured by the company to the books of account by filing annual reports of the company for the years 1989-90, to 1995-96. He also filed a statement pointing out the discrepancies in respect of automobile parts at an estimated value of Rs. 86.49 crores in a span of seven years.

244. Unfortunately the Board not only rejected the plea but also gave a certificate to the company for the increase in the turnover during the subsequent years and the Board says that the petitioners themselves agreed that in the subsequent years the closing stocks and opening stocks are shown properly. Likewise, the Board simply believed the version of the respondent-company that this procedure is being followed for a number of years as gospel truth having observed as follows :

"The company has unhesitantly admitted that the discrepancy in closing stock which was being followed for over a number of years would have been made more comprehensive than what was shown in the balance-sheet."

245. The Board further held :

"The discrepancies have occurred due to incomplete narration of closing stock in the balance-sheet and it is due to non-supply of full description of closing stock and it cannot be assumed that there is diversion of spare parts by the company."

246. In other words the petitioners have not been able to establish that the respondent-company is diverting the products of the company without accounting for the same.

247. In arriving at this conclusion, the Board relied upon the compilation of entries in the RJI register said to have been maintained under the provisions of the Central Excise Act which contains the day-to-day particulars of opening stock production, sales and closing stock together with statement of reconciliation for the year 1994-95 and it is also the case of the respondent-company that the entries in the RJI register are being periodically verified and signed by the authorities.

248. Now it is to be seen whether the procedure followed by the Board can be sustained in law.

249. Mr. Raghavan tries to impress upon the court that the Board comprises a member well acquainted with the accounts and other experts have approved the explanation given by the respondent-company. I can only observe that as this country is having such type of accounts officers the black money that is being

generated in the industrial circles of this country is 3 to 4 fold than the real currency, which is expected to be in circulation as per the version of the Reserve Bank of India. If the members of the Board properly analysed this issue in a manner known to law and not carried away by extraneous reasons, the result of the company petition would have been otherwise.

250. The book that was produced before the Board was produced before this court also. To my surprise it is nothing but a compilation prepared by the company. But the original RJI register was not produced before the Board to prove that the Central excise authorities have verified and signed in the register. Further the Board did not summon the original RJI register to find out whether the entries in the compilation book tally with the original register or not. In fact no Central excise officer was examined to prove that the entries in the RJI register are being periodically checked and signed by the Department officials. As stated supra none of the entries in the compilation was proved by the respondent in a manner known to law by examining themselves or their representatives or the excise officials. Further the members of the Board were carried away with the increased turnover of the company year after year by completely brushing aside the allegations made by the petitioners.

251. Now the next question is whether the finding recorded by the Board is sustainable, even if the perfunctory enquiry conducted by the Board is given any credence in the light of the documentary evidence.

252. From the annual reports, it is seen that the company divided the automobile spare parts that are being manufactured by it into four groups, namely

(1) king pins, king pin units, shackle pins, shackle pin bolts, C & BP tubes,

(2) tie-rod ends, kits and draglinks, (3) UJ crosses and (4) piston pins and the production as well as sales were shown groupwise in the annual reports. From the information culled out from the balance-sheet, the discrepancies in the stock were shown yearwise as follows :

Statement showing the difference of manufacturing items and its costs as per the price of SRMT

(1) King pins (2) Tierod ends (3) U. J. Cross (4) Piston Total value

(1) (2) (3) (4) (5) (6)

1989-90

Opening stock 1,90,707 11,946

Production 16,93,546 1,19,502 94,629 2,60,254

Sales 3,43,485 ... 1,26,660

Closing stock 2,33,978 22,020

Discrepancy 13,06,790 1,19,502 94,629 1,23,520
(Amount Rs.) 13,06,79,000 2,39,00,400 2,83,88,700 61,76,000 1,891
1990-91

Opening stock 2,33,978 22,020
Production 18,19,083 1,58,315 1,00,666 3,77,958
Sales 4,02,824 1,71,588
Closing stock 3,76,565 ... 36,336
Discrepancy 12,73,672 1,58,315 1,00,666 1,92,054
(Amount Rs.) 12,73,67,200 3,16,63,000 3,01,99,800 96,02,700 1,988
1991-92

Opening stock 3,76,565 36,336
Production 19,17,917 1,76,116 1,28,738 2,03,529
Sales 4,19,260 1,44,354
Closing stock 3,27,631 24,462
Discrepancy 15,47,591 1,76,116 1,28,738 71,049
(Amount Rs.) 15,47,59,100 3,52,23,200 3,86,21,400 36,52,450 2,321
1992-93

Opening stock 3,27,631 24,462
Production 21,93,374 1,36,833 1,19,927 2,01,883
Sales 4,56,203 1,26,948
Closing stock 1,90,404 5,472
Discrepancy 18,74,394 1,36,833 1,19,927 93,925
(Amount Rs.) 1,87,43,400 2,73,66,600 3,59,78,100 46,96,250 2,554
1993-94

Opening stock 1,90,404 5,472
Production 24,89,080 1,44,537 1,55,651 2,75,534
Sales 5,43,636 1,45,434
Closing stock 72,048 3,942
Discrepancy 20,63,800 1,44,337 1,55,651 1,31,650
(Amount Rs.) 20,63,80,000 2,89,07,400 4,66,95,300 65,82,500 2,885

1994-95

Opening stock 72,048 3,942

Production 24,90,943 1,83,966 1,44,055 2,42,725

Sales 4,88,413 1,49,166

Closing stock 1,24,385 5,394

Discrepancy 19,50,193 1,83,996 1,44,055 92,107

(Amount Rs.) 19,50,19,300 3,67,99,200 4,32,16,500 46,05,350 2,796

1995-96

Opening stock 1,24,385 5,394

Production 39,22,383 1,67,955 1,72,197 1,76,316

Sales 5,72,499 1,69,062

Closing stock 1,10,969 15,672

Discrepancy 33,63,576 1,67,955 1,72,197 + 3,024

(Amount Rs.) 33,63,57,600 3,35,91,000 5,16,59,100 1,51,200 4,212

Total value of discrepancy since 1989-90 to 1995-96 = Rs. 186.49 crores.

253. The estimated value of the unaccounted spare parts as per the price list of the company was arrived at. The total value of the discrepancies of the stocks from 1989-90 to 1995-96 worked out to Rs. 186.49 crores :

Though this is a very serious allegation, the Board neither looked into original annual reports filed by the petitioners to find any discrepancies in the stocks nor assessed the value of the missing stocks and expressed their satisfaction on the explanation given by the respondents without verifying the truth or otherwise of their plea.

254. The ninth petitioner to prove his case pointedly has taken one item, i.e., piston pins for the year 1994-95. These pins are sold in sets consisting of 6 pieces. The opening stock of piston pins for the year 1994-95 is 657 sets (3,942 pins) and the production during the year is 40,454 sets (Nos. 2, 42, 725 pins). The total number of sets available for sale are 41,111 and the sets sold are 24,861. The closing stock of the sets should be 16,250. But the closing balance was shown as 899 and the missing sets are 15,357 whose value works out to Rs. 70,76,811 at the rate of Rs. 461 per set as per the price list of the respondent-company. To prove the falsity of the case of the respondents, the petitioners furnished the account of piston pins for the years 1980, 1994-95 and 1996-97. The table is extracted hereunder :

Stock position of piston pins in the balance-sheets of S. R. M. T.

Piston Pins 1980 1994-95 1996-97

Sets Production in Nos. Sets Production in Nos. Sets Production in Nos.

(1) (2) (3) (4) (5) (6) (7)

Opening stock 293 1,20,204 657 2,42,725 2,612 1,43,424

Production 20,034 40,454 23,904

6 6 6

Sales 20,327 41,111 26,516

Closing stock 18,363 24,861 24,223

1,964 16,250 2,293

1,964 899 2,293

0 15,351 0

Stock Difference value Nil 15351 X 461 Rs. per set -Rs. 70,76,811 Nil

Before filing the petition in the Law Board At the time of filing the petition in the Law Board After filing the petition in the Law Board

255. When these discrepancies were shown at the time of considering the plea of . the petitioner for appointment of interim administrator in C. A. No. 65 of 1996 the members of the Board observed that "we made a pointed question to Sri Raghavan whether the company will be in a position to produce a statement reconciling the figures of production, sales and dosing stock to compare the same with the monetary value of shares shown in the annual accounts, he readily agreed to do so". Thereafter at the time of final hearing, learned counsel for the respondents filed a statement said to be a reconciliation statement and the same is extracted herein :

Reconciliation statement of opening stock, production, sales and dosing stock for the year 1994-95

Group Opening Stock As per balance-sheet Production Sale Closing Stock As per balance-sheet

(1) (2) (3) (4) (5) (6) (7)

Piston pins 657 657 25,103 24,861 899 899

King pins 32,052 4,11,862 3,77,374 66,540

King pin units 2,392 1,10,751 1,11,039 2,105

Other 32,555 72,048 19,68,329 21,71,780 46,726 1,24,385

M.V. Parts and Engine parts 2,17,622

21,85,951

U. J. Crosses 2,876 1,44,055 1,46,390 541

Tie rod ends. 2,173 1,83,996 1,77,696 8.473

kits, Drag

Links

Grand total 72,705 72,705 30,61,719 30,09,140 1,25,284 1,25,284

Note : 1. The narration in respect of "piston pins" under the head "Production" in balance-sheet is incomplete.

2. Balance-sheet production figure shown against narration "piston pins" Nos. 2,42,725 includes other engine parts Nos. 2,17,622.

3. In this statement they have been included under "Other M. V. parts and engine parts".

256. On the basis of the above statement, counsel for the respondents contended that the petitioners arrived at the conclusion on the basis of incomplete narration in the annual reports and the production of piston pins includes other engine parts whose number is 2,17,622 and they are shown in this reconciliation statement. This contention found favour with the members of the Board. To my mind the explanation is utterly false and far from the truth. For the first time I came across with a contention that the figures shown in the balance-sheet are incomplete and they include some other engine parts whose identity was not established. If there is any truth in this reconciliation statement, the respondents would have stated what are the other engine parts that they are manufacturing, how their production and sales were shown in the balance-sheets of all those years, and how for the first time in the reconciliation statement they came up with this story that piston pins include other engine parts. The case of the petitioners is that the automobile spare parts that are being manufactured by the company are reflected in the balance-sheet and to their knowledge there are no other engine parts that are being manufactured by the company. Under the caption "sales" after sale of Tata vehicles for which the company is dealer, sales of SRMT parts were shown and the sale of other engine parts was not shown in any of the annual reports. The respondents have not given any explanation how the sale proceeds on other engine parts are being shown in the balance-sheets. Nextly the production of piston pins for the year 1994-95 was shown as 2,42,225 (40,454 sets) in the annual report. But in the reconciliation statement the production was shown as 25,103 sets. It is not known from where he got this figure. From the figures given in the balance-sheet the difference is 15,351 sets as explained in the Table. This difference is sought to be explained by stating that the production includes other engine parts Nos. 2,17,622, this figure is shown separately along with other parts whose production, sale and closing stocks were shown groupwise and though the so called other engine parts have

nothing to do with either the piston pins account or other parts shown groupwise in the annual reports.

257. Assuming for a moment that the reconciliation is true, the respondents have shown other M. V. parts and engine parts under different head and how they can add these parts to piston pins accounts. The fallacy of this argument can be exposed from another angle also. The mischief played by the respondents which missed the eye of the Board, is as follows. The piston pins produced in that year was 2,42,725, As they are being sold in sets of 6 Nos. the number of sets will be 40,454. But the respondents mischievously deducted the so-called other engine parts from the total number of pins, i.e., 2,42,725--2,17,622 and shown that 25,103 Nos. pistons pins were produced. If this figure is divided by six, the number of sets will be only 4,184. For this, if the opening stock of 657 sets are added total number of sets available for sale would be 4,841 sets. But the piston pins sold during that years are 24,861 sets while the other figures relating to piston pins were shown in sets--production was shown in numbers as explained above. The Board did not apply its mind to these grave discrepancies that are evident on the face of the reconciliation statement. The falsity in the plea of the respondent-company can be exposed in another manner also. From the annual reports for the years 1980 and 1996-97 (after Board order in C. A. No. 65 of 1996) it is seen that there are no discrepancies in the stocks of the piston pins. If other engine parts are included in the piston pins, why were the discrepancies that occurred in the financial year 1994-95 not there in those years and where have the other engine parts gone ? I understand in 1980 the company was following the calendar year but the company seemed to have opted financial year for accounts purpose subsequently.

258. If the statement of the respondent counsel that the production of piston pins includes other engine parts is true, how they disappeared in the years 1980 and 1996-97 when the respondent-company is following the same pattern of accounts consistently for the last 25 to 30 years as per their version before the Board and their own letter dated September 24, 1996, addressed to petitioner No. 4 wherein he stated "that the itemwise tally of each and every part manufactured in the formula given by you is impracticable because of the large number of items manufactured and also on account of combination sale and the company has been consistently following the same pattern of disclosing the quantitative particulars of production, sales and stock for the last 25 to 30 years."

259. From the above it can be safely presumed that either the details of the spare parts shown for the years 1980 and 1996-97 should be false or the figures shown in the year 1994-95 should be false.

260. The above discussion exposes the falsity of the plea of the respondents that the production figure of piston pins includes other engine parts. The Board did not even advert to the discrepancies in the stock position from 1989-90 to 1995-96 with regard to (1) king pins, (2) tie-rod ends, (3) U. J. crosses and (4) piston pins whose value seems to be Rs. 186.49 crores as per the price list of the

respondent-company.

261. Learned counsel for the petitioners strenuously contended that as the company is involved in manufacture of spare parts, the accounts of the company have to be audited under the Cost Audit (Report) Rules, 1968. On the other hand, counsel for the respondents contended that these rules are not applicable to this company. I am not going into that controversy. From the statement of discrepancies extracted supra, it is seen that a large number of spare parts that were produced by the company were not brought to the books of account. In fact the respondents did not dispute seriously the discrepancies. They simply tried to get over by saying "incomplete information". At least there is a prima facie evidence to show that there is large scale embezzlement of funds of the company and there is large scale evasion of excise duty, sales tax, Income Tax etc., and required thorough investigation.

262. In the light of the foregoing discussion, I have no hesitation to hold that the Board in its anxiety to give a clean chit to the respondent-company has not even looked into the annual report of the company as approved in the annual general body meeting of the company to find out whether there is any truth in the allegation about the large scale misappropriation of the company funds by not bringing the automobile spare parts that are being manufactured by the company to the books of account as is evident from the statement extracted supra and satisfied itself with the statement of the petitioners that in the subsequent years opening stocks and closing stocks are being shown properly without reference to large scale evasion of both direct and indirect taxes apart from excise duty payable to the State as well as Central Governments.

Other acts of mismanagement

263. I am not adverting to the plea of the petitioner with regard to the diversion of material for construction of a community hall in the name of the mother of the second respondent, Hotel Jaya International, sale of scrap, used oil etc. as no serious arguments were addressed on these matters before me, though the petitioners filed some material and deposed on these issues in his evidence before the Board. I would not like to express any opinion on these aspects.

264. From the findings recorded by me on the acts complained of by the petitioners with regard to mismanagement, I have no hesitation to hold that the affairs of the company are being conducted by respondents Nos. 2 and 3 (father and son) as joint managing directors of the company in a manner not only prejudicial to public interest but also prejudicial to the interest of the shareholders of the company as well.

Acts of oppression :

The word "oppression" used in Section 397 of the Act was not defined in the Act.

265. In Universal Dictionary the word "oppression" is defined as (1) harsh ; tyrannical (2) causing a state of physical or mental discomfort or weariness.

266. As Section 397 of the Act being a corresponding Section to Section 210 of the old English Act, counsel for the petitioner placed reliance both on English decisions as well as Indian decisions.

267. In *Elder v. Elder and Watson Ltd.* [1952] Scottish Cases 49, Lord Keith while considering the word "oppression" observed that "it is not lack of confidence between shareholders per se that brings Section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs, and oppression involves, I think, 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 *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1958] 3 All ER 66; [1959] 29 Comp Cas 1 (HL) Lord Viscount Simonds speaking for the majority of the House of Lords observed, (page 28): "Oppression u/s 210 may take various forms. It suggests, to my mind, as I said in *Elder*'s case, a lack of probity and fair dealing in the affairs of a company to the prejudice of some portion of its members. The Section introduces a wide power to the court to deal with such a situation in an equitable manner which it did not have in the case of a company prior to the passing of the Act of 1948." Lord Denning in a separate judgment held that the object of the remedy is to bring "... to an end the matters complained of, that is, the oppression, and this can be done even though the business of the company has been brought to a standstill." (page 33)

268. In *Five Minute Car Wash Service Ltd., In re* [1966] 36 Comp Cas 566; [1966] 1 All ER 242 it was held that an act or omission may also amount to oppressive conduct if it is designed to achieve an unfair advantage.

269. In *Shanti Prasad Jain Vs. Kalinga Tubes Ltd.*, , their Lordships of the Supreme Court observed that (p. 364) :

"the law, however, has not defined what is oppression for purposes of this section, and it is left to courts to decide on the facts of each case whether there is such oppression as calls for action under this section.

(Page 366) : . . . the question in each case is whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case . . . It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, 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. . . . Section 397 unless it be shown that this lack of confidence sprang from a desire to oppress the minority in the management of the company's affairs and that there was at least an element of lack of probity and fair dealing to a member in the matter of his proprietary right as a shareholder."

270. In *Gajarabai Patny v. Patny Transport (Pvt.) Ltd.* [1966] 36 Comp Cas 745 (AP) this court considered the effect of Sections 397 and 398 of the Act of 1956. Justice Jaganmohan Reddy, as he then was, observed that (headnote): "where there is discrimination by the majority of shareholders or by the majority of the directors to the detriment of the minority amounting to oppression, and the affairs of the company are managed in a manner derogatory to the company's interest, Sections 397 and 398 of the Companies Act can be invoked and the court has unfettered discretion in such a case to impose upon the parties whatever settlement it considers just and equitable to remove the oppression."

271. On facts of the case, his Lordship held (headnote) : "that the action of the directors in withholding transfer of shares in favour of the petitioners, in accordance with the terms of the will, while at the same time transferring some other shares in the managing agency firm, under the same will, was vindictive and harsh and unreasonable and amounted to oppression.

272. In *Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others*, , their Lordships of the Supreme Court in para. 52 of the judgment held that (page 782) "the person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as shareholder". If this act is proved, the power of the Company Law Board to invoke Section 397 of the Companies Act will be justified.

273. While going through the minutes book I found two/three important resolutions adopted by the board which throw sufficient light on the acts complained of by the petitioners against respondents Nos. 2 and 3 and which were not placed before the Board. While dealing with the merits of the case, I have taken note of the resolutions.

274. In *Malleswara Finance and Investments Co. v. Company Law Board* [1995] 82 Comp Cas 836; [1995] 1 Comp LJ 1 the main matter in dispute was the decision to increase the share capital of the company so as to reduce the majority shareholders into minority shareholders. Learned counsel for the appellant in that case contended that the allotment of the shares is a matter of internal management of the company and the same is outside the scope of Section 397 or 398 of the Act. After reviewing the case law on the subject, the Madras High Court held that (page 886): "it is well established that directors of a company are in a fiduciary position vis-a-vis the company and must exercise

their power for the benefit of the company. If the power to issue further shares is exercised by the directors not for the benefit of the company but simply and solely for their personal aggrandisement and to the detriment of the company, the court will interfere and prevent the directors from doing so. The very basis of the court's interference in such a case is the existence of the relationship of a trustee and cestui que trust as between the directors and the company." On the facts of the case, the court having observed that there was no necessity to increase the capital since there was no plant or machinery, why the share capital was increased is not explained. Accordingly, the court held that the directors of the fifth respondent-company did not act in good faith and amounted to act of oppression.

275. In (1995) 82 CompCas 563 the Principal Bench of CLB held that the action of the company in passing a resolution that the petitioner consented for transfer of her holding of 50 per cent. shares by fabricating minutes showing her presence, though she did not attend the meeting and other resolutions passed in such a meeting are null and void and non-operative. As the petitioner continued to hold 50 per cent. shares in the company and as such she was held to have fulfilled the criteria prescribed u/s 399 of the Companies Act, 1956, for filing a petition under Sections 397 and 398 of that Act.

276. In the above judgment it was further held that the action of the directors in not offering shares to all the shareholders, but to one shareholder, such allotment had the effect of converting the majority shareholding of the petitioner into a minority shareholding and the same amounts to acts of oppression and mismanagement. The Company Law Board further held that the directors cannot utilise the fiduciary powers over the shares purely for the purpose of destroying an existing majority or creating a new majority and exercise of power to issue further shares for the purpose of consolidating and improving voting power to the exclusion of the existing majority shareholder cannot be allowed.

277. In R. Khemka's case [1998] 16 SCL 1 (AP) this court observed that the word "oppression" is a chameleonic word and it changes its colour and content from time to time, place to place, and event to event, depending on circumstances of the case. His Lordship also observed while Section 397 of the Act is intended to protect the interest of minority shareholders, Section 398 of the Act is intended for maintaining public interest and interest of the company.

278. From the above it is seen that if the company with the support of the majority shareholders creates a state of physical or mental discomfort to the minority members and tries to alter shareholdings of the members by fabricating the resolutions as held supra it has to be construed as an act of "oppression" of the minority by majority. Further, in a case of mismanagement, the minority shareholders need not prove the allegations to be true. Mere apprehension is sufficient for making an order by the Company Law Board with a view to bringing to an end the disputes, as seen from Section 398(2) of the Act.

279. But Sri Raghavan appearing for the respondents strenuously contended that the Company Law Board, not being a court and being creature of a statute, whose powers are enumerated cannot exercise powers in equity as is being done by the High Courts as well as the Supreme Court.

280. While this court considered the series of objections raised by counsel, this contention was rejected by holding that the Company Law Board is empowered to exercise inherent powers under Rule 44 of the Company Law Board Regulations, 1991, akin to the inherent powers that are being exercised by the civil courts u/s 151 of the Civil Procedure Code.

281. Nextly, from the language of Section 398, mere apprehension in the minds of minority shareholders is sufficient and the allegations levelled against the majority shareholders need not be proved in the strict sense for exercise of the powers vested in it u/s 402 of the Act by the Board.

282. Keeping the dicta laid down in the cases referred supra, I proceed to examine whether the acts complained of by the petitioners constitute acts of oppression.

Rights issue :

The case of the petitioner is that in January, 1994, the company made rights issue all of a sudden without any discussion in any board meeting or the general body meeting, on September 25, 1993, with a view to bringing the shareholding of the petitioners below 10 per cent. in order to see that the petitioners would not approach the Board for reliefs against oppression and mismanagement and the issue was not for any bona fide business purpose. The petitioner in his chief examination categorically stated that in the board meeting held on July 29, 1993, the issue regarding expansion or modernization of the company was not in the agenda. It is also his case that in the annual general body meeting held on September 25, 1993, no discussion about expansion or modernisation of the company took place. Be that as it may, the petitioners having received the offer of rights on April 31, 1994, applied for shares on March 8, 1994, but the shares were not allotted to the petitioner for a long time on the ground that the form was not signed by one Aruna Devi who was holding shares jointly along with the petitioner and who died in the year 1980, though the death certificate of Aruna Devi was sent to the company on May 25, 1994. The case of the respondents is that the additional share capital was sought to be raised for purposes of expansion and modernisation and replacement through the rights issue as per the resolution of the board in its meeting held on July 29, 1993. The company has not allotted the shares to the petitioner, as the petitioner did not attach the death certificate of the joint shareholder along with the application. It is only in 1997 the shares were allotted to the ninth petitioner.

283. Rejecting the contention of the petitioners, the Board held that it is beyond their comprehension as to how the rights issue as long as the offer is accepted would reduce one's shareholding forgetting the fact that the shares were not

allotted to the ninth petitioner till 1997, i.e., three years after the company petition was filed. On the second contention that the company is not in need of funds, the Board observed that it was not the first time that the company made such an issue. Earlier in 1991 also such an issue was made even without verifying the minutes of the board dated July 29, 1993. Ultimately the Board held as follows (page 538 of 98 Comp Cas) :

"Therefore, we cannot subscribe to the view of the petitioners that the rights issue was made with an oblique motive especially when it will have effect on nearly 90 per cent. of the shareholders other than the petitioners who hold only around 10.6 per cent. shares."

284. Having taken such a view the Board surprisingly held (page 539) :

"However, we find that the grievance of the petitioner relating to delayed allotment of the shares has substance. We are not in a position to appreciate the stand of the company that the death of a family member was not known to the persons in management, viz., second respondent for over three years to allot shares applied for in 1994, in 1997. Personal differences should not come in the way of discharging statutory responsibilities. The delayed allotment has denied the petitioner the benefit of dividend declared. Therefore, we are of the view that the petitioner should be compensated at least to the extent of the dividend that he would have been otherwise entitled to if the shares had been allotted in time. Accordingly, we direct the company to compensate him by payment of interest at the same rate at which dividends were declared and paid in respect of the delayed period within a period of one month from the date of receipt of this order."

285. Now let me see to what extent the findings recorded by the Board can be sustained. The case of the respondent is that the Board has taken a decision at its meeting held on July 29, 1993, admittedly after the disputes started. The agenda notice for that meeting was filed before the Board as annexure R-15 by the respondents themselves. None of the agenda items relate to expansion or modernisation or replacement of the old machinery. Perhaps they want to take advantage under the last item "any other matter with the permission of the chair". But at the same time the resolution adopted at the meeting was not filed before the Board. I summoned the original minutes book to have a look at the resolutions adopted by the board. The subject replacement/modernisation of machinery was taken up under Item No. 8 (D) in the board meeting held on July 29, 1993, and the resolution adopted under this item is extracted hereunder :

"Resolved that approval of the company be and is hereby given in principle to take up replacement-cum-modernisation of machinery and expansion of the plant.

Resolved further that the scheme of funding and other details be considered at the next board meeting which shall be made available by the managing director."

286. From the above resolution it is seen that the board did not decide to raise additional amounts through rights issue-Secondly, if the rights issue was made for the purpose of expansion, etc., the respondents did not state how the additional share capital raised was utilised even at the time when the case was heard at the fag end of 1998. Further the case of the respondent is that about Rs. 1.5 crores was raised through rights issue and it is not known whether the company is not in a position to raise that amount if it is really needed from other sources. On the other hand, the specific case of the petitioner is that the company made rights issue only to see that his shareholding is reduced to less than 10 per cent. thereby preempting him from approaching the Board u/s 397 of the Act. The ninth petitioner spoke about this issue in detail while giving evidence. From the resolution of the board it is seen that the company is having surplus funds and with regard to raising of additional share capital, the board having agreed in principle to the suggestion of the second respondent that about Rs. 7.5 crores may be raised for the purpose, resolved to consider the scheme of the funding and other details at the next board meeting which shall be made available by the managing director. From the above it is seen that the board did not resolve to raise additional share capital by rights issues. Further while the estimated amount for the purpose is Rs. 7.5 crores the amount raised through rights issue is only Rs. 1.5 crores. How the remaining amount was raised, the company did not explain. On the other hand, the respondents did not file the copy of these resolutions before the Board purposely as they will be caught on the wrong side.

287. In the light of the foregoing discussion the conclusion arrived at by the Board that the company decided to raise Rs. 1.50 crores by making rights issue is not based on any material and it is the result of non-application of mind.

288. Nextly, the Board brushed aside the contention of the petitioner that the company made a rights issue only to see that his shareholding is reduced to less than 10 per cent. to prevent him from approaching the Board u/s 397 of the Act, by holding that it is beyond their comprehension as to how the rights issue as long as the offer is accepted would reduce one's shareholding. The case of the petitioner is that both in the petition as well as in his evidence that having accepted the rights issue, he submitted an application dated March 8, 1994, to the Assistant Secretary, when the company did not allot the shares to the petitioner on the ground that the joint shareholder, i.e. Aruna Devi has not signed the application, he submitted the death certificate of Aruna Devi on May 25, 1994. The copy of the letter along with death certificate were filed before the court. Though counsel for the respondent-company contended that the company did not receive the death certificate till 1997, he neither produced any evidence to show that the death certificate was not received by the company in 1997 nor he elicited anything contra in the cross-examination of the petitioner that he has not furnished the death certificate on May 25, 1994. If there is no mala fide intention on the part of respondents Nos. 2 and 3 it is not known how the shares remained unallotted to the petitioner for three long years, more so in the light of

the observation of the Board that "we are not in a position to appreciate the stand of the company that the death of the family member was not known to the persons in management".

289. Mr. Raghavan in his marathon arguments did not attack this finding of the Board. Be that as it may, the very finding of the Board that "personal differences should not come in the way of discharging the statutory responsibilities and awarding of payment of interest at the rate at which the dividends were declared to compensate the petitioner", is sufficient to hold that respondents Nos. 2 and 3 pitched upon the rights issue and withheld the allotment of shares to the ninth petitioner with a view to see that the shareholding of the petitioner will be less than 10 per cent. Had the other shareholders not joined him, he would not have on his own approached the Board u/s 397 of the Act.

290. In Malleswara Finance and Investments Company (P.) Ltd.'s case [1995] 82 Comp Cas 836; [1995] 1 CLJ 1 the Madras High Court held that in the absence of any evidence that the increase in the share capital was necessary, the issue and allotment of shares is not in good faith and is intended to defeat the rights of shareholders.

291. In Gajarabai Patny's case [1966] 36 Comp Cas 745 (AP) his Lordship Justice Jaganmohan Reddy as he then was in this court held that the action of the directors in withholding transfer of shares in favour of the petitioners, in accordance with the terms of the will, while at the same time transferring some other shares in the managing firm, under the same will, was vindictive, harsh, unreasonable and amounted to oppression.

292. In Standard Industries Ltd.'s case [1994] 80 Comp Cas 764 again the Principal Bench of the Company Law Board held that the action, as evidenced by resolute endeavour, to go with the rights issue in spite of opposition from 48 per cent. shareholders in effect, intended to reduce the petitioners and others to insignificant minority and suffers from lack of probity and fair play.

293. Following the dicta laid down in the above judgments, I hold that withholding of allotment of shares of the ninth petitioner even after producing the death certificate of the joint shareholders, the late Aruna Devi, along with her letter dated May 25, 1994, for more than four years is only with a view to preempt the ninth petitioner and his group from approaching the Company Law Board complaining of acts of oppression and mismanagement in the affairs of the company and such an action is vindictive, harsh and unreasonable and amounts to oppression.

Removal of petitioner No. 9 as director :

The case of petitioner No. 9 is that he was removed as director in the extraordinary general body meeting of the company held on January 21, 1994, without following the procedure prescribed in the Act. It is also his case that the petitioners and other shareholders supporting him were not allowed to

participate in the said meeting and he was not accorded any opportunity to explain his position as envisaged u/s 284 of the Act. His further case is that once the board decided to convene the meeting as per the requisition, a special notice u/s 190 of the Act must have been issued by the requisitionist. Likewise, the provisions of Section 168 of the Act were not followed and the notice for the meeting did not contain any explanatory statement as envisaged u/s 173 of the Act and as such the proceedings of the meeting have to be declared as null and void.

294. The case of the respondents is that the company received a requisition notice for removal of the petitioner as director of the company. After the court litigation initiated by the petitioner on the requisition notice came to an end, in the extraordinary general body meeting held on January 21, 1994, it was unanimously decided to remove the petitioner as director. Their case is that the telegraphic representation sent by the petitioner for the board meeting held on December 27, 1993, was circulated to the members, as the petitioner did not choose to attend the meeting to make oral representation. The general body decided to remove him after considering the telegraphic representation and as such the provisions of Section 284 of the Act were complied with.

295. With regard to issuance of special notice u/s 190 of the Act, the case of the respondent is that the requisition notice received by the company was a composite one both u/s 169 of the Act as well as u/s 190 of the Act. Hence, the removal of the petitioner was in consonance with the above provisions of law and had the support of all the shareholders who attended the meeting and as such it cannot be impugned.

296. The Board, having observed that in a petition u/s 397 of the Act directorial complaints cannot be generally agitated, examined the same and held:

"As per record, nine shareholders requisitioned for convening an extraordinary general body meeting for passing a resolution to remove the petitioner as a director. Having taken recourse to the legal forum, the petitioner is complaining that the provisions of Sections 284 and 190 of the Act were not followed in this process". The Board accepted the plea of the respondents that "the circulation of telegraphic representation is sufficient compliance with the provisions of Section 284 of the Act". The other contention of the petitioner that the requisitionist has not issued special notice of fourteen days before the date of meeting did not find favour with the Board and they observed that Section 169 of the Act has to be read independently from Section 284 of the Act. Since a notice u/s 169 of the Act is received by the company and the notice indicates the business to be transacted in the meeting which is to be held within a stipulated time framed as provided under that section, the question of issuing separate special notice u/s 190 of the Act does not arise and the notice of the requisitionist was treated as special notice u/s 190 of the Act. The Board also held that "the provisions of Section 190 of the Act are applicable only in connection with the annual general body meeting and not in respect of a requisitioned extraordinary general body

meeting". The Board also held that "in case of meetings convened on requisition u/s 169 of the Act, no explanatory statement need be enclosed. In that view of the matter, the Board held that the removal of the petitioner as director does not suffer from any legal infirmity".

297. Before considering the correctness or otherwise of the order of the Board, it should be kept in mind that petitioner No. 9 was given in marriage to respondent No. 2's daughter in 1969 and he became a director of the company in 1970. He was not only a director of this company, but also actively involved in the management of the affairs of the various subsidiary companies. He was the (1) managing partner of Padmalaya Finance Company, (2) managing director of Vijaya Engine Valves Limited, (3) managing director of K. V. R. Forgings and (4) chairman of Bhavani Castings. From this it is clear that the petitioner was holding important positions at least in four subsidiary companies apart from the post of director in the respondent-company. After the disputes have arisen between the father-in-law and son-in-law, i.e., respondent No. 2 and the ninth petitioner, he was stripped of the positions held by him one after the other except the post of managing director for K. V. R. Forgings which he seemed to have resigned after he became Member of Parliament in 1984. No explanation whatsoever is forthcoming as to why he was removed from various positions held by him for nearly 2 1/2 decades. From the events that have taken place, it is obvious that he was stripped of all his positions as he has fallen from the grace of his father-in-law and he started raising his voice against the mismanagement of the affairs of the company by respondent No. 2. Nextly, as a director of the company he will be having access to all the records and account books of the company and as director he is entitled to have the information as a matter of right unlike a shareholder who has no right to have the information with regard to the day-to-day affairs of the company. This is evident from the alleged letter of the company dated December 3, 1993, addressed to the ninth petitioner, which did not reach him as per the answer given by the ninth petitioner to Q. No. 131 in cross-examination. The question (Q. No. 136) put to the ninth petitioner and the answer given by him in his cross-examination are extracted below :

"Q. 136. You have every right to inspect the books and records of the company ?

A. Since the information asked for was not given and it is not possible to go through the records of the company and find out the mis-appropriation."

298. From questions Nos. 6 to 10 in the cross-examination, it is seen that counsel suggested to the ninth petitioner that as a director he is having access to all the books, records and accounts.

299. From this it is evident that petitioner No. 9 is stripped of his directorship, so that he will not have access to the records and to pre-empt him from approaching the Board seeking relief against acts of oppression. This answer of the ninth petitioner is further fortified from the reply given by the company to the letters addressed by him seeking information before and after losing the

directorship as well as the replies of the company to the other petitioners as shareholders.

300. From this angle, if we look at the notice, nine shareholders belonging to respondent No. 2's family gave notice after the disputes have arisen between respondent No. 2 and the ninth petitioner, the irresistible conclusion that can be arrived at is that respondent No. 2 with the power at his command wants to oppress the voice of the petitioners by not allowing him to have access to the records, accounts, etc., more so, when he tried to find pitfalls in the administration and tried to expose the misdeeds of respondent No. 2 prejudicial to public interest as well as the interest of the company.

301. Coming to the resolution removing petitioner No. 9 as director, the specific case is that in the annual general body meeting held in September, 1993, he raised the issue of misappropriation of Rs. 1.25 crores and as a retaliation respondent No. 2 got requisition notice issued by his family members on November 4, 1993. The requisition notice is said to have been given u/s 169 of the Act requesting the managing director to convene an extraordinary general body meeting to consider and pass a resolution, "resolved that Mr. Chundru Srihari Rao be and is hereby removed as director of the company". They also stated that "it may be treated as special notice u/s 190 of the Act".

302. Section 284 of the Act deals with removal of directors. Under Sub-section (1), a company may, by ordinary resolution, remove a director before the expiry of his period of office. Under Sub-section (2), a special notice has to be given for passing a resolution for removal of a director or appoint some one in his place. Under Sub-section (3), on receipt of such a notice, the company shall forthwith send a copy thereof to the director concerned, and the director shall be entitled to be heard on the resolution at the meeting. Under Sub-section (4), the director concerned after receipt of the meeting notice may make a representation in writing to the company and request its notification to members of the company. While giving notice for a general body meeting, the company has to send a copy of the representation to every member of the company, and if a copy of the representation is not sent for the reasons stated therein, the director may without prejudice to his right to be heard orally, require that the representation shall be read out at the meeting. From the language employed in Sub-sections (3) and (4), I feel that there is some ambiguity with regard to the time at which notice to be given to the director, i.e., prior to giving notice for the general body meeting or after the notice for general body is given. I need not go into the controversy, as both counsel did not address arguments on this aspect.

303. u/s 190 of the Act, notice of intention to move the resolution shall be given to the company not less than fourteen days before the date of meeting at which the resolution to be moved, excluding the day on which the notice is served or deemed to be served on the member concerned.

304. u/s 169 of the Act, on receipt of requisition meeting notice received from

the members of the company, the board of directors shall proceed to call for an extraordinary general body meeting of the company. Though the board at its meeting held on December 27, 1993, decided to call for the extraordinary meeting, on January 21, 1994, neither the notice calling for the meeting nor the explanation of the ninth petitioner appended to the notice, or the resolution passed in the general body meeting were produced either before the Board or this court to find out whether the statutory requirement is satisfied in convening the meeting or the contents of the telegram, to know whether it can be treated as an explanation and whether the resolution adopted by the general body reflects the application of mind by the members to the telegram in removing petitioner No. 9 as director.

305. Be that as it may, even assuming that the company complied with statutory requirements in convening the meeting, u/s 294(3) of the Act, the director is entitled to be heard on the resolution at the meeting. In the evidence, the petitioner categorically stated that having received the notice for extraordinary general body meeting slated on April 21, 1994, he along with his wife went to attend the meeting at 3.30 p.m., which is scheduled to be held at 4.00 p.m., to explain to the shareholders of the company the reasons why a resolution is being moved to remove him as a director and to explain to them the stand taken by him for exposing corruption and misappropriation of funds by respondent No. 2, but he was not allowed to enter the meeting hall as the gates were closed at 3.30 p.m. and the security told him that they were doing so under instructions. Immediately, he gave a press release, but the same was published on January 27, 1994, vide answer to question No. 65 in chief-examination. This statement of the petitioner stood un rebutted. But the Board accepted the version of the company and held that the removal of the petitioner as director does not suffer from any legal infirmity.

306. Firstly, I have gone through the order as well as the material papers filed by the respondents in this regard. From Sub-section (4) of Section 284 it is seen that even if the representation is not circulated to the members of the company, the director may, without prejudice to his right to be heard, orally require that the representation shall be read out at the meeting. From this, it is evident that even if the representation is circulated with the notice, the right of the director sought to be removed, of being heard is preserved. As the deposition of the petitioner that he was not allowed to enter the meeting hall to explain his stand and he gave a press statement to that effect which was published on December 27, 1993, stood un rebutted, I have no option except to hold that the resolution adopted by the general body at its meeting held on April 21, 1994, is in contravention of Section 284 of the Act.

307. Counsel for the respondent strenuously contended that the shareholders cannot be restrained from calling a meeting and they are not bound to disclose the reasons while calling for an extraordinary general body meeting to move a resolution for removal of some directors and appoint others in their place, nor

the reasons for the resolutions are subject to judicial review by placing reliance on Life Insurance Corporation of India Vs. Escorts Ltd. and Others, . Their Lordships of the Supreme Court in para. 100 held as follows (page 636) :

"100. Thus, we see that every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting. Nor are the reasons for the resolutions subject to judicial review It does not require the shareholders calling a meeting to disclose the reasons for the resolutions which they propose to move at the meeting."

308. It is true that the Honourable Judges of the Supreme Court have taken such a view in upholding the action of the Life Insurance Corporation in seeking removal of non-executive directors in Escorts Limited who resisted transfer of shares held by the financial institutions in favour of non-resident Indians with a view to avoid confrontation with the Government and the Reserve Bank and to adopt more conciliatory approach as per the policy of the Government, to earn foreign exchange by attracting non-resident individuals of Indian nationality or origin to invest in the shares of Indian companies, by providing incentives to facilitate investment by non-residents of Indian nationality or origin in shares of Indian companies and by liberalising the existing facilities and procedural formalities, and who dragged the issue to the court. In arriving at this conclusion, they placed reliance on Company Law by Gower who compared the shareholders and board of directors as legislative and executive organs. Their Lordships opined that the only effective way the members in general meeting can exercise their control over the directorate in a democratic manner is to alter the Articles so as to restrict the powers of the directors for the future or to dismiss the directorate and appoint others in their place. I have no quarrel with the general proposition laid down by the Honourable Supreme Court.

309. But the facts and circumstances of that case are altogether different from the facts and circumstances of this case. Here, the Board is considering whether the action of the shareholders in calling for an extraordinary general body meeting to move a resolution for removal of petitioner No. 9 is bona fide one or tainted with bad faith at the instance of respondent No. 2. Though the resolutions are not subject to judicial review, the court should not close its eyes to the time and the manner in which the resolution is sought to be moved by the shareholders, more so, when the shareholders who have given the notice for convening of the extraordinary general body meeting are no other than the kith and kin of respondent No. 2, apart from the fact that the ninth petitioner was stripped of all his positions in the subsidiary companies which he was holding for more than 2 1/2 decades at the same time. In fact, in Standard Industries Ltd.'s case [1994] 80 Comp Cas 764(CLB) while considering the action of the majority shareholders fully subscribing to the rights issue to the detriment of the

petitioners observed that "it was not the legality of the rights issue but the modus operandi adopted by the respondents that was the real issue". From the above it is seen that it is not the legality of the resolution passed by the general body removing the ninth petitioner as director, but the time, the intention, modus operandi adopted by respondents Nos. 2 and 3 in getting the resolution passed, so that he will not have access to the original records and account books, etc., to see that the ninth petitioner is placed in a disadvantageous position to expose their misdeeds and also to gain time to fabricate the documents, which are in their possession, in the event of his approaching the Company Law Board under Chapter VI of the Companies Act.

310. In *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, their Lordships of the Supreme Court held that (page 628) : "Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of public interest, the effect on parties who may be affected, etc".

311. From this judgment it is crystal clear when fraud or improper conduct is alleged against the majority shareholders, the Board is expected to lift the corporate veil to see whether the majority shareholders acted in violation of the statutory provisions, whether any element of public interest is involved and whether any of the parties are affected by their actions and whether the resolution is moved in good faith. But the Board without seeing whether the removal of the petitioner by the general body is in good faith or at the dictates of respondents Nos. 2 and 3, who are controlling the majority shareholders and even without looking into statutory provisions whether the resolution passed by the general body satisfied the test laid down in Section 284 of the Act, simply held that the removal of the ninth petitioner as director does not suffer from any legal infirmity.

312. Hence, it is rather difficult to hold that the procedure prescribed for removal of petitioner No. 9 as a director u/s 284 of the Act is followed. As such the finding of the Board that Section 169 of the Act has to be read independently from Section 284 of the Act and no explanatory statement need be enclosed in the case of meetings convened on requisition and that the provisions of Section 190 of the Act are applicable only in connection with the annual general body meeting and not in respect of a requisition for the extraordinary general body meeting, runs counter to the provisions of the Act and I have no manner of doubt to hold that the findings of the Board are not in consonance with the provisions of the Act.

313. Other acts of oppression not adverted to by the Board, by not considering the voluminous record :

1. Assault by Krishna Mohan :

While giving answer to questions Nos. 77 and 78 in chief, categorically stated that respondent No. 2 sent one Krishna Mohan working as manager in S. R. M. T. to his cabin to assault him and in the assault he received bleeding injuries. With the result he was treated in the Government Hospital at Kakinada and he also filed a criminal case against the said Krishna Mohan. It seems the case is still pending. On the other hand, the case of the respondent-company is that on a complaint given by Krishna Mohan, petitioner No. 9 was convicted and a fine was imposed on him. Rebutting this argument, petitioner No. 9 brought to the notice of this court that on appeal the order of the learned magistrate was reversed. It is not known how the magistrate kept the criminal case filed by the ninth petitioner pending and disposed of the criminal case filed by Krishna Mohan though both the complaints arose out of the same incident and they being case and counter case.

2. Assault by Mr. M. V. V. Satyanarayana Rao :

Mr. M. V. V. Stayanarayana Rao, joint managing director of Padmalaya Finance Corporation and co-son-in-law of petitioner No. 9 seemed to have caused bodily injuries to petitioner No. 9 and he lodged a complaint before the III Town Police Station, Kakinada, on April 9, 1997. Though a case was registered in Cr. No. 82 of 1997 u/s 324 read with Section 34 of the Indian Penal Code no action seemed to have been taken by the police. In those circumstances, petitioner No. 9 filed Writ Petition No. 27324 of 1997 questioning the inaction on the part of the police. In the counter, the Sub-Inspector of Police while admitting that the investigation has not been completed went to the extent of saying that the incident has nothing to do with the disputes between the co-sons-in-law. The learned judge in his judgment dated November 7, 1997, recorded a finding as follows :

"It is rather difficult to appreciate as to how the Investigating Officer could have expressed any opinion whatsoever about the non-involvement of certain persons whose names are mentioned by the petitioner."

In fact this court directed the Superintendent of Police to entrust the investigation of the case to another Inspector of Police by divesting the Sub-Inspector of Police, III Town Police Station, Kakinada. Even after the judgment, the result of the investigation has not seen the light of the day till this date.

(3) Criminal cases filed by Satyanarayana Rao, son-in-law of respondent No. 2 :

It is also his case that the said Satyanarayana Rao filed as many as eight criminal cases against him, i.e., C. C. Nos. 434 of 1998, 453 of 1998, 82 of 1999, 93 of 1999, 607 of 1999, 46 of 1999, 56 of 1999 and 94 of 1999. Though these cases were filed after the company petition, the fact remains that the persecution

of the ninth petitioner is continuing and the court has to take judicial notice of these cases, as counsel for the respondents did not deny the fact of filing so many criminal cases against the ninth petitioner.

(4) Criminal cases filed by K. V. V. Prasada Rao another son-in-law of respondent No. 2 :

Another co-son-in-law Mr. K. V. V. Prasada Rao filed three criminal cases against him, viz., C. C. Nos. 705 of 1999, 706 of 1999 and 707 of 1999.

Again though these cases are subsequent to the filing of company petitions, I have taken judicial notice for the reasons given below.

These cases filed by both the co-brothers of the ninth petitioner against him are all pending in the criminal courts, Kakinada.

(5) Criminal case against E. Satyanarayana Murthy--List witness u/s 3(1)(e) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 :

It is his further case that (a) at the instance of respondent No. 2 a criminal complaint was given by one Peter Bala against one E. Satyanarayana Murthy, who worked in various capacities in the respondent-company, on a suspicion that he is giving information to petitioner No. 9, stating that he scolded him by his caste name on August 8, 1995, and the same was registered as Crime No. 55 of 1995 u/s 3(1)(e) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. He was detained in the prison for more than ten days. Ultimately, he was granted bail by this court in CrI. Petition No. 3912 of 1995, dated August 17, 1995.

(b) Mr. E. S. N. Murthy in his representation dated September 7, 1995, to the Collector and S. P. stating that the management was harassing him for the reason that the ninth petitioner cited him as a witness in the company case and not able to withstand the harassment, he resigned the job. Not being satisfied with this, the second respondent got him implicated in this false case though he did not even know the de facto complainant and he requested them to get the case investigated by a superior Police Officer and to do justice to him. It is also his case that when the district authorities did not move in the matter, to save himself, he left Kakinada and settled in Visakhapatnam. Though the complaint and representation are of the year 1995 neither the police prosecuted him nor closed the case till this date.

(6) False case against Y. D. Rama Rao :

It is also his case that the second respondent got a false criminal case registered against Y. D. Rama Rao, who worked as manager in S. R. M T. for more than 20 years and now Chairman of Super Bazar, Kakinada, on the ground that he abused and beat one Harijan u/s 3(1)(e) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In proof of the allegation

the pamphlet published by Y. D. Rama Rao explaining the circumstances under which he was forced to go on hunger strike at taxi stand near Balajicheruvu on September 23, 2000, and also the bail order granted by the First Additional Sessions Judge, East Godavari on September 20, 2000, wherein Mr. Rama Rao categorically pleaded that de facto complainant has been pressed into service by the S. R. M. T. group in order to foist a false case against him. As this incident is after the judgment of the Board, I am not taking into consideration, as the same was not brought to my notice in a manner known to law. It is suffice to state that Y. D. Rama Rao is supporting the ninth petitioner as seen from the statement of George Babu before police on February 17, 1994.

(7) Inaction of police against D. George Babu, Security Guard in S. R. M. T. : The specific case of the ninth petitioner is that when the petitioner and his group of shareholders are taking steps to file a company petition one Mr. D. George Babu, who is working as a security person in S. R. M. T. followed him to Samalkota Railway Station on February 17, 1994, and on a complaint given by his men, as he is leaving for Hyderabad, the Railway Police arrested and handed him over to regular police and the said George Babu gave a statement before the police. As per his version, while he was in "A" shift from 6.00 a.m. on the fateful day the security officer by name Ch. S. V. S. N. Murthy sent for him at about 2 p.m. in the noon and he was asked to go in plain dress on the Kinetic Honda bearing No. AP-5-8656 belonging to the security officer and asked him to trace the whereabouts of petitioner No. 9 and also to see who are the others accompanying him including Y. D. Rama Rao and he admitted that Sri Hari Rao having seen him asked Mr. E. Satyanarayana Murthy and Tallapudi Subba Rao who are with him to hand him over to the Railway Police who in turn handed him over to the local police before whom he gave the above statement. No information is forthcoming whether the police registered a crime or not against George Babu and at what stage the investigation is. But the receipt given by the police in proof of receipt of the complaint given by E. Stayanarayana Murthy and the statement given by the said George Babu before the police were filed before the Company Law Board.

(8) Threat to ninth petitioner by respondent No. 2 after board meeting dated October 3, 1993 :

The case of the petitioners is that immediately after the board meeting dated October 3, 1993, wherein the issue of misappropriation was again raised by him, is over, respondent No. 2 threatened him to vacate the premises of SRMT wherein the office of Padmalaya Finance Corporation was also located within 24 hours and thereafter having agreed before the police not to press for vacation of the premises, removed his table and placed it outside the company premises on October 14, 1993.

314. The ninth petitioner in his affidavit dated May 13, 1998, filed before the Board not only brought all these incidents to the notice of the Board with documentary evidence, but also deposed in his evidence on the incidents that

have taken place till the time of giving evidence (see answers to questions Nos. 78, 84 and 86 in chief).

315. The company did not produce any rebuttal evidence on any of the above aspects. Though such a voluminous material was placed before the Board, it did not discuss whether the above actions on the part of respondents Nos. 2 and 3 amount to oppression of the minority shareholders or not.

316. From the above documentary and oral evidence available on record, I have no hesitation to hold that the petitioner placed sufficient material explaining not only his inability in not getting the list witnesses to give evidence but also proved that respondents Nos. 2 and 3 are creating fear psychosis among the list witnesses, that if any one helped the ninth petitioner or raised his voice against the activities of respondent No. 2, the first and foremost thing would be, that he will be arrested by the police under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Secondly, the series of incidents referred to supra both before and after filing of the company petition are clearly intended to prove to the outside world that a man who incurred the wrath of respondent No. 2 even if he is his own son-in-law will not be spared so easily and the persecution will continue till he is crushed.

317. At this stage the court is expected to take judicial notice of the fact that in the entire district, the respondent-company is the biggest industrial house with assets worth more than Rs. 100 crores and we can imagine how much political clout the managing director of such a company will wield not only in the town, but also in the entire district leave apart the State.

318. We should also keep in mind that petitioner No. 9 was a Member of Parliament when he was in the good books of his father-in-law and when petitioner No. 9 fell from the grace of his father-in-law, another son-in-law by name Mr. Ravinder is now Member of Parliament.

319. Hence, all the above incidents clinchingly establish that as the majority of directors and majority of the shareholders in the respondent-company hail from the family of respondent No. 2 and they will go to any extent to silence the minority shareholders by using their brute majority in the company and also by using the political clout and physical force at their command to suppress any dissent voice against his illegal activities.

Compromise proposals :

After the petitioners filed C. A. No. 65 of 1997 seeking appointment of interim administrator, as the petitioners offered to sell their shares to the respondent-company at a value determined by an independent chartered accountant, the Board suggested that the matter should be settled amicably in its meeting held on September 5, 1997, not only relating to the respondent-company--Gopal Automatic Limited, but also other four group companies, in which the petitioner had some interest and counsel for the respondent has taken time to find out the

reaction of his clients. Again when the matter came up for hearing on September 29, 1997, he sought for further extension of time by stating that the shareholding of the respondent-company and its subsidiaries being divergent, the shareholders have to be consulted before any commitment could be given to the Company Law Board. Though the attendance sheet does not reflect the reaction of the respondents from the order of the Board it is seen that the respondents did not agree to the proposals. Having taken time to consult the shareholders in the company as well as its subsidiaries no material whatsoever is placed to show that the views of the shareholders were ascertained either by convening general body meetings of these companies or by circulation and they did not agree to the proposals.

320. In the appeal, arguments were addressed by counsel for about three weeks. I understand respondent No. 3 was physically present in the court most of the time apart from the employees of the respondent-company and every day having pointed out the glaring illegalities committed by the Board, this court went on suggesting that this matter has to be settled amicably and the shares held by the petitioners can be purchased by the company instead of inviting a judgment on the merits. But the respondents flatly refused to purchase the shares by contending that the financial position of the company would not permit such a measure. From the record, it is seen that the annual turnover of the company is more than Rs. 100 crores and it is having sufficient reserves.

321. This is evident from resolution 8-B at the meeting of the board of directors held on July 29, 1993, in the following terms :

"8-B : Subject: Authority to invest surplus funds in Government securities and shares of company :

Resolution : Resolved that pursuant to the provisions of Section 292(1)(d) and (2) and other applicable provisions of the Companies Act, 1956, Sri K.V.R. Choudary, managing director and Sri K. Sarathi, joint managing director be and are hereby severally authorised to invest funds of the company in fixed/term deposits with banks, body corporate and in shares and/or debentures (convertible and non-convertible) of companies and other Government securities (Central or State or semi-Government) provided, however, that the total amount up to which the funds to be invested as aforesaid shall not exceed the sum of Rs. 2 crores (rupees two crores only) at any one time until otherwise decided in this regard)."

322. Further, even according to the respondents an amount of Rs. 1.5 crores were raised through the rights issue in 1993 and how this amount was invested was not explained by the company. Further, in the extraordinary general body meeting held on December 6, 2000, the shareholders with a view to diversify the activities of the company and to carry on the business of generating, selling, transmitting, distributing, supplying electric power and host of other activities including floriculture, horticulture, not only amended the objects clause, but also

authorised the board of directors to borrow any sum or sums of money exceeding the aggregate of the paid-up capital of the company and its free reserves, provided, however the total amount so borrowed shall not exceed Rs. 100 crores at any time. Can it be said that a company of this magnitude is not having financial resources at its command and is not in a position to purchase the shareholding of the minority shareholders whose shareholding is less than 10 per cent. as on today ? To my mind, such an action on the part of the respondent-company is nothing but victimisation and persecution of petitioner No. 9 and other shareholders supporting him. It may be the intention of respondents Nos. 2 and 3 to show to others that if they raised their voice against their mismanagement they will meet the same fate as petitioner No. 9 who is none other than the son-in-law of respondent No. 2. This conduct of respondents Nos. 2 and 3 is yet another act of oppression of minority shareholders.

Non-furnishing of the information :

On November 2, 1993, the first petitioner addressed a letter to all the directors seeking information on the closure of parcel offices and selling of about forty lorries.

(1) The secretary in his letter dated December 3, 1993, stated that "the matters referred to by you are the matters to be dealt with by the management during the day-to-day business. Hence it is not possible to accede to your request". If information sought for, relates to day-to-day business, it is not known why respondent No. 2 has taken a resolution in the meeting of board of directors alleged to have been held on August 7, 1992, as well as February 27, 1993. When the ninth petitioner, as director, sought for the information in his letter dated November 27, 1993, the company claimed that a reply was sent on December 3, 1993, stating that "the books of account and other records are available at the registered office of the company and he may come and inspect the same during 2.00 p.m. to 4.30 p.m. on any working day with due prior intimation to them". In proof of service of notice, they filed acknowledgment dated December 27, 1993, and petitioner No. 9 categorically denied about the receipt of the said letter. In the witness box also counsel for the respondents cross-examined the petitioner that he being a director he is having access to statutory books. The petitioner in his deposition categorically stated to question No. 86 in chief that respondent No. 2 threatened him to vacate the premises of Padmalaya Finance on October 3, 1993. This issue was dealt with separately apart from the attempted attacks on his body by that time.

(2) Petitioner No. 9 by his letter dated July 17, 1995, i.e., after the filing of the petition before the Board requested for certified copies of the registers duly enclosing banker's cheque for the purpose and the company secretary by his letter dated July 20, 1995, asked him "under what provision of law he is seeking certified copies of the said registers as he is no more director by that date".

(3) Again in the month of September, 1997, when petitioner No. 9 sought for

several details with regard to the financial transactions of the company through registered letter as well as telegram dated September 24, 1997, respondent No. 3-joint managing director raised the same query "please let us know under what provisions of the Companies Act a member is entitled to several details which you sought for".

(4) Again on February 27, 1999, petitioner No. 9 addressed a letter to furnish photostat copies of the (1) balance-sheets of the company for the years 1983-84 to 1986-87, (2) copies of contract registers for the years 1989-90 to 1992-93 (3) list of bad debts with all particulars for the years 1991-92 to 1996-97 and (4) particulars of the passenger cars possessed by SRMT Limited as on the date with full particulars relating to company make, model and its registered numbers as they are required for arguments before the Company Law Board. The company secretary in his letter dated March 6, 1999, has taken the stand in the first para, "that the submissions on both the parties have completed before the Company Law Board and the matter is posted to March 22, 1999, for reply of counsel for the petitioner and further stated that no fresh documents or facts can be introduced in the reply" as if he is the authority to decide the admissibility of the documents in a case pending before the Board.

In the second para., it is stated that "the company is not required to give the information sought for" and again questioned the petitioner "under what provisions of the Act the company is bound to furnish the above". In the third para, of the letter, the secretary stated that in September, 1994, itself the company informed that the register of contracts of which the petitioner required copies were not traceable. Hence, furnishing the copies of register of contracts for the period 1989-90 to 1992-93 is not possible. From the above it is seen, while admitting that the matter is posted for reply arguments to March 22, 1999, the company secretary states that no fresh documents or facts can be introduced in the reply. It is not known how the petitioners are precluded from substantiating their plea, in reply to the arguments of the respondents by securing fresh material relevant to the issues that have cropped up for adjudication, more so, when the Tribunal did not follow any known procedure like marking of documents as exhibits recording oral evidence, etc. Further, if more evidence is collected on the plea already raised, through the documents sought for it is always open to the petitioner to file an application to reopen the hearing for receiving the documents as additional evidence at any time before the Board pronounced the orders and even at the appellate stage in support of his plea. Be that as it may, in the second para, the secretary flatly refused to furnish the information sought for and questioned the petitioner under what provision he is asking the information.

As far as register of contracts is concerned, u/s 301 of the Act, every company is bound to keep one or more registers in which the particulars of all the contracts and arrangements covered by Sections 297 and 299 of the Act have to be mentioned. u/s 297 of the Act, no director of the company or his relative can

enter into a contract without the express consent of the board of directors and u/s 299 of the Act if a director of the company is directly or indirectly concerned with the contract or arrangement, etc., to be entered into on behalf of the company, he shall disclose the nature of his concern or interest in the meeting of the board of directors and obtain prior approval of the board and the same should find a place in the register. This being a vital register containing the information whether any director or his relative has entered into contract or arrangement with the company with or without disclosing the same to the board of directors, the company secretary simply stated that the register of contracts for the period 1989-90 to 1992-93 is not traceable.

(5) Petitioner No. 9 again addressed a letter on September 12, 2000, having seen that huge amounts were written off as bad debts in the annual reports of the company, seeking full and accurate information regarding bad debts that were written off during those five years, and the reply given by respondent No. 2 on September 19, 2000, is that "please let us know under what provisions of the Act a shareholder is entitled for such elaborate information and any clarification/explanation will certainly be given at the annual general meeting, if sought for, by the shareholders". When petitioner No. 9 is not being allowed to enter the premises and there is every threat of attacking his person or implicating him in criminal cases as seen from the record, the possibility of attending annual general meeting and raising any question with regard to these bad debts is completely ruled out.

(6) After the company petition was filed, as per the letter of P.1 dated September 27, 1995, he attended the annual general body meeting of the company held on September 27, 1995, and when he sought clarification on certain items listed in the general business as well as special business on the annual report of the company for 1994-95, as he happened to be one of the petitioners in the company petition the followers of respondent No. 2 created disturbance and created fear in him as well as the other shareholders who are also of his view and when he requested that the proceedings to be noted reflecting the true state of affairs, respondent No. 2 refused to do so. Having come out of the meeting he addressed registered letter to respondent No. 2 on the happenings at the general body meeting on the same day. No reply was given by the respondents to this letter. On the same day the late Karedla Suryanarayana, petitioner No. 1 in the company petition, addressed a letter to all the board of directors to furnish the true reasons for closing parcel offices and the reasons for selling away the lorries for low prices causing loss to the company. The directors of the company observed silence.

(7) For the letter of P. 4 dated September 19, 1996, respondent No. 2 in his letter dated September 24, 1996, gave reply on similar lines.

It is to be seen to what extent the action of the respondents in not furnishing information sought for by the shareholder, more so when they filed an application u/s 397 of the Act and when the Company Law Board failed to call for the

documents can be justified. u/s 163 of the Act, the registers that are required to be maintained by the company shall be kept at the registered office of the company and they shall be open during the business hours for inspection of the members at least for two hours subject to reasonable restrictions. Under Sub-section (3), a member, debenture holder or other person is at liberty to make extracts of the registers that are maintained u/s 163 of the Act without paying any fee and under Sub-section (3)(b) he may require the company to furnish certified copies of them on payment of the prescribed fee required for copying. On requisition given by the member, the company is bound to furnish them within ten days and under Sub-section (5) refusal to permit the member to inspect the records or furnishing of the copies, the company is liable to be punished with a fine, which may extend up to Rs. 50 for every day. Under Sub-section (5)(b) the Company Law Board may also, by order, compel an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it and did not move its little finger in the matter.

323. u/s 209 of the Act every company shall keep at its registered office proper books of account with respect to the aspects enumerated therein and u/s 209(a) of the Act, the books of account, other books and papers of every company shall be open for inspection during business hours.

324. u/s 219 the members of the company are entitled to have a copy of the balance-sheet including profit and loss account, auditors' report and every other document required by law to be annexed or attached as the case may be to the balance-sheet, which is to be laid before the company in the general meeting at least 21 days before the date of the meeting. Under Sub-section (2) any member of the company on demand is entitled to have a copy of the last balance-sheet of the company free of cost with other documents annexed or attached to the balance-sheet. Again if the company refuses to furnish copy of the documents, the Board by order directs the company to furnish a copy of the document demanded by person concerned.

325. In Life Insurance Corporation of India Vs. Escorts Ltd. and Others, , the rights of shareholders are summarised in para. 84 of the judgment as hereunder (page 617) :

"On an overall view of the several statutory provisions and judicial precedents to which we have referred, we find that a shareholder has an undoubted interest in a company, an interest which is represented by his shareholding. Share is movable property, with all the attributes of such property. The rights of a shareholder are (i) to elect directors and thus to participate in the management through them; (ii) to vote on resolutions at meetings of the company ; (iii) to enjoy the profits of the company in the shape of dividends; (iv) to apply to the court for relief in the case of oppression ; (v) to apply to the court for relief in the case of mismanagement; (vi) to apply to the court for winding up of the company; (vii) to share in the surplus on winding up."

326. From the provisions of Sections 163, 209 and 219 of the Act coupled with the law enunciated by the Supreme Court, the shareholders in a company are having every right to seek information in order to safeguard their rights and interests in the company and to know whether the management of the affairs of the company are in the larger interest of the shareholders or not. As the annual reports deal with the assets and liabilities of the company broadly and as they do not contain the details, generally the shareholders cannot raise the issue in the annual general body meeting. Be that as it may, in this case when the majority shareholders supporting respondent No. 2 are not allowing the minority shareholders to raise any issue by creating a hostile atmosphere and the minority shareholders are afraid to attend the meeting of the office, the only way left for them is to get details, for the information furnished in the report by applying for certified copies of the extracts. They cannot make a grievance without getting required information. In a case of this nature where a right is conferred on the minority shareholders to approach the Company Law Board seeking relief against acts of oppression and mismanagement they are entitled to have copies of the documents sought for, to prove their case. Otherwise, the right to seek relief against acts of oppression and mismanagement given to the minority shareholders under the statute will be a futile exercise, if the required information sought for is neither provided by the company nor called for by the Board.

327. The whole misfortune in this case is that the Board has not chosen to summon the original record and provide an opportunity to the petitioners to go through the records of the company. The Board did not choose to pass any orders to that effect in spite of their specific prayer in the main petition as well as in C. A. No. 69 of 1994. When they approached the company, it was refusing to furnish information required to prove their allegations by questioning them under what provision a shareholder is entitled to that information having removed respondent No. 2 as director of the company.

328. To my mind while the action of the Board is wholly unsustainable in law, the action of the respondent-company is intended not only to oppress the minority shareholders, but also intended to withhold the information to prove their case and the Board ought to have drawn an adverse inference against the respondents for withholding the information available with them. But unfortunately the Board did not advert to this aspect and did not record a finding whether these acts on the part of the respondents amount to acts of oppression or not.

329. Withdrawal of some of the petitioners from company petition :

Coming to the company petition, originally nine shareholders have filed this application including the third petitioner-S. Jayaram Reddy, a resident of Visakhapatnam. He executed general power of attorney along with his subsidiary shareholders on April 4, 1994, in favour of petitioner No. 9. He also filed an affidavit on September 10, 1994, confirming the contents of the rejoinder filed

by the petitioners in the case. But on November 29, 1995, he informed petitioner No. 9 that he executed a revocation deed on November 8, 1995, duly enclosing a copy of the revocation deed. This letter was sent by registered post from Rajahmundry, though he is a resident of Visakhapatnam. After the death of the first petitioner-Suryanarayana, his legal representatives did not choose to come on record. Petitioner No. 2 Dwarapudi Seetharam did not file appeal along with others. The case of the petitioner is that respondents Nos. 2 and 3 pressurised them either from not continuing the proceedings or for withdrawing from the proceedings only to see that petitioner No. 9 is singled out in his fight against the misdeeds of respondents Nos. 2 and 3. The respondents did not rebut these allegations by any evidence oral or documentary. From the conduct of respondents Nos. 2 and 3 on various acts of oppression discussed in this judgment a presumption has to be drawn in favour of the contention of the petitioners.

330. Non-recording of minutes of the general body truly and correctly :

Likewise petitioner No. 9 in his letter dated September 27, 1993, alleged that the minutes of the previous general body meeting are not recorded properly and truly and the issue referred therein were raised by him in the general body meeting held on September 27, 1993, were wantonly omitted. For this no reply was given by any of the respondents.

331. The will of the majority shall prevail :

The judgment would not be complete without the answering the sheet anchor of the arguments of learned counsel for the respondents that majority directors on the board as well as the shareholders and at times the petitioners also approved the actions of mismanagement as well as the acts of oppression, the question of granting any relief to the petitioners in this case does not arise. This issue was answered by the Supreme Court in *B. R. Kapur v. State of Tamil Nadu*, AIR 2001 SCW 3720 ; [2001] 3 MLJ 165 their Lordships while repelling the arguments of counsel for the respondents that the members of the political party commanding majority in the Legislative Assembly are having an unfettered right to elect a person who does not possess the qualifications enumerated under Article 173 or who incurs the disqualifications enumerated in Article 191 held as follows (pages 183 and 186) :

"... a person convicted for a criminal offence and sentenced to imprisonment for a period of not less than two years cannot be appointed as a Chief Minister under Article 164(1) read with (4) and continue to function as such. Their Lordships further observed "that such an action on the part of the legislative members would be subversive of the Constitution and would be repugnant to the theory of good governance and would be contrary to the Constitution itself, which Constitution has been adopted, enacted and given to the people of India by the people of India."

332. Their Lordships further held thus (page 191) :

"Given the present political parties and the electoral system, it is accepted that following a general election, the party with a majority of seats in the State Legislature or Parliament will form the Government. This is what the Constitution postulates and permits. But in the matter of formation of Government if the said majority political party elects a person as their leader, whom the Constitution and the laws of the country disqualifies for being chosen as a member of the Legislative Assembly, then such an action of the majority elected member would be a betrayal of the electorate and of the Constitution to which they owe their existence. In such a case, the so-called will of the people must be held to be unconstitutional and, as such, could not be and would not be tolerated In other words, the people of the country, the organs of the Government, Legislature, Executive and Judiciary are all bound by the Constitution ... to be *suprema lex* or the paramount law of the land and nobody is above or beyond the Constitution This being the position, the action of the majority of the elected members of a political party in choosing their leader to head the Government, if found to be contrary to the Constitution and the laws of the land then the Constitution and the laws must prevail over such unconstitutional decision, and the argument of Mr. Rao, that the will of the people would prevail must give way ... it would be a blatant violation of constitutional laws to allow her to continue as the Chief Minister of a State, howsoever short the period may be, on the theory that the majority of the elected members of the Legislative Assembly have elected her as the leader and that is the expression of the will of the people."

333. At some other place their Lordships held that "the Constitution prevails over the will of the people as expressed through the majority party. The will of the people as expressed through the majority party prevails only if it is in accord with the Constitution".

334. From this it is seen that if the decisions taken by the board or general body is in contravention of the laws of the country and prejudicial to public interest, it cannot be said that the will of the majority will prevail, but not the law of the land.

335. Further, for various reasons, the majority of the shareholders in the company might have not dared to open their mouth against the illegal actions of respondent No. 2 having burnt their fingers once in 1978 and having seen the plight of the petitioner, who is none other than the son-in-law of the second respondent and brother-in-law of the third respondent, on that ground the respondents cannot contend that if their actions are clearly in violation of the laws of the land like the Companies Act, Income Tax Act, so on and so forth, their decisions will prevail over the law of the land.

336. Further under Chapter VI of the Act, a right is conferred on the minority shareholders seeking relief against not only acts of oppression but also on the actions of majority shareholders that are prejudicial to public interest apart from acts of mismanagement of the affairs of the company. Hence, the respondents

cannot take shelter, if the actions of the company are not in accordance with law, by contending that such an action is having the approval of majority shareholders.

337. In the light of the foregoing discussion on various issues in controversy I have no manner of doubt in holding that the petitioners were able to prove the acts of mismanagement as well as the acts of oppression and they are being continued unendingly, even after company petition if filed, even though the procedure followed by the Board is unknown to law and the findings recorded by the Board are not supported by any evidence and they are per verse. As stated supra the scales of justice before the Board heavily swung in favour of the respondents.

338. Hence, I have no hesitation in setting aside the findings recorded by the Board on the issues in controversy and in holding that the allegations levelled by the petitioners are proved, at any rate, a prima facie case was made out by the petitioners for grant of relief under Chapter VI of the Act.

339. As stated supra, the petitioners are satisfied with the directions given by the Board and from that point of view only, I examined the case of the petitioners to see whether any reasons can be given by this court in support of the directions given by the Board, as counsel for the respondents vehemently argued that the Board having dismissed the case of the petitioners as devoid of merit, gravely erred in giving such a direction. Now as I have taken the view that the series of acts of mismanagement as well as acts of oppression are proved by the petitioners, the question would be what should be the relief that can be granted in the circumstances of the case. The facts of the case speak for themselves that the differences between the groups have reached an irrevocable point of no return and any direction or directions for keeping the company with present holding intact will not serve the purpose as it is impossible for the parties to continue together in the company and at the same time or ordering winding up of a company, which is otherwise solvent is not proper. Hence the only equitable and just relief that can be granted is to direct either of the parties to purchase the shareholding of other group. But in this case, as the majority shareholders are on the side of the second respondent, it would not be proper for this court to direct the majority shareholders to sell their shares to the minority shareholders. Hence the only order that can be passed in this case is to direct the respondent-company itself or any one of the shareholders of the company including respondents Nos. 2 and 3 to purchase the shares of the minority shareholders. In fact, the petitioners expressed their willingness for the said course both before the Board as well as this court, but respondents Nos. 2 and 3 contended that the financial position of the company does not permit the purchase of the shares held by the minority shareholders. As far as the financial position of the company is concerned, I have clearly taken a view that the financial position of the company is very sound and it is in a position to purchase the shares of the minority shareholders. At that stage, I brought to the notice of

counsel for the respondents Article 6 of the Articles of association whereunder any member of the company can transfer his shares to an outside person, only with prior approval of the board of directors and suggested that in the light of bad blood flowing between the parties as no one will come forward to purchase the shareholding of the minority shareholders who incurred the wrath of the second respondent, that the company itself may select the purchaser of their choice for transfer of shares of the minority shareholders. Even for this suggestion also the respondents are not willing.

340. I am fortified in my view by the following decisions :

341. In *Shanti Prasad Jain Vs. Kalinga Tubes Ltd.*, , their Lordships of the Supreme Court held that the provisions of Section 397 of the Companies Act are more or less akin to Section 210 of the English Companies Act of 1948. It was held that the purpose of introducing Section 210 in the English Companies Act was to give an alternative remedy to winding up in the case of mismanagement or oppression. The law always provided for winding up, in case it was just and equitable to wind up a company. However, it was being felt for some time that though it might be just and equitable in view of the manner in which the affairs of a company were conducted to wind it up, it was not fair that the company should always be wound up for that reason, particularly when it was otherwise solvent. That is why Section 210 was introduced in the English Act to provide an alternative remedy where it was felt that though a case had been made out on the ground of just and equitable cause to wind up a company, it was not in the interest of the shareholders that the company should be wound up and that it would be better if the company was allowed to continue under such directions as the court may consider proper to give. This is the genesis of the introduction of Section 153C in the 1913 Act, and at present Section 397 of the Indian Companies Act, Their Lordships further held that "the circumstances must be such as to warrant the interference that "there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company"s affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy".

342. In *Daulat Makanmai Luthria"s case* [1992] 3 Comp LJ 119 the Principal Bench of the Board held that in case of deadlock or loss of mutual trust necessary for working together in managing the affairs of the company and if it becomes impossible for the petitioner and the respondent to work together even if an independent chairman was appointed, the only course open to the Board is to direct either of the parties to purchase the shares of the other party, so that the company comes under the exclusive control and management of either of the warring groups.

343. From the beginning both before the Board as well as this court, the respondents consistently exhibited a defiant attitude perhaps they are under an impression that they can resort to acts of oppression of minority shareholders and crush them ruthlessly by dragging the proceedings to the apex court level by

availing of the services of corporate lawyers with the riches at their command ; so that no one can dare to raise his voice, in future on administration of the affairs of the company by respondents Nos. 2 and 3, as they have already tasted success once in 1978. Of course, at that time the ninth petitioner was with his father-in-law.

344. Even assuming that the findings recorded by this court are not sound in law on the facts of the case will, as I have taken the view that the Board is empowered to exercise the inherent powers under regulation 9 of the Board's regulations to give directions in equity for doing substantial justice between the parties and pull down the curtain on the acts complained of by the minority shareholders. I hold that the directions given by the Board are proper and just in the circumstances of the case. Hence, though I did not agree with the findings of the Board on the merits of the case, I am in full agreement with the end result in the case, vide (1995) 83 CompCas 371

345. Accordingly, C. A. No. 4 of 1999 is dismissed as devoid of merits and C A. No. 5 of 1999 is allowed to the extent indicated above.

346. Naturally the petitioners in C. A. No. 5 of 1999 should not only have the costs but exemplary costs, according to me, against the respondents. Accordingly, the respondents are directed to pay Rs. 25,000 to the petitioners towards costs.

347. Having pronounced the judgment on the merits, I am adjourning the matter to October 29, 2001, to have the views of the parties on the appointment of valuers to value the shares held by the minority shareholders. Provisionally, I am thinking that both the parties will nominate one chartered accountant each and the court will be nominating one chartered accountant and the fee for the chartered accountant nominated by the court has to be paid by the company subject to modification after hearing the parties.

348. After pronouncing judgment on the merits on October 18, 2001, I adjourned the matter to October 29, 2001, so as to enable both the parties to nominate one chartered accountant from their respective side to be associated with the chartered accountant to be nominated by this court for valuation of the shares held by the minority shareholders. The matter underwent some adjournments due to the untimely death of the managing director. Today both the parties nominated the chartered accountants. Accordingly, the following order is passed constituting the committee of chartered accountants.

349. Mr. Ch. G. Krishna Murthy, M.A., LL.B., F.C.A., former Member of Law Commission of India, Ministry of Law and Justice, Government of India (now residing at H. No. 512/A/2, Road No. 31, Jubilee Hills, Hyderabad, Phones : 3543622 and 4745165 (Res.)) is nominated, on behalf of this court and he will be the Chairman of the Committee. M/s. V. Sankarayya and Co., Chartered Accountant (202-301, Satyam Cinema Complex, Ranjit Nagar Community Complex, New Delhi-8) is nominated as chartered accountant by the minority

shareholders and M/s. S. Daga and Co., Chartered Accountants, (403, Paigah Plaza, Basheer Bagh, Hyderabad-500063) is nominated as chartered accountant by the respondent company M/s. Sri Ramadas Motor Transport Limited and its board of directors. Their postal addresses are given below the order.

350. The remuneration payable to the chartered accountant nominated by this court is fixed at Rs. 1,50,000 in lump sum. He is entitled to claim actual expenses to be incurred by him towards travelling apart from the above remuneration if he has to leave Hyderabad. He is given liberty to move this court if the above remuneration is not adequate for the work done by him. As far as the chartered accountants nominated by the parties are concerned, both the parties shall bear the remuneration and travelling expenses payable to their respective chartered accountants.

351. Both the parties are given liberty to make their representation before the committee of chartered accountants ; and the committee of chartered accountants shall submit its report to this court within three months from the date of receipt of this communication.

352. Before parting with the case, I feel that it is my bounden duty to bring to the notice of the authorities concerned, that grave miscarriage of justice has taken place in this case as the Company Law Board failed to observe fundamental principles of procedural laws. But counsel appearing for the respondents submitted that the Company Law Board is following the same procedure from its inception. I am afraid, that if the Company Law Board is allowed to function in this manner, grave injustice will be done to the litigant public. Since the Company Law Board is vested with discharge of judicial functions and being an institution of public trust, it is expected to act fairly, objectively and dispassionately, but not whimsically, fancifully or arbitrarily. If the individual members/Benches of the Board are allowed to follow their own procedure giving a go-by to the laws of procedure, the very faith and belief of the litigant public will be eroded. Hence, it is high time that either the Board should frame regulations on the procedure to be followed without ambiguity or the Government in exercise of its rule making power shall frame rules with regard to the procedure to be followed by the Board instead of leaving the issue to the individuals occupying position in the Company Law Board which will go a long way in gaining credibility by the institution.