

(1976) 04 MP CK 0014

In the Madhya Pradesh High Court

Case No : I.A. No. 2049/75 in C.P. No. 4 of 1972

Virendra Singh Bhandari and Others

APPELLANT

Vs

Nandlal Bhandari and Sons P. Ltd.

RESPONDENT

Date of Decision : 23-04-1976

Acts Referred:

Companies Act, 1913 — Section 162

Companies Act, 1956 — Section 397, 398, 433, 439, 443(2)

Citation : (1979) 49 CompCas 532

Hon'ble Judges : J.S. Verma, J

Bench : Single Bench

Advocate : A.K. Chitale, S.N. Kohli and R.C. Mukand, G.I. Mehta and R.G. Waghmare, for company, N.A. Modi, Aziwala and S.R. Rhadnis, for the Appellant;

Final Decision : Dismissed

Judgement

J.S. Verma, J.—This petition u/s 439 of the Companies Act, 1956 (hereinafter referred to as " the Act ") is primarily for a direction to wind up the company--" M/s. Nandlal Bhandari and Sons (Private) Ltd. " Indore, or in the alternative to make certain directions under Sections 397 and 398 of the Act to grant the other reliefs specified in the petition. The petition came up for admission before Oza J. and was admitted by him on September 22, 1972, while deferring the question of advertisement to a later date. Notice was issued to the company which has opposed advertisement of the petition and filed I. A. No. 2049 of 1975 on August 20, 1975, for not advertising the petition, revoking the order of admission and dismissing the petition for winding up. This order shall govern the disposal of this application and decide the question regarding advertisement of the petition.

2. The company--" M/s. Nandlal Bhandari and Sons (Private) Ltd. " (hereinafter referred to as " the company "), has three directors, namely, Sukanmal Nandlal Bhandari, Bhanwarsingh Motilal Bhandari and Virendrasingh Motilal Bhandari (Petitioner No. 1). These directors are closely related, Virendrasingh and Bhanwarsingh, brothers, and Sukanmal being their uncle. Initially they

constituted a joint Hindu family trading under the name and style " M/s. Nandlal Bhandari and Sons " and held 5,836 shares and one scrip of " M/s. Nandlal Bhandari Mills Ltd. " a public limited company incorporated on March 1, 1922 (hereinafter referred to as " the Mills Ltd."). In 1949 there was a partition in the joint Hindu family and the separated members formed "M/s. Nandlal Bhandari and Sons Ltd. " which was incorporated as a company limited by shares, and ultimately converted into a private limited company styled as " M/s. Nandlal Bhandari and Sons (Pvt.) Ltd. " (hereinafter referred to as " the company ") and incorporated as such under the Companies Act, 1956. By a division of the capital account which included shares, these shares which had increased to 11,772 shares and one scrip, were transferred to the company. Subsequently in the year 1969, the company purchased 6,327 shares of the Mills at Rs. 325 per share and thus the company held 17,099 shares and one scrip, i.e., 85 per cent. of the share capital of the Mills Ltd. Consequently, the company held the sole selling agency of the Mills Ltd., under a contract which was to continue till December 31, 1975. It is common ground that the sole selling agency has not been renewed thereafter so that it has come to an end on December 31, 1975.

3. There is no dispute that the main source of income of the company was the commission received by it for the sole selling agency of the Mills Ltd. which, according to the common estimate, was approximately between Rs. 4 and 5 lakhs per year from the year 1972 till the termination of the agency. The other incomes of the company were about Rs. 5,000 per month from Mills Ltd., as guarantee commission and about Rs. 3,000 per month as rent from the properties owned by the company. It is not in dispute that the only surviving income now is the rental income, which amounts to about Rs. 40,000 per year, while the total actual salary bill of the existing employees of the company is about Rs. 84,000. The result is that the expenditure on account of the salary bill of the employees is a little over twice the existing income of the company since termination of the sole selling agency of the Mills Ltd.

4. Even though the objects of the company enable it to carry on a wide range of business, yet the business actually carried on by it till the date of petition were as follows:

(1) Central Hotel located in Rampurawala building, Indore, which was closed in September, 1971.

(2) A yarn shop at Siyaganj, Indore, which was also closed in 1971.

(3) " Dewas Flour Oil and De-oiled Cake Factory " and " Nand Vanaspati " both at Dewas, which were closed in 1971.

(4) Sole selling agency of the Mills Ltd., which has also terminated on December 31, 1975, the same not being renewed. It may be mentioned that as a result of transfer of a huge chunk of shares of the Mills Ltd. held by the company which gave the company virtual control of the Mills, the company no longer has its hold over the Mills Ltd. so as to ensure the getting of the sole selling agency which is

evident from the fact that on transfer of the shares by the company the sole selling agency of the Mills held by the company was not renewed in its favour after transfer of these shares when the agency terminated on December 31, 1975.

(5) Two ginning factories, one at Hatod near Indore and the other in Indore. There is some dispute whether these factories at all worked but there is no dispute that they were closed long before this petition was filed.

(6) Rental income from buildings owned by the company. Particulars of this income have been given earlier. It may, however, be mentioned that the rental income also decreased on account of the two buildings in Indore known as "Rampurawala building" and "Nandanwan" ceasing to be the company's properties as a result of transfers made in August, 1971. The particulars relating to these transactions are referred later.

5. The above facts, which are not in controversy indicate that the aforesaid business were the only business carried on by the company and they too have come to an end now.

6. Petitioner No. 2 is the wife and petitioners Nos. 3 and 4 are sons of petitioner No. 1. The petition for winding up is as creditors and contri-butories on the basis of several allegations mentioned hereafter. As already stated, petitioner No. 1 is one of the directors of the company. The petitioners are in a minority holding shares worth 121/2 per cent. of the total capital, the other two directors who continued to work in unison being in the majority. In addition to their share capital, the petitioners also have an investment of Rs. 4,35,732.22 excluding interest for the year 1971 and onwards by way of deposits in the company. The petitioners have not been paid even interest on these deposits in spite of their demands for payment of the interest as well as the principal amount, It is on account of the non-payment of this amount in spite of notice that winding up is sought on the ground contained in Clause (e) of Section 433 of the Act. The other allegations in the petition are made to support their claim for winding up under Clause (f) of Section 433 of the Act on the ground that it is "just and equitable " that the company should be wound up. For the present purpose, the allegations in the petition relating to Clause (f) alone need be mentioned.

7. To attract Clause (f) of Section 433 of the Companies Act, 1956, in order to show that it is just and equitable to wind up the company, the allegations made in the petition are substantially these :

(1) The majority group has taken complete control of the company and it is being worked by them only for their own personal gain and those of the members of their family, close friends and relatives in whom they are interested.

(2) There is complete exclusion of the petitioners from the working of the company which is being carried on according to the whims and caprices of the majority so much so that the normal benefits to which the petitioners are entitled

are also not being given to them;

(3) The entire business of the company has come to an end and its continuance for the time being is only to enable the majority group to procure for itself the properties of the company by transfers or otherwise, facts to support these allegations being given in the petition ; and

(4) The actual winding up of the company is being opposed only to obtain these unlawful advantages to the majority group and in short the majority group which is in complete control of the company has been functioning in such a manner as to cause justifiable lack of confidence in them which rests in lack of probity and mismanagement in the conduct of the affairs of the company.

8. It is alleged that the substratum of the company has gone, so that it would be just and equitable to wind it up. It is further alleged that the company is in substance merely a partnership on account of which the principles applicable to the dissolution of a partnership should be applied. At this stage, I do not consider it necessary to rely on the allegations relating to inability of the company to pay its debts (the ground under Clause (e)) and its real character which is alleged to be that of the partnership. I shall, therefore, confine myself in this order only to the remaining allegations in order to examine whether a prima facie case for winding up under the " just and equitable " clause is made out.

9. Before advertent to the relevant facts in this connection, it would be appropriate to mention the principles which govern the enquiry at this stage in order to decide whether the petition should be advertised in order to hold a full investigation or it should be dismissed at this stage itself without any further enquiry. In my opinion, if the petition contains allegations, on proof of which a winding-up order would be justified and the material placed on record shows that there is a fair possibility of those allegations being proved in a further and full investigation, then the petitioners are entitled to have this petition advertised so as to enable full investigation into the allegations. In such a situation there can be no occasion to refuse advertisement of the petition and to revoke the order of admission made earlier by Oza J. In my view, this is in substance the scope and ambit of enquiry at the present stage. The cases cited at the Bar with regard to the scope of enquiry at this stage only support this view. I shall now refer to relevant extracts from the same. In *Advent Corporation Pvt. Ltd., In re* [1969] 39 Comp Cas 463, 470, the Bombay High Court summarised the scope of enquiry at this stage as follows :

" at the stage of admission, the court takes only a prima facie view of the petition on the material before it and has to consider whether that material would justify the court in summarily dismissing the petition, or whether it would require further investigation. At the admission stage, the court has to consider contentions of a preliminary nature that the petition is not maintainable or that the petition constitutes an abuse of the process of the court....."

10. In a recent decision of the Court of Appeal in *Bryanston Finance Ltd. v. de*

Vries (No. 2) [1976] 1 All ER 25, the principle is contained in the judgment of Buckley L.J, with whom the other judges agreed. The relevant extracts from the judgment of Buckley L.J. at page 36 of the reports is as follows :

" It has long been recognised that the jurisdiction of the court to stay an action in limine as an abuse of process is a jurisdiction to be exercised with great circumspection, and exactly the same considerations must apply to a writ of injunction to restrain commencement of proceedings. These principles are, in my opinion, just as applicable to a winding-up petition as to an action. The right to petition the court for a winding-up order in appropriate circumstances is a right conferred by statute. A would-be petitioner should not be restrained from exercising it except on clear and persuasive grounds. I recognise that the presentation of a petition may do great damage to a company's business and reputation.....The restraint of a petition may also gravely affect the would-be petitioner, and not only him, but also others, whether creditors or contributories. If the presentation of the petition is prevented the commencement of the winding-up will be postponed until such time as a petition is presented or a winding-up resolution is passed. This is capable of far-reaching effects."

11. No doubt these observations were made in an action brought to obtain an injunction restraining the presenting of a winding-up petition but the principles applicable when the winding-up petition has been filed, as in the present case, are undoubtedly the same as expressly stated in the above quoted extract itself. It is, therefore, to this extent that the petitioners have to discharge their burden at this stage in order to justify advertisement of the petition.

12. I shall now refer to the authorities dealing with the meaning of the expression " just and equitable " used in Clause (f) of Section 433 of the Act in the light of which it has to be seen whether the petitioners have brought their case within the ambit of this expression. These authorities are relied on by both sides and the only difference is that Mr. N. A. Modi, learned counsel for the petitioners urges that they support his contention, whereas Mr. J. I. Mehta, learned counsel for the company contends to the contrary.

13. The leading case on the point which may be referred first is a decision of the Privy Council in *Loch v. John Blackwood Ltd.* [1924] AC 783 (PC). Whatever may have been the difference as a result of the earlier English decisions, the law on the point has been taken to be settled by the Privy Council decision in *Loch's* case. The Supreme Court has consistently quoted with approval the decision in *Loch's* case and the conclusion one way or the other has been only on the facts of the particular case. It is, therefore, necessary to refer in some detail to the decision in *Loch's* case.

14. In *Loch's* case [1924] AC 783 (PC), a petition for the winding up of a company was filed on the ground that it was just and equitable that the company should be ordered to be wound up. The entire decision relates to this ground for winding up. The circumstances in which an order for winding up under this clause

was held to be proper were summarised at page 794 of the reports as follows :

" It only remains to apply the doctrines thus expressed to the circumstances of the present case. Their Lordships forgo unnecessary details. They are of opinion that the learned Greaves C.J. is correct when he says that: " The directors in control since the death of Blackwood Rodger have, I think, laid themselves open to the suspicion that by omitting to hold general meetings, submit accounts and recommend a dividend, their object was to keep the petitioners in ignorance of the truth and acquire their shares at an under value." The Board agrees with these views. In the opinion which they have formed, Mr. McLaren, for reasons not unnatural, had come to be of opinion that the business owed much of its value and prosperity to himself. But he appears to have proceeded to the further stage of feeling that in these circumstances he could manage the business as if it were his own."

15. It is clear that the circumstances in Loch's case [1924] AC 783 (PC) gave rise to a reasonable suspicion in the petitioners' mind that the directors in control of the company were acting in a manner so as to keep the petitioners in ignorance of the truth and to acquire their shares at an under value. I would now quote some other passage from the decision in Loch's case wherein the doctrines were laid down by their Lordship, which were then applied to the facts of that case in reaching the conclusion that a winding-up order was proper. The relevant extract is as follows (p. 788):

"It is undoubtedly true that at the foundation of applications for winding up, on the " just and equitable" rule, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs. But this lack of confidence must be grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company's business. Furthermore the lack of confidence must spring not from dissatisfaction at being outvoted on the business affairs or on what is called the domestic policy of the company. On the other hand, wherever, the lack of confidence is rested on a lack of probity in the conduct of the company's affairs, then the former is justified by the latter, and it is under the statute just and equitable that the company be wound up." (Emphasis supplied).

16. The question in Loch's case [1924] AC 783 (PC) really was whether the just and equitable clause there was to be construed ejusdem generis in the light of the earlier clauses or not. The provision there was the same as Section 433 of the Companies Act, 1956. While holding that the just and equitable clause could not be construed ejusdem generis with regard to the earlier five sub-sections of the section, their Lordships observed as follows (pp. 789, 790):

" It seems plain enough that beyond these cases there is the whole category of fraudulent administration under which a company's property might be imperilled or transferred into the pockets of its directors, when the case for winding up would, be of supreme urgency. Yet if the argument as to ejusdem generis were

sound, it would logically exclude such a case from the grounds for winding up, which is absurd. It has been long stated that the element of fraud could not be so dealt with." (Emphasis supplied).

17. Thus, in *Lock's case* [1924] AC 783 (PC) it was clearly held by the Privy Council that a winding-up order was called for under the just and equitable rule where there was a justifiable lack of confidence in the conduct and management of the company's affairs in regard to the company's business when the lack of confidence rested on a lack of probity in the conduct of the company's affairs. This is the gist of the principle settled by the decision in *Loch's case* [1924] AC 783 (PC).

18. In *Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others*, *Loch's case* was quoted with approval after stating that the divergence of opinion emerging from the earlier English decisions must be taken to be settled by the pronouncement of the Judicial Committee in *Loch's case*. It would be desirable to quote certain extracts from this decision of the Supreme Court which are as follows (p. 97 of 26 Comp Cas) :

"When once it is held that the words "just and equitable " are not to be construed ejusdem generis, then whether mismanagement of directors is a ground for a winding-up order u/s 162(vi) becomes a question to be decided on the facts of each case. Where nothing more is established than that the directors have misappropriated the funds of the company, an order for winding up would not be just or equitable, because if it is a sound concern, such an order must operate harshly on the rights of the shareholders. But if, in addition to such misconduct, circumstances exist which render it desirable in the interests of the shareholders that the company should be wound up, there is nothing in Section 162(vi) which bars the jurisdiction of the court to make such an order. *Loch v. John Blackwood Ltd.* [1924] AC 783, 790 (PC) was itself a case in which the order for winding up was asked for on the ground of mismanagement by the directors.....

Now, the facts as found by the courts below are that the vice-chairman grossly mismanaged the affairs of the company, and had drawn considerable amounts for his personal purposes, that arrears due to the Government for supply of electric energy as on 25th June, 1955, was Rs. 3,10,175-3-6, that large collections had to be made, that the machinery was in a state of disrepair, that by reason of death and other causes the directorate had become greatly attenuated and " a powerful local junta was ruling the roost", and that the shareholders outside the group of the chairman were apathetic and powerless to set matters right. On these findings, the courts below had the power to direct the winding up of the company u/s 162(vi), and no grounds have been shown for our interfering with their order."

19. Thus, this decision of the Supreme Court lays down that where in addition to the mismanagement by the directors, some circumstances exist which render it

desirable in the interest of the shareholders that the company should be wound up, there is nothing to prevent the making of such an order. On the facts appearing from the above extract, an order of winding up was held to be proper. In a very recent decision of the Supreme Court in *Hind Overseas Private Limited Vs. Raghunath Prasad Jhunjhunwalla and Another*, , the above meaning of the "just and equitable " clause was reiterated once again on the basis of the authority of *Loch's case* [1924] AC 783 (PC). Some useful extracts from this decision are as follows (pp. 105, 106);

"The principle of " just and equitable " clause baffles a precise definition. It must rest with the judicial discretion of the court depending upon the facts and circumstances of each case. These are necessarily equitable considerations and may, in a given case, be superimposed on law. Whether it would be so done in a particular case cannot be put in the strait-jacket of an inflexible formula.

In an application of this type allegations in the petition are of primary importance. A prima facie case has to be made out before the court can take any action in the matter. Even admission of a petition which will lead to advertisement of the winding-up proceedings is likely to cause immense injury to the company if ultimately the application has to be dismissed. The interest of the applicant alone is not of predominant consideration. The interests of the shareholders of the company as a whole apart from those of other interests have to be kept in mind at the time of consideration as to whether the application should be admitted on the allegations mentioned in the petition.

The question that is raised in this appeal is as to what is the scope of Section 433(f) of the Act. Section 433 provides for the circumstances in which a company may be wound up by the court. There are six recipes in this section and we are concerned with the sixth, namely, that a company may be wound up by the court if the court is of the opinion that it is just and equitable that the company should be wound up. Section 222(f) of the English Companies Act, 1948, is in terms identical with the Indian counterpart, Section 433(f). It is now well established that the sixth clause, namely, "just and equitable", is not to be read as being ejusdem generis with the preceding five clauses. While the five earlier clauses prescribe definite conditions to be fulfilled for the one or the other to be attracted in a given case, the just and equitable clause leaves the entire matter to the wide and wise judicial discretion of the court. The only limitations are the force and content of the words themselves, " just and equitable ". Since, however, the matter cannot be left so uncertain and indefinite, the courts in England for long have developed a rule derived from the history and extent of the equity jurisdiction itself and also born out of recognition of equitable considerations generally. This is particularly so as Section 35(6) of the English Partnership Act, 1890, also contains, inter alia, an analogous provision for the dissolution of partnership by the court. Section 44(g) of the Indian Partnership Act also contains the words "just and equitable ".

Section 433(f) under which this application has been made has to be read with

Section 443(2) of the Act. Under the latter provision where the petition is presented on the ground that it is just and equitable that the company should be wound up, the court may refuse to make an order of winding up if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Again under Sections 397 and 398 of the Act there are preventive provisions in the Act as a safeguard against oppression in management. These provisions also indicate that relief u/s 433(f) based on the just and equitable clause is in the nature of a last resort when other remedies are not efficacious enough to protect the general interests of the company."

20. Mr. Mehta, learned counsel for the company relies equally on all the above decisions as does Mr. Modi on behalf of the petitioners. Mr. Mehta, however, also argues that Section 443(2) of the Companies Act should be kept in mind so that if there be an efficacious alternative remedy available to the petitioners then a winding-up action, being the last resort, should not be permitted. There can be no quarrel with this proposition but then the significance of Section 443(2) of the Act is also limited to the extent of examining the case from a prima facie angle at this stage as stated earlier.

21. Mr. Mehta has referred to *In re Fildes Bros. Ltd.* [1970] 1 All ER 923 ; [1970] 40 Comp Cas 998 (Ch D) to contend that the question for consideration, should be judged in the light of events happening subsequent to the filing of this petition, in order to examine whether the grounds set forth in the petition have afterwards melted away. The conclusion stated in this decision is as follows (p. 1005 of 40 Comp Cas) :

" Accordingly, the question for me is whether, as matters stand today, what has been alleged in the petition and proved before me makes it just and equitable to wind up the company. "

22. There is no dispute before me that the events happening after the date of petition can be taken into account for the purpose of either weakening or reinforcing the heads of complaint set forth in the petition even though no new head not fairly covered by those in the petition can be made out on that basis. The case of *Mohan Lal and Another Vs. Grain Chamber Ltd., Muzaffarnagar and Others*, also relied on by Mr. Mehta has to be similarly read, since both these cases are relied on by Mr. Mehta in support of his argument and in placing reliance on some subsequent events to contend that the grounds in the petition have, to a certain extent, melted away by those subsequent events. Another case relied on by Mr. Mehta in *Charles Forte Investments Ltd. v. Amanda* [1964] Ch 240 : 34 Comp Cas 233 (CA). In that case the only grievance of the petitioner was that the directors' refusal to register transfer of shares was unjustified. The question was whether on this ground alone an order for winding up the company should be made. It was held that the alternative and more suitable remedy by an

action for rectification of the register being available to the petitioner, a winding-up petition on this ground alone did not lie, more so, when the article under which the directors had acted gave them an absolute and uncontrolled discretion in the matter unless their act of refusal was shown to be not bona fide. This decision is clearly inapplicable to the present case. There can be no doubt that an alternative relief in respect of all the grievance of the petitioners is not available in the present case, as will be presently shown. The last case relied on by Mr. Mehta is *Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd.*, . That was a case arising out of a final order in a winding up action and it was not against an order at the admission stage. In that decision, it was held as follows (42 Comp Cas 135):

" The mere fact that the company has suffered trading losses will not destroy its substratum unless there is no reasonable prospect of it ever making a profit in the future, and the court is reluctant to hold that it has no such prospect. See *In re Suburban Hotel Co.* [1867] 2 Ch App 737 and *Davis and Co. v. Brunswick (Australia) Ltd.* [1936] 1 All ER 299 : 6 Comp Cas 227 (PC)."

23. Mr. Mehta relies on this passage to contend that it is not for the court to hold that the company has no reasonable prospects of making profit in the future in the present case and that the court is reluctant always to come to this conclusion. This passage itself indicates that in a suitable case the court can come to the conclusion that the substratum has disappeared and that there is no reasonable prospect of the company making profit in the future, even though the court would be reluctant to reach that conclusion. In that case the Supreme Court clearly came to the conclusion, on the facts and in the circumstances of that case, that the company, which had not ceased carrying on its business had a reasonable prospect of business and resources. It is significant that in that case the company's business was continuing and had not ended while in the present case it is admittedly at an end.

24. In the light of the above principles, I shall now consider the facts of the present case.

25. Two buildings owned by the company at Indore and known as " Rampurawala " and " Nandanwan " were transferred admittedly to the family members of the two directors constituting the majority group in August, 1971, and these are alleged by the petitioners to be underhand dealings. Admittedly, there was no publicity in order to obtain the highest price available in the market for these buildings and for the transfer no cash payment was made to the company by the transferees. The company's resolution dated August 20, 1971 (annex. R-6) described these transfers as allotment and not even sales. The company's books show that these transfers were effected merely by making entries in the books showing adjustment of the price without any cash being given to the company. The deposits in the company of these transferees belonging to the family of the majority directors were merely adjusted against the cash price and in this manner these depositors belonging to the majority group were also permitted to

withdraw their deposits with the company, while obtaining the properties at a low price. It is alleged that the company was facing financial stringency at that time, which is the common case, and this transaction further increased the financial burden on the company. On the deposits which were so permitted to be withdrawn, the company was required to pay interest at a much lower rate than that at which the company was paying interest to the bank on loans taken by the company. If cash was obtained as the price of these buildings and it was utilised for reducing the company's liability against the loans, the burden on the company on account of interest alone would have been reduced by a few lakhs of rupees every year. This result ensues even if the fact of the buildings being sold away to close relatives of the majority group at a low price is ignored. The company has attempted to counteract this allegation, inter alia, by saying that the report of the Government valuer shows that the price obtained was proper, a mention of which report is made in the resolution dated August 20, 1971. After it was pointed out by Shri Modi at the hearing that a photostat copy furnished by the company to the petitioners in another case after great difficulty, showed the date of the valuer's report as August 24, 1971, i.e., after the date of the resolution in which it is mentioned, and that this resolution is, therefore prima facie fabricated, on behalf of the company some documents and affidavits were filed to show that the reference in the resolution was to a draft report of the valuer and not to the final report. Be that as it may, at this stage this is a strongly suspicious circumstance which the company is required to explain before it can be held that there is no fabrication of the resolution dated August 20, 1971. I may also mention that on my asking for the original valuer's report at the hearing when this fact was brought to my notice by Mr. Modi, it was after a considerable time on the next date of hearing that the same was made available to me. The original report admittedly is of August 24, 1971. Moreover, this circumstance relates only to the actual value of these buildings at the time of their transfer to the members of the majority group and there is nothing prima facie to counteract the other allegation of increase of financial burden on account of payment of interest as a result of the price not being recovered in cash. It may be mentioned that similar deposits of the petitioners continue to remain with the company and the petitioners also alleged non-payment of any interest thereon since 1971, which fact is not denied. The undue preferential treatment resulting in large benefit to the members of the majority group by this transaction alone, of several lakhs of rupees, is at least, prima facie, made out.

26. Another transaction relates to the transfer of the Central Hotel business to the daughters-in-law of Shri Bhanwarsingh Bhandari, one of the directors of the majority group, for no consideration at all. This hotel was located in the Rampurawala building mentioned above, which building itself was transferred on August 27, 1971, as already stated. The company's books show that the hotel business was carried on by the company till Sep. 20, 1971, on which date the hotel was closed, even after the building itself had been transferred during the previous month by the company. These facts are not in dispute. It is also not in

dispute that no consideration whatsoever was paid by the transferees for this hotel business which undoubtedly had considerable value at least as price of the furniture and other articles needed for running that large hotel. It is significant that this benefit in its entirety also went to the majority group.

27. Another transaction relates to the transfer of 8,299 shares of the Mills owned by the company. These shares were transferred to M/s. Gajendrasingh Randhirsingh Oil Mills Pvt. Ltd. at the rate of Rs. 250 per share when about 11/2 years earlier they were bought at the rate of Rs. 325 per share and then sold by M/s. Gajendrasingh Randhirsingh Oil Mills Pvt. Ltd. on October 12, 1973, again at Rs. 350 per share. The transfer of these shares to M/s. Gajendrasingh Randhirsingh Oil Mills Pvt. Ltd. in which also the majority group has a controlling interest, was again by mere transfer entries made in the company's books and no cash was obtained for them by the company. In this transaction also the majority group was able to siphon out for its own benefit, considerable amount of money by getting back its deposit from the company. The transfer of these shares had the further effect of passing the controlling interest in the Mills to another concern in which also the majority group has a controlling share, and thereby the advantage of ensuring for itself the sole selling agency of the Mills is a loss to this company. The admitted fact of the sole selling agency not being renewed on its termination lends support to this allegation of the petitioners. The further loss to the company was once again in the shape of added liability for interest on loans taken from the banks which could have been reduced by utilising the amount of about Rs. 40 lakhs involved in the transaction for reducing the liability on account of loans taken from the banks. The advantage once again to the majority group of siphoning out this huge amount to benefit only themselves was in addition. It is also significant that by mere purchase of these shares in the name of M/s. Gajendrasingh Randhirsingh Oil Mills Pvt. Ltd. at Rs. 250 per share and their sale some time thereafter at Rs. 350 per share resulted in a clear profit of Rs. 100 per share to M/s. Gajendrasingh Randhirsingh Oil Mills Pvt. Ltd. where once again the benefit is mainly to the majority group of this company.

28. Mr. Modi contends that these transactions alone are sufficient to indicate a justifiable lack of confidence in the conduct of the majority directors, which rests on a lack of probity and mis-management in the conduct of affairs of the company.

29. On behalf of the company, reliance is placed on the resolution dated June 26, 1971 (annex. R-6 at page 1) passed by the board of directors and the resolution dated August 20, 1971 (annex. R-6 at page 11) passed at the extraordinary general meeting of the shareholders to contend that the petitioner No. 1 was himself a party to both these resolutions, which had authorised these actions. The petitioner No. 1's presence at both these meetings is denied on affidavit and some circumstances are pointed out by Mr. Modi from the company's documents itself to support the petitioners' contention. At this stage, it is neither necessary

nor proper to deal at length with that material and it is sufficient to say that it is not possible to reject the petitioners' contention as unfounded. This is more so because in both these resolutions the decisions mentioned are entirely to the benefit of the majority group and it is unlikely that the petitioners Nos. 1 and 2, if present, would not even object to those decisions, when, it appears, trouble had already started between them and the majority group, by then. There is a controversy about the date of commencement of the dispute but it is not unlikely that the dispute had commenced some time prior to July 26, 1971. Thus, the company's reliance of the petitioner's participation at both these meetings and being a party to these resolutions is doubtful, and it cannot be said that the petitioners will be unable to prove their stand. In this connection, it would be useful to remember the petitioners' allegation that the resolution dated August 20, 1971, is a fabrication, on the basis that the valuer's report mentioned therein is of subsequent date. For this reason, at this stage, the petition cannot be thrown out by accepting that the petitioners Nos. 1 and 2 were a party to both these resolutions.

30. It is also significant that the board's resolution dated July 26, 1971 (annex. R-6 at page 1), mentions financial stringency in the company as the cause for disposing of the company's shares held in the Mills Ltd. It has already been mentioned that the transfer of these shares, and that too in the unusual manner without obtaining any cash for them, resulted unduly in heavy losses to the company in addition to the loss of the sole selling agency of the Mills, which was the main business of the company. Even in normal times such a transaction would be indicative of lack of probity and mismanagement in the conduct of affairs of the company and that result is aggravated since it was done at a time when the company was admittedly facing financial stringency.

31. On behalf of the company, it has also been contended that the two units at Dewas were under the complete control of petitioner No. 1 who was their director-in-charge and it was the mis-management of petitioner No. 1 which occasioned heavy losses to the company on account of which it had to be closed down. In the first place no resolution or any other material has been placed to show that petitioner No. 1 was the person placed in-charge of " Nand Vanaspati " while there is material to show that this unit was under the direct control of Shri Sukanmal Bhandari, one of the directors of the majority group. Moreover, from the material it is shown that even in respect of the other unit at Dewas, while petitioner No. 1 had been placed in charge, the other directors also were in control of that unit and were in fact exercising that control. Resolutions showing that even when petitioner No. 1 was placed in charge of this unit, the other directors of the majority group were authorised time and again to deal on behalf of the company in respect of loan transactions of the unit. The company alleges that there was serious mis-management by petitioner No. 1 of the Dewas units, which resulted in heavy losses and shortage of security for the loans taken from the bank, with the result that- the bank demanded additional security. It is alleged that the transfers made of the company's properties were for the

purpose of furnishing the additional security demanded by the bank. That there were surprise inspections made by the banks to check the goods against which loans had been advanced and the last such check was on July 23, 1971, is not in dispute. It appears from the material at present that the serious differences between the petitioners and the majority group and the actual dispute between them arose on or about July 23, 1971, when the last check was made by the bank and there was an attempt by the majority group to fasten the entire liability on the petitioner No. 1. It is quite reasonable to presume that the board's resolution dated July 26, 1971, itself, was, therefore passed subsequent to the dispute coming on the surface. The company's stand has been that the petitioner No. 1 alone was responsible for the misfortune leading to the closure of the Dewas units but there is material in the company's own documents to indicate that the majority directors were also in control of the working of the Dewas units and many large loans taken for them were actually by the majority directors themselves. Thus, this other main stand of the company does not prima facie appear to be acceptable at this stage.

32. Apart from the loans of the two secured creditors State Bank of Indore and the Madhya Pradesh Financial Corporation amounting to about Rs. 68 lakhs, there is also a claim of the State of Rajasthan of about Rs. 24 lakhs as the sales tax dues against the Dewas units of the company. The claim on account of arrears of sales tax is disputed by the company on the ground of its liability to pay the same even though there is no dispute that no sales tax against those sale transactions was paid by the company. The company contends that this liability is of another party, while the State of Rajasthan claims to recover the amount from the company as the principal. The figure of the claim has not been disputed by the company. In view of this dispute about the liability, the company has not shown this debt in its balance-sheet. Even without this debt being shown, the balance-sheets continue to show losses year after year which from Rs. 4,87,152.69 in 1972 has risen to the figure of Rs. 8,74,042.75 in 1974 and there is no dispute that the position in the year 1975 would be even worse. On behalf of the company, it is contended that the losses are on the increase on account of the fact that the loans could not be paid off by sale of the properties as a result of the petitioners' action in thwarting the same which the company proposed by sale of its properties, to liquidate the debts. It is urged that increase in the figure of losses is on account of the increase in the amount of interest payable on these loans. It is sufficient to say at this stage that this argument itself supports the petitioners' allegation of lack of probity and mismanagement in the conduct of the company's affairs on the basis of the transactions of transfer of buildings, hotel and the shares already mentioned above. This state of affairs also supports the petitioners' contention that the company is already on its last legs. Mr. Modi contends that the company, the business of which as already ended, is being continued for some time only to enable the majority group to set out the kernel and then to throw the worthless shell after the assets of the company have been siphoned out for the benefit of members of the

majority group. On the material present, it is not possible to say that this accusation against the majority group is not justified.

33. Mr. Mehta has relied on some business of cotton done in the year 1973 which yielded a profit of about Rs. 50,000 to the company. He relies on this subsequent event to contend that the company has the potentiality to undertake business in the future so that it cannot be said that the substratum of the company has gone. He also argues that the conduct of the petitioner No. 1 has been impeding the company so far. It is sufficient to say that at least from July 26, 1971, when the board's resolution was passed entirely to the benefit of the majority group, the acts of the petitioner No. 1 could not in any way effectively check the conduct of the affairs of the company in any manner that the majority group desired. All the same, there is nothing to show that there is either any desire of the majority group or any prospect of the company carrying on any business hereafter. The facts not in controversy do suggest that the majority group has been acting in a manner so as to derive the maximum benefit for itself and it is quite likely that their desire for continuance of the company is only to retain the complete control of the affairs in their own hands to suit their own purpose.

34. The main argument of Mr. Mehta on behalf of the company is that it is not necessary to advertise the petition for winding up, since the alternative reliefs claimed in the petition can all be granted under Sections 397 and 398 of the Companies Act. This argument is based on Section 443(2) of the Companies Act. His argument is, therefore, really not for dismissing the petition as a whole but for continuing it without advertisement, only for the purpose of Sections 397 and 398 of the Companies Act. For the reasons already given, I am unable to accept this contention on the facts and in the circumstances of this case which justify continuance of the petition for winding up. Moreover, some of the alternative reliefs also, such as avoidance of sales made by the company to members of the majority group, cannot be granted in a petition merely under Sections 397 and 398 of the Act in view of the shorter period of limitation prescribed for that purpose. I am satisfied that the proper action would be a winding-up order in case the allegations made in the petition can be ultimately substantiated and there is material to show *prima facie* that those allegations are capable of proof.

35. In my opinion, the above circumstances alone are sufficient to indicate that the petitioners have made out a case to attract Clause (f) of Section 433, i.e., the "just and equitable" rule for winding up the company. It is, therefore, not necessary to deal with the other circumstances relied on by the petitioners, at this stage. For obvious reasons, the opinion expressed in the order has to be read for the limited purpose already indicated at the outset.

36. I must, however, record my appreciation of Mr. N. A. Modi, learned counsel for the petitioners, and Mr. J. I. Mehta, learned counsel for the company, for their able assistance and the complete fairness with which both of them argued the case before me.

37. As a result of the aforesaid discussion, I. A. No. 2049 of 1975 filed by the company is dismissed with costs. Counsel's fee Rs. 1,000 if certified. Consequently, in accordance with Rule 96 read with Rule 24 of the Companies (Court) Rules, 1959, it is directed that advertisement be duly published in the prescribed manner. The requisite steps for this purpose be taken by the petitioners within two weeks from today. In addition to the publication being made in the official Gazette of the State as required by r, 24, it shall also be made in one issue each of the daily newspapers " Nai-Duniya " of Indore and " M. P. Chronicle " of Bhopal. The date of hearing to be mentioned in the advertisement be fixed by the office and necessary steps be taken to ensure the advertisement more than 14 days before the date fixed for hearing. It is also directed that the notice be sent to the Central Government in accordance with Rule 89 of the Companies (Court) Rules, 1959.