

Subhash Chand Agarwal and anr. Vs. Associated Limestone Ltd. and

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Court : Company Law Board CLB

Decided On : Feb-18-1998

Reported in : (1998)92CompCas525

Judge : P Majumdar, A Ramanathan

Appellant : Subhash Chand Agarwal and anr.

Respondent : Associated Limestone Ltd. and

Judgement :

1. This petition filed in September, 1991, by Shri Subhas Chandra Aggarwal and Smt. Anju Aggarwal under Section 397/398 of the Companies Act, 1956 (hereinafter called "the Act"), against Associated Limestone Limited (hereinafter called "the company") complaining of oppression and mismanagement has a long and chequered history. It is appropriate to trace this history before coming to the merits of the petition.

2. After the initial hearings in December, 1991, January and February, 1992, an attempt was made at the instance of the Company Law Board for settlement of the dispute between the parties. In the month of March, 1992, it appears that there was a meeting of the concerned parties excepting the petitioner and respondent No. 3 but including respondent No. 2 at which there was an agreement to the effect that all allotments made by the company after it became public in July, 1985 (originally the company was incorporated as a private company) are not valid, and, therefore, a redistribution of such shares among the original shareholders was

agreed upon. The Rajasthan State Mineral Development Corporation (RSMDC) which got allotment of about 50.4 per cent, of the shares after the company became public was also agreeable for reallocation of their shares and also suggested a settlement in the process as is evident from the communication from that institution. At the hearing held on April 7, 1992, it appears from the records that a settlement was arrived at by which all allotments, after the company became public, in contravention of Section 81(1A) of the Act, are to be cancelled excepting the allotments made to RSMDC, respondent No. 3 and one Shri Rohit Bohra, director of the company. It was also agreed, inter alia, to redistribute the shares wrongfully allotted along with the shares allotted to RSMDC. Though it appears that no formal shape to this settlement was given, there is a reference to this settlement in the order of the Company Law Board dated June 4, 1992. It is also further recorded that the representative of respondent No. 2 withdrew his consent to the compromise and submitted alternative proposals which were not acceptable and compromise efforts failed. In view of this, the Company Law Board passed an interim order dated June 4, 1992, reconstituting the board of directors with immediate effect in order to make interim arrangement for conducting the affairs of the company. In this board, the petitioner, respondents Nos. 2 and 3, and the representatives of the RSMDC were appointed. It was also directed that these three parties will deposit equally the amount due to the RSMDC towards repurchase price of the shares along with the interest at the rate of 14 per cent, since the RSMDC desired to off-load their shareholding. In addition all share transfers and allotments after the filing of the petition were stayed. All the above information is available in volume I as part of the pleadings.

3. Aggrieved by the above order dated June 4, 1992, respondent No. 2 and another director in the earlier board, namely, Shri Rohit Vohra filed two separate appeals under Section 10F of the Act, before the Rajasthan High Court challenging the reconstitution of the board of directors by the Company Law Board through an interim order. On these two appeals, the Rajasthan High Court passed stay orders in June and July, 1992, by which order dated June 4, 1992, of the Company Law Board was stayed. The High Court, however, had given liberty to the Company Law Board to proceed with the main petition. The appeals were finally disposed of by the High Court by its order dated April 7, 1995. It is recorded

in the final order that the question whether the Company Law Board has the jurisdiction through an interim order to reconstitute the board of directors or to put a restraint on the transfer of shares which were the grounds of appeal have become complicated due to counsel for the respondents therein raising the plea that the orders passed by the Company Law Board or by the High Court (stay order) have not been complied with. This is a factual matter and for that purpose the High Court directed that the respondents therein may submit the factual position before the Company Law Board which should take that into consideration and pass final orders. It was further directed that if any interim relief is required by any party they may apply to the Company Law Board. It was concluded that it is not appropriate to observe anything with regard to the interim order of the Company Law Board or the compliance or non-compliance of orders. It was left to the Company Law Board to pass necessary orders which it may deem proper.

4. After the above final orders, the petitioners filed an affidavit dated May 1, 1995, being C. A. No. 126 of 1995 seeking issue of fresh directions to dispose of the matter since the Company Law Board had stayed the proceedings by an order dated October 22, 1992, in view of the pending appeal before the Rajasthan High Court.

5. In the interregnum respondent No, 3 through an application in September, 1994 (C. A. No. 156 of 1994), had prayed for early hearing in view of the interim order of the Rajasthan High Court clarifying that the Company Law Board is free to proceed so far as the main petition is concerned. Around this time an affidavit was also filed by the petitioner narrating additional instances of acts of oppression and mismanagement. However, before a final decision on this interim application for resumption of hearings and the additional affidavit of the petitioner could be taken up, since the petitioner's application, viz., C. A. No. 126 of 1995, along with the copy of the Rajasthan High Court's final order was received, the proceedings were resumed in November, 1995. Thus, for a period of nearly four years no progress could be made in the petition.

6. After resumption in November/December, 1995, further attempts at compromise were made. With these attempts not coming to fruition the interim application,

namely, C. A. No. 126 of 1995, filed by the petitioners seeking further directions to the respondents to implement our order of June 4, 1992, regarding board of directors and stay of transfer of shares was heard. At the hearing held on September 30, 1996, the advocate for respondent No. 2 fairly conceded that with the disposal of the appeal by the High Court technically our order June 4, 1992, got revived. However, the plea of the petitioner to operate the board as reconstituted by us could not be given effect to since in the meanwhile the general body during the operation of the stay had elected the board of directors and hence he prayed that they should be allowed to continue. In this connection he also cited various case-laws to show that the courts do not intervene to dislodge the duly elected directors of the company. It was also found that during this period one transfer of 10 shares of Shri S. K. Singh and a transmission to the widow of an existing member only took place. The advocate justified these transfers as not in violation of the orders of the Company Law Board as during this period the Company Law Board order had been stayed by the High Court, since that order was under challenge. After hearing, we issued an interim order allowing the board of directors as elected by the general body, but inducted three more persons, that is those persons whom we had inducted vide our order dated June 4, 1992. We did not find any serious violation of our orders regarding transfer and transmission while disposing of the application nor did the petitioners raise such objection in their application. They, therefore, adequately complied with the directions of the High Court of Rajasthan with regard to violation of any of the orders of the Company Law Board or of the High Court.

7. After the disposal of the appeal by the Rajasthan High Court, the petitioners filed an amended petition on December 20, 1995, seeking to amend the original petition on the ground that after the original petition, the respondent-company and its directors were not supplying any information and not allowing the applicants to inspect the records of the company. However, subsequently, the petitioner had come to know more details about acts of oppression and hence preferred the amending application, along with an amended petition. The respondents though formally objected to the amendments subsequently tacitly conceded since they filed their replies to the amended petition though under protest.

We were however convinced that since the petitioners were denied inspection of the statutory records as already alleged in the original petition and hence, we had allowed the inspection in early 1992, all the further material on facts are relatable to the broad allegations in the petition and have arisen out of inspection granted to the petitioners by us. Accordingly, the amended petition was taken on record along with replies which were filed subsequently. This entire process to reach the main stage of hearing took up to March, 1997, when the hearing on the merits really commenced.

9. On the facts it is stated in the amended petition that the company was incorporated as a private limited company on October 6, 1983, with three parties, namely, petitioner No. 1, respondent No. 2 and one Shri Sunil Kumar Singh with all the three holding 10 shares each. Petitioner No. 1, one of the promoter directors, resigned from directorship in 1985, before the company was converted into a public company. An agreement was reached around that time between the promoters and the RSMDC for the purpose of operating limestone mines. Thus, the main business of the company is quarrying limestone through a joint venture project with the RSMDC. The two petitioners in all hold 524 shares or 12.55 per cent. of the equity capital of the company, the paid-up capital being Rs. 4,17,600 divided into 4,176 shares of Rs. 100 each, thus they qualify under Section 399 of the Act, to apply.

(a) The share capital of the company was raised from time to time and about 971 shares of Rs. 100 each were allotted to a number of benami/ fictitious shareholders. Further, all allotments made after the company became a public company are null and void since such issues were made without the approval of shareholders by special resolution as required under Section 81(1A) of the Act.

(b) The petitioners have not received any notice of annual general meetings, accounts, etc., for the last seven years and the company has not filed the annual returns regularly.

(c) The petitioners had requested through registered letters that additional shares may be offered to them in case the company proposed to issue further shares which however has not been heeded to.

(d) The petitioners also requested for inspection of the register of members along with the necessary remittance in this regard. No reply at all was received from the company.

(e) The request for calling extraordinary general meeting was refused by respondent No. 2.

(f) The petitioners also understood that respondent No. 2 summoned the annual general meeting some time in September, 1991, at the private residence of a political leader. Though no notice was received by the petitioners, a copy obtained from another shareholder showed that it was not accompanied by the balance-sheet, directors' report, auditors' report, etc. The notice also was signed by respondent No. 2 though the chairman as well as the managing director personally informed the petitioner that the meeting does not have their consent.

(g) General meetings were held without quorum and the appointment of auditor is irregular since no proper notice stating that a special resolution is necessary for this purpose has been given and no representative of the RSMDC was present which is a requirement as per the articles of association.

11. It was the conclusion of the petitioners that in view of the above, the affairs of the company are being managed in a manner oppressive to the minority shareholders and completely mismanaged to the detriment of all the shareholders of the company.

12. In addition to the above, further allegations are made that: (a) despite the existence of a managing director the affairs of the company were being managed de facto by an official of the RSMDC in his personal capacity, (b) no disclosure of interest as well as appropriate approval of the board has been obtained as per the requirements of Sections 297 and 299 of the Act, for the joint sector agreement with the RSMDC, (c) the joint sector agreement was entered into by respondent No. 2 without properly disclosing the contents of the same to the board of directors, (d) all the taxes, dead rent, etc., relating to the mines payable by respondent No. 2 have been burdened on the respondent-company. The allotments of shares were made to the relatives and friends of respondent No. 2

without appropriate disclosure, (e) the then managing director, namely, respondent No. 3 has been illegally removed without complying with the provisions of the Companies Act, (f) certain adverse findings exist in the enquiry conducted by the Director, Mining and Geology, Government of Rajasthan, with regard to the maintenance of records by the company, and (g) there are certain adverse remarks by the auditors in their audit report dated August 22, 1991.

13. The petitioners also contended in the amended petition that there is a clear cut case of winding up because of the continued oppression of the minority, but winding up will prejudicially affect their interest. This averment however was absent in the original petition.

14. The petitioners, therefore, have sought the following substantive reliefs : (1) Declaring as null and void the allotment of shares made in contravention of Section 81 of the Act, or in the alternative, regularise the allotment but the petitioner be granted additional shares to maintain his percentage.

(2) Allow buy-back of shares held by the RSMDC by the petitioner, respondent No. 2 and respondent No. 3, in the same ratio of their original holding.

(4) Declare that respondent No. 2 is ineligible and incompetent to remain as a director and made responsible for funds illegally usurped by him.

(5) The petitioner be appointed as a permanent director. Apart from the above, certain other prayers which are purely interim in nature have been incorporated in the final reliefs.

16. Respondents Nos. 1 and 2 filed detailed replies to the original petition as well as to the amendment application. As regards the allegations in the original petition of non-receipt of notice of annual general meetings and non-filing of annual returns, etc., it was contended that notices were regularly sent and annual returns have been regularly filed. Photocopies of the postal certificate as well as the relevant entry of the despatch register have also been enclosed with the reply. It is further contended that the petitioners had been perhaps sending letters to the wrong address since the registered office has been already shifted. It is further

stated that the petitioner in collusion with respondent No. 3 has been sending the letters to the address of the latter which correspondence also is a concoction inasmuch as registered letters written on a particular day were shown to be received by respondent No. 3 on the same day. It is further contended that even remittance for obtaining copies of registers, etc., were perhaps sent to the above wrong address which is also described as concoction. All these acts are described as joint ventures between the petitioner and respondent No. 3 to grab control of the company.

17. In the reply to the amendment application, the following preliminary objections have been raised: (a) The amendment application is a surreptitious attempt to move a fresh company petition on back date. In this petition not less than 33 new respondents who are not even shareholders as on the date of the moving of the original petition have been included. As already submitted by the respondents there were only 27 shareholders on the date of filing of the petition.

(b) Despite inspecting the records of the company, the petitioner has given deliberately wrong addresses of shareholders even though the latest list of members was made available to the petitioner before the Company Law Board proceedings as well as in the High Court proceedings. Thus, the petitioner tried to clearly mislead the Company Law Board.

(c) Though a number of subsequent events have been included in the amended petition still an erroneous impression is sought to be created as if this petition was filed in September, 1991, which is not a fact. In particular this relates to the removal of respondent No. 3 as managing director.

(d) The amendment application does not bear the consent of petitioner No. 2.

(e) The amendment application is also not supported by fresh affidavits of the petitioners and they seem to have relied on the original affidavits which also are not in conformity with the Company Law Board Regulations.

(f) Under Order VI, Rule 17 of the Code of Civil Procedure, though wide discretion is available to allow amendments in the pleadings, through various decisions of

the High Courts and the apex court, it is now established that no new cause of action can be introduced nor the substratum of the dispute can be changed. It is also not possible to substitute one cause of action for another.

(g) The petitioner has unnecessarily dragged on the litigation by introducing unnecessary and unrelated elements as well as parties.

Hence, the petition should be dismissed on the basis of the preliminary objections.

18. Another major preliminary objection of the respondent is that the petitioner has failed to make out a case for winding up which is a must for granting relief under Section 397 of the Act. It has been held by the Company Law Board and High Courts in various cases that a case for winding up has to be made by the petitioner but that such winding up will be prejudicial. In this petition, no such case has been made out.

It is also contended that the simple averment of the petitioner that a case for winding up exists has also been only as an afterthought after the respondents pointed out and stressed upon this basic lacuna during the early hearings and was, therefore, incorporated in the amended petition.

19. On the additional facts in the amended petition, it is stated by these respondents that : (a) As regards the allotment of shares allegedly in violation of Section 81 of the Act, all the allotments have been made by duly constituted board meetings. Further, the petitioner cannot be permitted to pick and choose certain allotments as illegal but approve certain other allotments. In fact allotments were made even to the two petitioners as well as to respondent No. 3.

(b) Regarding allegation of allotment to benami/fictitious persons, the petitioner has failed to bring forth any proof about these shares being benami after the inspection of the records.

(c) The petitioner has placed reliance on a wrong copy of the articles of association to state that for a general body meeting, the presence of a representative of the RSMDC is a must otherwise the meeting is invalid whereas the correct copy has been already provided to the petitioner. The correct copy has

also been placed on the record of the High Court and still the petitioner is trying to mislead the Company Law Board.

(d) As regards the joint venture agreement, it is stated that it has been duly approved and is also incorporated in the articles of association of the company. Further, out of the eight shareholders at the time of entering into the joint venture agreement, seven shareholders have already submitted duly sworn affidavits stating that the joint venture agreement was entered into by respondent No. 2 with their due knowledge and consent was also given at the general meeting of the company. Suitable replies have also been filed with regard to the other allegations of mismanagement.

20. As regards the reliefs, it is stated that in view of the replies there is no case made out by the petitioner and they are not entitled to any relief.

21. As regards the additional allotments the respondents have no objection if all the allotment of shares deemed/considered as in violation of the provisions of Section 81 and consequently cancelled or permitted to be reallocated but they opposed the cancellation of only certain allotments as proposed by the petitioners. It is further stated that the RSMDC has committed in writing before the Rajasthan High Court that respondent No. 2 is the only person who has a right to buy back the shares, in case they off-load the same.

22. As regards the relief that the petitioner may be appointed as a permanent director it is vehemently opposed on the ground that looking to the extent, manner and behaviour of the petitioner who tried to make a mountain out of a non-existing mole-hill and his basic nature of complaining perpetually he should not be allowed to act as a director.

Finally, the respondents have prayed for outright rejection of the amendment application as well as the original company petition on the basis of preliminary objections raised by the answering respondents.

Further keeping in view the attitude and manner in which the petitioners and respondent No. 3 have contested this petition, they may be directed to sell their

shares to the majority at a reasonable price which may be fixed by the Company Law Board.

23. Respondent No. 3 earlier filed a reply to the petition and subsequently filed a consolidated reply to both the original and the amended petition. The subsequent reply, however, was not taken on record. His affidavit basically concurs with the allegations made in the petition. Respondent No. 3 has brought to the notice of the Company Law Board certain special facts relating to the company, namely, that the entire records of the company were stolen from the registered office by one Shri Ankit Sharma, an employee of the company, for which a first information report was lodged by him in his capacity as the managing director. Subsequently, he came to know that these records are with respondent No. 2. As such, respondent No. 2 is the only person who can deal with the contentions raised in the petition. It is also stated in the affidavit that in April, 1991, when he was also present at a board meeting the registered office of the company was purported to be changed, but actually no such decision was taken. Subsequently, respondent No. 2 commenced false propaganda stating that he (respondent No. 3) has been removed from managing directorship. Apart from these narration of facts all the contentions of the petitioner have been accepted by respondent No. 3.

24. The hearings in this case were extended over nearly six months. The petitioner's counsel, Shri Vinod Kumar Jain, chartered accountant, narrated the facts in the amended petition and reiterated the instances of non-receipt of notices of general body meetings, annual reports, shifting of the registered office without notice, non-filing of annual returns, denial of inspection, etc. He also questioned the validity of the meetings in view of the absence of RSMDC representatives at these meetings. In addition he questioned the allotment of shares in violation of Section 81 of the Act. He further stated that even though the petitioners had deposited money for allotment of further shares the full allotment was not given to them. He laid stress on the applicability of Section 81 to this company right from the day it became a public company. According to him, Section 81(1) exempts any issue made by the company within two years of formation or within one year of the first allotment of shares. This company having been formed in 1983, (though as a private company) since the entity is the same, the period of two years is over in

1985. As such in July, 1985, when the company became public, right from that day any allotment made shall have to conform to Section 81(1) requirement as a public company. In his view, the period of two years should not be counted from the day the company became a public company as the word used is "formation" and the time limit is to run from the date of formation. Formation as per Section 12 of the Act is through filing memorandum/ articles etc. which has taken place in 1983 itself. In 1985, there was no further formation but is only a change of name or at best it is like a minor becoming a major or a child becoming a man, the private company became a public company. Shri Jain also dealt at length with the interpretation of the wording in the joint venture agreement with the RSMDC to establish that the petitioners are also co-promoters and hence entitled to buy back the shares held by the RSMDC. Though there is no specific allegation with regard to the implications of the joint sector agreement, in support of the prayer for repurchase of shares from RSMDC proportionately by the petitioner also, it was argued that the petitioners should also be considered as co promoter as according to Shri Jain, the term includes "associate" as well. There are no other "associates" other than the original promoters and hence there is a valid justification for an order to that effect as Shri Jain contended.

Shri Jain submitted certain case-laws after arguments along with written submissions which were also considered by us.

25. Shri M. C. Mehta, advocate, appearing on behalf of respondents Nos.

1 and 2 laid stress on the non-maintainability since the petition does not comply with the fundamental requirement under Section 397, namely, that a case has to be made out for winding up on "just and equitable" grounds. In fact, in the original petition, there is no such averment to this effect at all. Even in the amended petition, it has not been substantiated as to how the company can be wound up on just and equitable grounds. According to him, this is a pre-condition for considering any petition under Section 397. In this connection, he cited the following cases : Albert David Ltd., In re [1964] 68 CWN 163 at 171 ; Laxmi Film Laboratory and Studios (P.) Ltd., In re [1984] 56 Comp Cas 110 at 131 (Guj) ; Nagavarapu Krishna Prasad v. Andhra Bank Ltd. [1983] 53 Comp Cas 73 (AP); Suresh Kumar

Sanghi v. Supreme Motors Ltd. [1983] 54 Comp Cas 235 (Delhi) and Shanti Prasad Jain v. Kalinga Tubes Ltd. [1965] 35 Comp Cas 351 at pages 366 and 367 (SC).

26. Apart from this he also challenged the maintainability on the grounds of the consent not being given and that the consent should be "appropriate" consent. He also cited a number of cases with regard to the consent in the absence of which the petition has to be dismissed.

He also challenged the affidavit filed by the petitioners on the ground that these affidavits are not in accordance with the Company Law Board Regulations and as such the petition cannot be entertained. To support this contention , Shri Mehta filed a catena of cases.

27. Apart from the above preliminary contentions, Shri Mehta also challenged the petition, in particular the amended petition, which deals with subsequent acts which have no linkage with the allegations in the main petition. He also further contended that the allegations in the petition are vague and imprecise. Such wild allegations without details cannot be entertained by the court particularly in the context of a prayer for investigation. In this connection, he cited the following cases : Clive Mills Co. Ltd., In re [1964] 34 Comp Cas 731 (Cal) ; P. S. Offshore Inter Land Services P. Ltd. v. Bombay Offshore Suppliers and Services Ltd. [1992] 75,Comp Cas 583 (Bom) and Krishnanand Agnihotri v. State of Madhya Pradesh, AIR 28. As regards the subsequent acts which form part of the amended petition, the following cases were cited : Shanti Prasad Jain v. Kalinga Tubes Ltd. [1965] 35 Comp Cas 351 (SC); Palghat Exports Pvt. Ltd, v. T. V. Ctiandran [1994] 79 Comp Cas 213 (Ker) ; Lundie Bros. Ltd., In re [1965] 35 Comp Cas 827 (Ch D) ; Asoka Betelnut Co. Pvt. Ltd. v. M. K. Chandrakanth [1997] 88 Comp Cas 274 (Mad) ; Sanatan Investment Co. (P.) Ltd. v. Prem Chand Jute Mills Ltd. [1983] 54 Comp Cas 186 (Cal) and Vihas Jalan v. Hyderabad Industries Ltd, 29. Shri Mehta also stated that the allegation of non-maintenance of records and denial of access to records cannot be acts of oppression.

At worst, it may be a default under the relevant provisions of the Companies Act, which may or may not involve penal consequences under the relevant provisions

of the Act. In this connection he cited the following cases :Chander Krishan Gupta v. Pannalal Girdhari Lal Pvt. Ltd. [1984] 55 Comp Cas 702 (Delhi); Maharani Lalita Rajya Lakshmi v. Indian Motor Co. (Hazaribagh) Ltd. [1962] 32 Comp Cas 207 (Cal) ; Gover Rustom Irani v. Property Co. P. Ltd. [1976] TLR 1682 (Cal) and Suresh, Kumar Sanghi v. Supreme Motors Ltd. [1983] 54 Comp Cas 235 (Delhi).

30. Dealing with the merits, Shri Mehta submitted that the allotments were made as per the actual applications made by the existing shareholders. Further, he emphasised that the petitioners cannot be allowed to pick and choose a cut-off date for applicability of Section 81. This Section according to him deals with public limited companies only and the formation of a company is governed by Section 12 according to which a public limited company can be formed only by at least seven promoters and in the instant case five new members joined the existing three members only on May 31, 1985, and only thereafter the present public limited company was formed and the same was registered by the Registrar of Companies, vide certificate of incorporation dated July 24,1985, and hence the shares allotted after a period of two years from that date, i.e., after July 24, 1987, if at all may be alleged as in violation of Section 81. He further justified that in any case the allotment to the RSMDC is not in violation of Section 81 as it has been done under a joint venture agreement duly approved by the shareholders of the company in general meeting unanimously and hence the provisions of Section 81(1A) are complied with. He also at the same time challenged the contentions of respondent No. 3 in his reply filed subsequently after filing reply to the original petition, that the ten shares of Shri Sunil Kumar Singh have been renounced in his favour.

According to him, there is no renunciation as there was no rights issue and even if there was a renunciation of the existing ten shares this was never informed to the company and has never been taken on the records of the company. There is no such document to that effect.

31. As regards other instances of oppression cited by the petitioners, Shri Mehta stated that the petitioners never wrote earlier complaining of such acts for a number of years. Though there are many other shareholders no such protest has

been received from any one. As regards allegation of denial of inspection and copy of the register of members he stated that all the correspondence in this regard has been addressed to the residential address of respondent No. 3 with the result, the company had no occasion to deal with such correspondence.

32. In fact, it was the contention of Shri Mehta that the whole conduct of the petitioners is mala fide and all the acts are consequent upon the strained relationship of respondent No. 3 with the company and respondent No. 2. It was his case that it is a collusion between respondent No. 3 and the petitioner which is also evident from the reply of respondent No. 3 to the petition, accepting the entire contents of the petition. According to him, respondent No. 3, never got himself elected as a director at any annual general meeting. Respondent No. 3 could never work to the satisfaction of the board and indulged in various acts of commission and omission as managing director which ultimately resulted in his removal. The acts and conduct of the petitioner and respondent No. 3 before and during the proceedings amply and clearly prove their collusion.

33. As regards the allegations of mismanagement the following submissions were made : (a) The allegation of allotment to benami persons is false since the full address and particulars were submitted to the High Court and the Company Law Board and has also been inspected by the petitioners during these proceedings.

(b) The allegation of annual general meeting having been held without quorum is based on a wrong copy of the articles of association of the company and as per the correct version of the articles, there is no need for a nominee of the RSMDC to be present and hence the general meeting cannot be questioned on this ground of quorum.

(c) Appointment of auditors at the annual general meeting is not invalid since there is a specific reference to Section 224A in the notice which clearly means that a special resolution is required and notice has been accordingly given.

(d) Regarding the allegation of certain observations of the Director of Mines, Government of Rajasthan, in his letter dated September 25, 1991, though no action was taken by respondent No. 3, who was in charge of the management at the

time, the matter has been settled subsequently and the assessment has been finalised. He produced copies of the assessment orders in this connection.

(e) As regards certain observations of the auditors on the accounts for the year ended March 31, 1991, these relate to the period when respondent No. 3 was the managing director and as such he only was responsible, still, the board has given suitable replies to all the points raised by the auditors to their satisfaction.

(f) As regards allegation of violations of Sections 297 and 299, Sim Mehta stated that not only the fact of entering into the joint sector agreement by respondent No. 2 as co-promoter was duly approved by the Board on June 18, 1984, but the joint sector agreement itself after it was entered into on March 29, 1985, was ratified again by the board of directors on June 5, 1985, and by the annual general meeting on June 15, 1985. The minutes books in this regard were submitted to the Company Law Board and inspection was also offered to the petitioners.

(g) As regards the allegation of management being dictated by a single individual who is an official of the RSMDC, the matter has been thoroughly investigated by the RSMDC already.

34. Shri Mehta, therefore, concluded that the petition has to be dismissed in limine on the ground that the basic requirement of a case for winding up has not been made out. Further, the entire allegations have to be disregarded in view of the conduct of the petitioners for delay and laches and for collusion with respondent No. 3 who carried a grouse since he was removed as a managing director of the company.

35. Arguments were also advanced on behalf of Shri T. K. Rana, respondent No. 3, on certain issues by Shri Rohit K. Aggarwal, advocate, and on certain other issues by Shri R. S. Suri, advocate. The points argued on behalf of respondent No. 3 mainly related to the effect of shares allegedly allotted in contravention of Section 81 and the interpretation of the joint sector agreement and the need for distribution of shares on unloading by the RSMDC. The substance of the argument in respect of alleged violation of Section 81 is that all concerned shareholders had constructive notice of additional issue of shares and having participated in

subsequent general meetings where the allotments have been given effect to, the petitioners are stopped to make any grievance about the allotments made. In the circumstances, and as confirmed in a catena of cases since "procedure is the handmaid of justice", any ruling that the allotments are to be set aside, the same would result in grave injustice to bona fide purchasers of shares including respondent No. 3. In this connection, the advocate also stated that the same principles were enunciated by the Patna High Court in Yugal Kishore Sinha v. B. N. Rahtogi, AIR 1958 Patna 154. He also drew a conclusion from a decision of the Supreme Court in Nanalal Zaver v. Bombay Life Assurance Co. Ltd., [1950] 20 Comp Cas 179 ; AIR 1950 SC 172, that so long as the shares were issued bona fide in the interest of the company the allotment is not per se invalid, but the procedure being illegal it can be avoided by the company or any director or shareholder aggrieved and may be used as a weapon of defence when any right or liability arising out of such allotment is sought to be enforced.

36. On the interpretation of the joint sector agreement and distribution of shares upon unloading by the RSMDC it was contended that the term "co-promoter" does not cover only respondent No. 2 but his associates as well. A reading, of all the relevant clauses together as contained in the joint-sector agreement would go to show that it includes the co-promoter, his nominees and associates. The same interpretation has to be given for the same term in the buy back agreement also. This is also fortified by various communications from the RSMDC to respondent No. 3 expressing its desire to sell the shares in his capacity as constituent of "co-promoter". Thus, it was argued on behalf of respondent No. 3 that the allotment of 500 shares should not be cancelled and that he should get his due share of the RSMDC holding when it unloads to the co-promoters.

37. We have carefully considered the pleadings and arguments by counsel along with the written submissions made on behalf of the parties.

Before we take up the merits of the case, it is appropriate to deal with the preliminary objections on behalf of respondents Nos. 1 and 2.

In this connection, we should also record that as a quasi-judicial body normally we do not resort to part adjudications that it is to give a ruling on maintainability and

other preliminary objections and to issue final orders thereafter if the petition is admitted. Thus, we do not have two stages of admission and consideration on the merits as in High Courts. As has been ruled by the apex court in *D. P. Maheshwari v. Delhi Administration*, AIR 1984 SC 153, we invariably adopt a composite adjudication of both preliminary issues and merits together unless the parties insist otherwise. At the same time, the non-insistence by any party at the initial stages cannot be presumed to go against such party.

38. In the present case, on behalf of the first and second respondents, counsel raised certain preliminary objections including on maintainability. On maintainability, our attention was drawn to the provisions of Section 397 which is reproduced below: "(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or member's (including any one or more of themselves) may apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of Section 399.

(2) If, on any application under Sub-section (1), the Company Law Board is of opinion- (a) that the company's affairs (are being conducted in a manner prejudicial to public interest or) in a manner oppressive to any member or members; and (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up : the (Company Law Board) may, with a view to bringing to an end the matters complained of, make such order as it thinks fit." 39. Sub-section (2)(b) clearly stipulates two tests, viz.; (i) that on consideration of the facts of the case, there should be justification for the making of a winding up order on "just and equitable grounds"; and (ii) a conclusion that to wind up the company would unfairly prejudice the complaining member or members. The above two are essential for a petition under Section 397 seeking relief on the ground of oppression apart from the petition establishing that the company's affairs are in fact being conducted in a manner oppressive to any member or members. This requirement has a history behind it originating from the Cohen Committee Report in the UK before the amendment of the law in 1948. Before this amendment, the

only alternative was winding up, and hence this remedy as an alternative is available as per the amendment only if such a situation is reached. The basic rule in corporate democracy is that the majority shall prevail, Section 397 proceedings being exception to this rule. Though the English law has undergone a sea change, thereafter, the Indian law being as it is, these tests are inevitable. Shri M. C. Mehta, advocate, for respondents Nos. 1 and 2 firstly drew our attention to the fact that in the original petition there is not even an averment to the effect that the facts justified the making of a winding-up order, but also that such order if made will be prejudicial to the petitioners. The petition is totally silent on this issue. In the revised petition, there is a mere averment to the above effect without any details as to which facts justify the winding-up order and in what way such order will be prejudicial to the petitioner's interest. Shri Mehta also contended that through an amended petition, the petitioners cannot improve their case.

40. We gave anxious consideration to the above preliminary objection and looked at the same in the context of legal precedence. Though the Supreme Court in *Shanti Prasad Jain v. Kalinga Tubes Ltd.* [1965] 35 Comp Cas 351, briefly dealt with this issue it has clearly pronounced that it must be shown as preliminary to the application under Section 397 that there is just and equitable cause for winding-up of the company. This case was brought to our notice by the advocate for respondents Nos. 1 and 2. Apart from this from our own study we could locate one more ruling of the apex court in *Rajahmundry Electric Supply Corporation Ltd. v. A. Nageswara Rao* [1956] 26 Comp Cas 91 (SC), which had already recognised this basic requirement which was only followed by the same court in *Shanti Prasad Jain v. Kalinga Tubes Ltd.* [1965] 35 Comp Cas 351, referred to above, namely, that an order under Section 397 can be made only if the facts would justify a winding-up order. In other words, law envisages that an order under Section 397 is clearly an alternative to winding-up of the company. Though valid ground should exist for winding up on just and equitable grounds it should also be shown that such a step would be detrimental to the member or members.

Hence, an order under Section 397 could be considered only on satisfaction of this condition.

41. We also looked into the two decisions cited by Shri Mehta, namely, Laxmi Film Laboratory and Studios (P.) Ltd., In re [1984] 56 Comp Cas 110, 131 (Guj) in which Justice A. M. Ahmadi (as he then was) has opined "Now, on a plain reading of Section 397 of the Act which is analogous to Section 210 of the English Act, the court must be satisfied 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 and that the facts would justify the making of a winding-up order on the ground that it was just and equitable so to do under Section 433(f) but if such an order is likely to unfairly prejudice any member or members, the court may exercise its power under Section 402 with a view to bringing' to an end the matters complained of. It is, therefore, an essential condition for the maintenance of a petition under Section 397 of the Act that facts and circumstances which would justify the making up of a winding up order on-just and equitable grounds should exist as required by Section 433(f) of the Act". This judgment once again has underlined that for maintaining a petition under Section 397 this is a condition which has to be fulfilled. In other words, in the absence of this condition, a petition under Section 397 cannot be maintained. We also considered the other case cited by Shri Mehta, namely, Naydvarapu Krishna Prasad v. Andhra Bank Ltd. [1983] 53 Comp Cas 73 (AP) , wherein a Division Bench of the Andhra Pradesh High Court, while considering an appeal in the matter of Sections 397 and 398, proceeded to consider as a preliminary issue the question whether the petitioners have made out a case for winding up of the company. All the above precedents clearly establish that in order to maintain a petition under Section 597 a case has to be made out that there is justification for winding up of the company on just and equitable grounds from the facts contained in the petition. Therefore, the non-existence of such condition is fatal to the petition.

42. We have noted in the present case that even in the amended petition, a reply was filed by respondents Nos. 1 and 2 objecting to the absence of valid justification for winding up and yet the petitioners have chosen not to file any rejoinder to the reply. During the arguments also though this preliminary objection was emphasised, there was no counter. Even otherwise, if we review the background of the company, applying the principle of dissolution of partnership this is not a case of partnership or a family business being run as a company

which perhaps could have supported the petitioner's cause. In this case, the company has a large number of shareholders not necessarily belonging to a limited group of persons. The shareholding of the parties is also not such that there is a deadlock in the management or affairs of the company. Since these are some of the tests to be Applied as per the decision of the apex court from time to time, in particular *Hind Overseas Put. Ltd. v. Raghunath Prasad Jkunjhunwalla* [1976] 46 Comp Cas 91 ; AIR 1976 SC 565, the benefit of such principle cannot also be given.

43. Another significant feature in this case is that more than 50 per cent, of the shares are held by a State Government undertaking, namely, the RSMDC, resulting in the company virtually falling within the definition of a "Government company" under the Act, i.e., RSMDC holding 50.4 per cent, whereas the test for a Government company under Section 617 of the Act is holding of not less than 51 per cent. The principle of dissolution on just and equitable grounds in the case of a largely held virtually Government company is unprecedented. Moreover, from a study of the working results it is evident that the company is turning the corner and past losses ,ai'e being wiped out. In the circumstances we are fully convinced that the petitioner has not fulfilled the primary condition under Section 397(2), namely, a justification for winding up on just and equitable grounds.

44. Apart from this, the advocate for the respondents has rightly contended that in accordance with the provisions of the Code of Civil Procedure, an amended petition cannot be allowed to make out a fresh case if the petitioner has failed to make out one in the original petition. As already noted, the petitioner has failed to bring out in the original petition that there is a justification for winding-up which he has tried to make up through the amended petition. Any consideration whether on account of maintainability or on allegations if an amended petition makes out a new case which is not originally made out, it would be unfair to admit such matters as part of the original proceedings. Hence, on this ground also, we cannot accept the petition under Section 397 of the Act.

45. The other preliminary issues raised by Shri Mehta, however, do not cut the petition at its root. These objections are more relating to form than relating to

substance namely, that the affidavit signed by the petitioners is not strictly in accordance with our regulations.

Further, there is no valid consent by Smt. Anju Aggarwal. These objections however do not really go to the root of the matter. As regards the affidavit, strict compliance cannot be insisted upon so long as the petitioners confirmed that it is genuinely filed by them and that they stand by the averments in the petition. As regards consent, since Smt. Anju Aggarwal has signed the petition as one of the petitioners, the use of the word "consented" does not mean that she is a consenter and not a petitioner. Moreover, she is qualified to be a petitioner in view of her own shareholding in the company. Hence, these preliminary objections are overruled by us.

46. Another preliminary objection raised by the respondents relates to inclusion of subsequent acts after the filing of the petition. The respondents have filed a catena of judgments of the Supreme Court, High Courts as well as the Company Law Board to show that the court will be travelling outside the allegations in the petition in such a case. On a consideration of all these cases, we are fully convinced that a petitioner cannot make out a new case so long as it is unrelated to the main allegation in the, petition. The removal of respondent No. 3 as the managing director does not fit into the various allegations contained in the original petition which are all in the nature of complaints of a member of a company. The cause of action which the petitioner is seeking to make through this new allegation of unjust removal of managing director is not only having no nexus with the main petition but also cannot constitute a basis of complaint by a member unless certain consequences affecting the interest of the company by the removal are narrated to establish that it is prejudicial to the interest of the company. Since no such consequences are brought to light through this petition the same could not have been considered, as such, we are not specifically going into this allegation. However, other allegations which are germane to the original petition have been given the consideration.

47. The petition is a composite one under Section 397/398 of the Act.

We have already come to the conclusion that since the petition does not satisfy the precondition of justification for winding up on just and equitable grounds, we have no other alternative except to ignore the allegations of oppression as mentioned in the petition. However, we may subject to the preliminary objections raised by the respondents regarding fresh cause of action not germane to the original petition, consider the allegations of mismanagement, i.e., acts prejudicial to the interest of the company or public interest. For this purpose, it is necessary to classify them into two categories, namely, oppression and mismanagement. How do we classify the allegations into acts of oppression and mismanagement Section 397(1) as it reads makes it abundantly clear that "oppression" has something to do personally with the complaining member or members. In other words actions of management which adversely affect the members in their proprietary and legal rights will fall under the classification "oppression". This has been succinctly put by the Supreme Court in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* [1981] 51 Comp Cas 743 at 782 : "A conduct which lacks in probity, conduct which is unfair to and which causes prejudice to the petitioner in the exercise of his legal and proprietary rights as a shareholder".

48. This conclusion has been arrived at on a consideration of a number of English cases on the subject by the Supreme Court. In this connection, the observation of Lord Keith in *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] 29 Comp Cas 1 (HL) ; [1958] 3 All ER 66, 86 was as follows (at page 28 of 29 Comp Cas) : "Oppression under Section 210 may take various forms, It suggests, to my mind, as I said in *Elder v. Elder and Watson Ltd.* [1952] Scottish Cases 49 a lack of probity and fair dealing in the affairs of a company to the prejudice of some portion of its members".

49. Thus, oppression relates to commission or omission on the part of management which affects the rights of members. Looked at from this point of view the various allegations relating to non-receipt of notice of meetings, non-filing of annual returns failure to reply or comply with the request letters of the petitioners for inspection, etc., and even the allotment of shares without offering to the existing members allegedly in violation of Section 81 of the Act fall squarely under the category of "oppression". In view of the valid preliminary objections

raised by respondents Nos. 1 and 2, we do not propose to go into these allegations. These allegations are personal in nature and cannot be considered as prejudicial to public interest or the company's interest.

However, the petitioner is not remediless. Most of these allegations are in the nature of grievances for which specific alternate courses of action are available under various provisions of the Act which could be resorted to by the petitioners. The decisions of the Delhi and Calcutta High Courts cited by the respondents are specifically on these issues that non-maintenance of books and records and denial of inspection and even failure to give notice of general meetings cannot constitute acts of oppression. Perhaps the intentional consistent elimination of a member from the affairs of a company may in a closely held company warrant the presumption of existence of oppression particularly in a private company which is virtually a partnership but this is not the case here. As regards the allegation of allotments in violation of Section 81 of the Act even if the petition under Section 397 had been maintainable, a decision on this allegation could have its implications on the repurchase/reallotment of the shares allotted to RSMDC. This is substantially what is aimed at by the petitioner as well as respondent No. 3. This specific aspect is already the subject-matter of a civil suit which in our opinion will take care of the grouse of the petitioner. Hence, we do not wish to burden the civil court with our findings on this matter. However, the interest of the company would not be adversely affected in the meanwhile as more than 50 per cent, is held by a State Government undertaking.

50. As regards the other fall out of the decision regarding violation of Section 81 of the Act on respondent No. 3 with regard to his continued entitlement to 500 shares which he is presently holding as well as his entitlement, if any, to any portion of the shares being off-loaded by RSM-DC, there are two civil litigations, namely, one which is already narrated-above and the other which is a challenge to the purported renunciation/ gift of 10 shares of Shri S. K. Singh in favour of respondent No. 3. Both these litigations would virtually sort out in effect the consequences if any of alleged violation of Section 81 as well as the vexed question of transfer of shares and renunciation of the rights of Shri S. K, Singh. In case respondent No. 3 is held to be the true owner of 10 shares it may have its

repurcussion on the 500 shares as well as the entitlement to the RSMDC shares. In particular because of the shifting stand of Shri S. K, Singh unless evidence is recorded in detail it may not be appropriate to come to conclusions in summary proceedings as in our case regarding the truth behind the alleged transfer/gift. However, the civil court may be able to come to definite conclusions on these issues and adequately take care of the complaint by the petitioner. Thus, our inability to go into this allegation does not also prejudice the petitioner in any way.

51. As regards acts of mismanagement, which are all narrated in the amended petition we have noted the objection of Shri Mehta that the opportunity for an amendment cannot be made use of by a petitioner to improve his case and that no new cause of action can be introduced nor the basic fabric or the substratum of the dispute changed, we are convinced that the events narrated are not subsequent events but prior events. We have also noted that under Order VI, rule 17 of the Code of Civil Procedure, regarding amendment, discretion is available with the court but the scope for an amendment petition should be limited as evident from the decisions of various High Courts as well as the apex court. At the same time, we are also conscious of the fact that the jurisdiction under Section 398 is an equitable jurisdiction. It is, therefore, necessary to adopt caution in exercising our jurisdiction with regard to addition of new grounds though in this case none of them are subsequent events. In this connection, we have to specifically keep in view the purpose behind the provisions contained in Section 398(1)(a) read with Section 402 of the Act. Section 398(1)(a) deals with a complaint that the affairs of the company are being conducted in a manner prejudicial to public interest or prejudicial to the interest of the company. Keeping in view the powers under Section 402 which are to be exercised in the interest of the company courts have already come to the conclusion that this jurisdiction is an equitable jurisdiction.

Moreover, these facts have come out after inspection, though the basic allegation has been already laid out in the petition perhaps without full details. This being so we are inclined to consider the allegations of mismanagement though contained in the amended petition and strictly speaking may constitute additional facts but relating to periods before the , filing of the petition. The main allegations of

mismanagement as contained in the amended petition relate to : (c) the affairs of the company are de facto managed by an official of the RSMDC in his personal capacity.

(e) observations against the 'company in the report of the Director, Mines and Geology, Government of Rajasthan.

(f) observations of auditors in their report for the year ended March 31, 1991.

(g) non-disclosure of interest of respondent No. 2 under Sections 297 and 299.

(h) burdening the company with taxes, dead rent, etc., relating to the mines which have to be borne by respondent No. 2.

52. We have examined all the above allegations with the documents filed by the respondents along with their replies. Regarding allotment to benami/ fictitious persons the respondent company has already made available the complete list of shareholders along with the register of members and these parties have also been impleaded as additional parties in the amended petition. In fact some of the parties have also filed replies thereafter. If some have not filed any replies, that alone cannot establish that they are fictitious. The petitioners' allegation appears to be based on perhaps some incomplete particulars filed with the Registrar of Companies which ultimately could not be conclusively established in view of the statutory registers produced by the company which have not been challenged which contains the full address and particulars of allottees. Thus, the allegation can no longer be sustained.

53. As regards the allegation of holding general meetings without quorum this is based on perhaps a wrong copy of the articles of association of the company available with the petitioner while filing the petition. Subsequently we have verified from the copy available with the Registrar of Companies and we are satisfied that there is no stipulation for the presence of a nominee of the RSMDC for general meetings though such stipulation exists in respect of board meetings.

The respondents have also stated on affidavit that a correct copy of the articles of association was' furnished to the petitioners and as such this grouse can no longer

subsist. Since there is no basis for the allegation that a general meeting is incomplete without the presence of the RSMDC representative, the allegation, totally falls to the ground.

54. The allegation that the affairs of the company are being managed by an official of the RSMDC in his personal capacity has been sought to be substantiated by means of a copy of the letter written by one Shri O.P. Sharma to the managing director ostensibly giving certain instructions. However, beyond this, nothing has been established to show whether these instructions have been carried out and whether the managing director had been continuously acting as per the instructions of that individual. One instance or a purported instance cannot lead to a conclusion that the affairs of the company are being conducted at the dictates of one individual. Moreover, it appears that the RSMDC has already instituted certain internal inquiries in this regard. A copy of the report of the inquiry was also made available to us by the RSMDC. Thus, this aspect has been taken care of by the RSMDC through appropriate action. Hence, we find no need to go into the allegation any further.

55. Regarding the deficiency in the appointment of auditors the allegation is that since the State Government undertaking is holding more than 25 per cent, of the capital, the appointment should be by means of a special resolution whereas the notice does not say so. In this connection, we are in agreement with the respondent-company that the indication in the notice that the appointment is in accordance with the provisions of Section 224A is itself sufficient to mean that the resolution was to be passed as a special resolution since this is the only requirement of this sub-section. In this connection, Shri Mehta also drew our attention to the practice followed by many leading companies in the corporate sector which is identical. It is also found from the minutes book that in fact the resolution has been passed as a special resolution. As such we do not find any substance in this allegation either.

56. As regards the allegation that there had been some adverse observation of the Director (Mines and Geology) with regard to the maintenance of records, the company has confirmed that the points raised have been settled to the satisfaction

of the authorities concerned and the assessment has been completed and the matter put an end to. The company has also produced copies of the final assessment orders. In the circumstances, we do not find any scope for probing into this issue which has been closed to the satisfaction of authorities concerned.

57. As regards the allegation of certain adverse observations by the auditors against the company, these are part of the report to the shareholders. So long as such report is placed before the shareholders and they had enough opportunity in the internal forum to debate and decide, we will not intervene in such matters unless such an opportunity had never been available or any mala fides are attributed.

Moreover, the petitioner has not spelt out the seriousness of the observations to enable us to examine the ramifications or seriousness of such observations. Thus, this allegation lacks in complete details and has also been taken care of by the internal forum.

58. Regarding the allegation of non-disclosure of interest of respondent No. 2 under Sections 297 and 299 of the Act, in the matter of the joint sector agreement, strictly speaking, these agreements were entered into when the company was a private company. As a private company these Sections have a limited application in the sense that though Section 297 is applicable, the contract is to be only approved by the board of directors. As regards Section 299 the requirement is that only the director concerned should disclose his interest but is still entitled to participate and vote at the meeting. All the same from the affidavits filed, it is established that the contract was approved not only by the board of directors but also by the general body. Approval by the general body though not a requirement has also been complied with. In addition, it is also found that some of the terms of the joint venture agreement have been incorporated in the articles of association of the public company. An amendment to the articles in this regard which could be done only by a special resolution would have again warranted a proper disclosure by an explanatory statement in the notice for the meeting. As such this allegation of non-disclosure has absolutely no substance. Moreover, the respondent-company produced the minutes book of the board and general body meetings of

the private company before the Company Law Board and opportunity was afforded to the petitioners to inspect the same which has not been made use of by the petitioners. Similarly, regarding the allegation that the expenses relating to taxes, dead rent, etc., relating to the mines are being borne by the company instead of by respondent No. 2, these have also arisen out of the joint sector agreement and as such has to be linked with the previous allegation, this being a related matter.

59. In view of our findings as above, as regards acts of mismanagement, we find that there is no scope for giving any relief to the petitioner on this score as well.

60. While disposing of this petition, we have also noted the arguments advanced on behalf of respondents Nos. 1 and 2 regarding the conduct of the petitioners and respondent No. 3, The following are relevant: (a) The petitioners took no interest in the affairs of the company for nearly seven years excepting to apply for some additional shares and did not complain about non-receipt of notices, etc.

(b) The awareness as a shareholder has come to the petitioners only around the middle of 1991, when it appears that relationship between respondents Nos. 2 and 3 got strained.

(c) The inclusion of the grouse of respondent No. 3 including his removal as an MD in the amended petition indicates the common cause between petitioners and respondent No. 3. All letters of complaint were sent by the petitioner to the address of respondent No. 3 though this address was only for some time the registered office of the company. When the petitioners were not aware of anything about the company during the seven-year period, how did they come to know about the change in registered office alone? Even registered letters sent to this address were shown to be on the same day of despatch which indicates the nexus between the petitioner and respondent No. (d) The manner in which the petitioner has been picking and choosing for challenging the legality of allotments in the light of Section 81 of the Act, and, thereafter, protecting the interest of respondent No. 3.

(e) The Extraordinary prayer in the petition which is self-contradictory, i.e., on the one hand seeking to declare as null and void the allotments allegedly in violation

of Section 81 and at the same time seeking to distribute the shares of RSMDC between the petitioners and respondent No. 3 besides respondent No. 2.

(f) Respondent No. 3 though a shareholder, since the allotment of his shares being liable to be disputed has possibly conveniently used the petitioner to file the petition.

61. A consideration of all the above taken together leads us to believe that the petitioners have no case of their own but are espousing the cause of respondent No. 3. In these circumstances also we consider it appropriate not to intervene in the affairs of the company and leave the matter with regard to the entitlement of shares of respondent No. 3 as well as regarding the interpretation of joint venture agreement to be done by the civil court. Since the allegations could not be established and since we could find nothing adverse against respondent No. 2 or in the affairs of the company we have to consider the prayers in this background.

62. As already stated, in exercise of the equitable jurisdiction we have to keep in view the interest of the company. We have noted that the affairs of the company are being managed all along with the involvement of representatives of the RSMDC and with a shareholding of more than 50 per cent, by the RSMDC and the company virtually falls within the definition of a Government company. In case the RSMDC shares are to be disinvested as per the joint sector agreement the shares would devolve upon those whom the civil court may decide as the proper person to get the shares. In any case, if the shares devolve on respondent No. 2 we may have to say something if at all we have any adverse findings against respondent No. 2. From the above consideration of the case, we have no adverse findings against respondent No. 2 and as such even if he gets the management we have no reason to believe that the company will be carried on detrimental to the interest of the company or public interest. As such, even on exercise of equitable jurisdiction, we have nothing to order with regard to the future governance of the company.

63. With regard to the prayer for ordering an investigation, we are in full agreement with the contention of counsel for the respondents that full and complete details of allegations of misappropriation, misapplication of funds, mismanagement or other

improper conduct have not been set out. No order for investigation is to be made on the basis of vague allegations because before ordering investigation a prima facie conclusion has to be reached based on certain materials. In the absence of full particulars the court will decline to embark upon investigation into charges of fraud and misconduct. This proposition is supported by a number of cases cited by Shri Mehta. In view of our conclusion as above that none of the charges of mismanagement are substantiated, the prayer for investigation has to be rejected. In this connection, we have also to record that the Registrar of Companies has already reported that the company has been regularly filing the returns and that there are no other complaints against the company.

64. As regards the appointment of the petitioner as a permanent director we have already dealt with the lukewarm interest shown by the petitioners in the affairs of the company. Further, the petitioners appear to be only espousing the cause of respondent No. 3. Hence, by inducting the petitioner we may be perhaps escalating the disputes further between respondents Nos. 2 and 3 which could be only detrimental to the interest of the company. In the end, we dispose of the petition without granting any of the prayers of the petitioners.

All interim orders stand vacated. However, since the petitioners, respondents Nos. 2 and 3 have already deposited the cost of the shares with the RSMDC, on unloading of the shares as per decision of the civil court the party/parties who get the shares shall reimburse forthwith the money deposited to the parties who do not get shares along with simple interest at the rate of 14 per cent, per annum.

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