

**In Re: Combust Technic P. Ltd.**

**In Re: Combust Technic P. Ltd.**

**SooperKanoon Citation :** [sooperkanoon.com/862972](http://sooperkanoon.com/862972)

**Court :** Kolkata

**Decided On :** Jun-18-1984

**Reported in :** [1986]60CompCas872(Cal)

**Judge :** Dipak Kumar Sen, J.

**Acts :** Companies Act,m1956 - Sections 397 and 398

**Appeal No. :** Company Petition No. 243 of 1983

**Appellant :** In Re: Combust Technic P. Ltd.

**Judgement :**

**Dipak Kumar Sen, J.**

1. The material facts on record leading up to this application under Sections 397 and 398 of the Companies Act, 1956, are as follows:

Combust Technic P. Ltd. (hereafter referred to as 'the company') was incorporated on or about November 30, 1977, with the object, inter alia, to acquire the existing business of 'Combust Technic', a partnership firm of Sukhendu Blkash Sarkar and Sourendra Nath Pal, as a going concern and to take over its assets and liabilities.

2. After its incorporation, the company has been carrying on the business of the said partnership, being designing and manufacturing for fabrication and repair of engineering equipments. The company owns and runs a factory at the Kidderpbre

Industrial Estate, Hide Road Extension, Calcutta,

3. The authorised capital of the company is Rs. 1,00,000 divided into 100 equity shares of the face value of Rs. 1,000 each. The amount of share capital paid up or credited as paid up is Rs. 30,000.

4. Ajit Kumar Roy, the petitioner in this application, was one of the subscribers of the company. Fourteen shares, of the face value of Rs. 1,000 each, had been allotted to the petitioner who still holds the same. Eighty per cent, of the face value of the said shares have been paid up and no call is presently outstanding on the same. The petitioner has been all along a director and is still a director of the company.

5. Neli Poddar, respondent No. 2, is the wife of respondent No. 3. She holds 16 shares of the company of the face value of Rs. 1,000 each. She is also a director of the company.

6. Apart from the petitioner and respondent No. 2, the company has no other shareholder or director at present. Eighty per cent, of the face value of the shares held by the petitioner and respondent No. 2 have been paid up or credited as paid up.

7. Sudhir Chandra Poddar, respondent No. 3, is a chartered accountant. He was appointed as the auditor of the company at its inception and he has continued as the auditor.

8. Respondent No. 2 was appointed as a director of the company under a resolution of its board passed in a meeting held on December 4, 1978. The petitioner was present at the said meeting. The board unanimously resolved that respondent No. 2 would be appointed as a wholetime additional director of the company at a consolidated remuneration of Rs. 1,000 per month with effect from December 4, 1978, and that under the superintendence and control of the board, respondent No. 2 would look after the administration and finance of the company and perform such other duties as may be assigned to her by the board.

9. On October 13, 1978, a letter was addressed to respondent No. 3 signed by the petitioner by order of the board as follows:

'With reference to the meeting of the board of directors of the above company and the subsequent discussion the writer had with you, we are pleased to give you appointment for performing all the secretarial functions of the company for a period of three years from this day. You shall have free access to all our board meetings and you will be allowed to keep all books of the company relating to secretarial work in your safe custody at your office. You are also appointed to perform the day-to-day accounts, sales tax and income-tax and central excise duty matters, if any, for the next three accounting years from this day.'

10. Disputes arose between the parties in November, 1982, when respondent No. 2 issued a show-cause notice dated November 26, 1982, to an employee of the company alleging that the employee had failed to attend an income-tax proceeding as instructed by respondent No. 2 and had failed to collect papers from the office of respondent No. 3.

11. Following the said notice, correspondence passed, amongst the petitioner, respondent No. 2, respondent No. 3, as also the employees of the company, in which various allegations and counter-allegations were made and recorded. It was alleged by the petitioner and the employees that respondent No. 3 had wrongfully taken custody of records and documents of the company and had removed them to his own office.

12. By a letter dated December 24, 1982, the petitioner convened an urgent meeting of the board of directors at the registered office of the company on December 31, 1982, at 2 p.m. to consider the aforesaid disputes. The petitioner also requested respondent No. 2 to instruct respondent No. 3 to give inspection of the minutes of all meetings of the board of directors as also of the general meetings of the company. A notice of the same date was also served by the petitioner on respondents Nos. 2 and 3 calling upon them to produce and allow inspection of copies of the annual returns filed by the company.

13. Respondent No. 2 did not attend the board meeting on December 31, 1982, and the petitioner treated the said meeting as automatically adjourned till January 1, 1983.

14. On January 1, 1983, the petitioner, it is alleged, received a telegram from respondent No. 2 recording that she had written a letter to the petitioner on December 31, 1982, for adjournment of the said board meeting scheduled to be held on that date. The adjourned meeting held on January, 7, 1983, was also not attended by respondent No. 2. The petitioner held the said meeting by himself where he appointed one P.K. Ghose as an additional director. Another meeting of the board was called on February 5, 1983, notice whereof was served on respondent No. 2. By her letter dated February 2, 1983, respondent No. 2 challenged the meetings of the board held on December 31, 1982, and January 7, 1983.

15. The petitioner and the said additional director held a further meeting of the board on February 5, 1983, at which also respondent No. 2 was absent. At that meeting, the petitioner was appointed as the managing director of the company and another 20 shares of the company were allotted to him.

16. Thereafter, in February, 1983, respondent No. 2 filed a suit in the District Court of Alipore marked Title Suit No. 19 of 1983. On an application made in the said suit, an ad interim order was passed on February 24, 1983, restraining the petitioner and the said additional director from holding any board meeting of the company and from giving any effect to the resolutions passed by the board on and from December 31, 1982.

17. On March 4, 1983, the petitioner filed an application for dismissal of the said suit on the ground that the Alipore Court had no jurisdiction to entertain the said suit. The said application was ultimately dismissed and the ad interim order passed February 24, 1983, in favour of respondent No. 2 was confirmed.

18. The present petition was, thereafter, filed by the petitioner on May 6, 1983, for the following orders:

- (a) A special officer or special officers be appointed to take charge of the business and the affairs of the company.
- (b) Direction be given to the special officer to make an inventory of all assets, books, papers and documents including the statutory books and records of the company.
- (c) Direction be given to the special officer to take possession of books, papers and documents of the company including those lying with respondents Nos. 2 and 3.
- (d) An investigation into the affairs of the company.
- (e) An injunction restraining respondent No. 3 from interfering with the affairs of the company in any manner.
- (f) Supersession of the board of directors of the company.
- (g) A direction on respondent No. 2 to sell her shares to the petitioner at such price as the court may fix or at a valuation to be made by an independent valuer appointed by the court.
- (h) A scheme of management be framed by the court.
- (i) The respondents be restrained from utilising the funds of the company for conducting litigation either for respondent No. 2 or for the company.

19. The case of the petitioner is, inter alia, that he holds a diploma in engineering and has about 14 years' experience in designing and manufacture of industrial fans and blowers. The petitioner as such claims to have the requisite technical knowledge, know-how and ability to carry on the business of the company. Since the incorporation of the company, the petitioner, it is alleged, has been looking after its manufacture and production.

20. Respondent No. 2, it is alleged, is a housewife and has no knowledge or experience of business nor of manufacture or production. It is alleged that she is, in fact, a benamidar of respondent No. 3, who has continued as the auditor of the

company on the strength of the majority shares held by respondent No. 2.

21. The annual general meetings of the company were being in fact conducted by respondent No. 3, respondent No. 2 taking practically no part.

22. Apart from the accounts, the minutes of the annual general meetings, the register of shares and other statutory books and papers of the company, it is alleged, used to be maintained by respondent No. 3. Similarly respondent No. 2 never took any real part in the meetings of the board of directors except being present. Respondent No. 3 used to be present also in the board meetings but the same was never recorded in spite of the request of the petitioner. The entire minutes of the meetings of the board were dictated by respondent No. 3. The petitioner did not record his protest at the said meetings as he was in a minority and also as he was totally absorbed in matters of design, manufacture and production in the factory and never concerned himself with the financial affairs of the company. Respondent No. 2 never attended the registered office of the company.

23. The letter dated October 13, 1978, authorising respondent No. 3 to perform all secretarial functions of the company for three years, it is alleged, was signed by the petitioner at the instance of respondent No. 3. No copy of the said letter was kept in the records of the company. The authority of respondent No. 3 to carry on the secretarial functions came to an end on March 31, 1982. In spite thereof, respondent No. 3 continued to retain in his custody records and documents of the company.

24. The show-cause notice dated November 26, 1982, which triggered the disputes between the parties, it is alleged, was issued without the knowledge, consent or approval of the petitioner or that of the board.

25. It is alleged that respondent No. 3 had been removing documents and papers received at the registered office of the company before the same were even filed. Respondent No. 3 had and retains in his possession a rubber stamp and seal of the company.

26. In the absence of respondent No. 2, the board meeting convened on December 31, 1982, it is alleged, was automatically adjourned till January 7, 1983, and was duly held in the usual course.

27. At the instance of respondents Nos. 2 and 3 and under the instructions of respondent No. 2, issued some time in July, 1982, the Bank of India, it is alleged, is not allowing the company to operate its bank account.

28. It is alleged that respondent No. 3 acting in collusion with respondent No. 2 is withholding material documents and records of the company.

29. It is alleged that there is at present a complete deadlock in the management and in the affairs of the company. Respondent No. 2 is not attending any meeting of the board in spite of notices.

30. The business of the company has come to a standstill, its factory is not running and the employees, eight of whom are employed in the factory could not be paid their salaries since January, 1983. The petitioner had to borrow Rs. 15,500 for making some payment to the employees. Respondent No. 2, it is alleged, was deliberately refraining from taking part in the management and is acting against the interest of the company. The affairs of the company are being conducted in a manner prejudicial to the public interest and also in a manner oppressive of the petitioner. The conduct of respondent No. 2 shows lack of probity and fairness. Mutual trust and confidence between the directors have been totally lost. In the facts, an order for the winding up of the company would be justified but would prejudice the petitioner.

31. Respondent No. 2 has affirmed an affidavit on July 1, 1983, which has been filed in opposition to the petition. It is alleged, in this affidavit, inter alia, that no meeting of the board of directors of the company could be held on February 5, 1983, in the absence of respondent No. 2 and no shares could be allotted to the petitioner alone as was purported to be done at the said meeting. The appointment of the additional director, it is contended, was also wrongful and illegal. It is contended further that the petitioner, constituting a minority, was treating the company as his personal property and was acting in a manner oppressive of the

majority.

32. The main business of the company, it is alleged, consists only of assembling parts and components of industrial fans and blowers and not manufacture of any product. The petitioner used to supervise the assembly of the said items and also attend to the office work and accounts of the company. Collection from customers, deposit of such collection in the bank of the company and the operation of bank accounts were being done by the petitioner.

33. It was at the suggestion of the petitioner that respondent No. 2, it is alleged, was appointed as a a wholetime director of the company.

34. It is alleged that respondent No. 3 was appointed as the auditor and has continued as the auditor of the company with the knowledge, consent and approval of the petitioner.

35. The accounts of the company, it is alleged, have been audited till March 31, 1982, and have been duly filed with the Registrar of Companies. The current books and accounts of the company, it is alleged, are with the petitioner.

36. The show-cause notice dated November 26, 1982, it is alleged, was issued by respondent No. 2 in the interest and for the benefit of the company. The petitioner, it is alleged, started acting in collusion and in conspiracy with the employees of the company to oust respondent No. 2 from the company. The employees, with the support of the petitioner, sought to ignore the directions of respondent No. 2.

37. It is alleged that the petitioner used to withdraw from the account of the company Rs. 4,000 per month--though he was not entitled to do so. The petitioner has, in the course of time, thus withdrawn a substantial amount and is bound to refund the same to the company.

38. The petitioner, it is alleged, used to obtain signatures of respondent No. 2 on the cheques of the company after which the said cheques were filled up and encashed by the petitioner.

39. It is alleged that the letter dated December 31, 1982, by which respondent No. 2 requested the company to adjourn the board meeting due to be held at 2 p.m. on that date was received by the company before 1 -30 p.m. and, as such, there was no failure of respondent No. 2 to attend the said meeting. It is contended that the said meeting did not stand adjourned automatically. It is contended further that there was no quorum at the meeting of the board held on January 7, 1983. The object of the petitioner in holding the board meetings on January 7 and February 1, 1983, was to convert respondent No. 2 into a minority. It is alleged that by his wrongful acts and conduct, the petitioner made it impossible for respondent No, 2 to attend the board meetings and created a deadlock in the management of the company.

40. Respondent No. 2 has invited the investigation as prayed for by the petitioner and it is alleged that the petitioner has been guilty of misappropriation of funds and assets of the company. It is contended that to put an end to his illegal and wrongful acts, the petitioner should be directed to sell his shares in the company to respondent No. 2 which will be in the interest and for the benefit of the company.

41. Sudhir Chandra Poddar, respondent No. 3, has affirmed an affidavit on July 1, 1983, which has also been filed in opposition to the petition. Respondent No. 3 alleges that the petitioner has made incorrect allegations against him in order to implicate him in the disputes of the company and to cause damage to his profession as a chartered accountant.

42. It is alleged that respondent No. 3 did not accept the secretarial job in the company when requested but at the instance of the petitioner rendered various services to the company, as and when required, including making entries in the books of the company. It is denied that respondent No. 2 is a benamidar of respondent No. 3.

43. It is denied that the books, papers and documents of the company are lying with respondent No. 3. It is also denied that any rubber stamp or seal of the company are in his possession.

44. The petitioner has affirmed an affidavit on July 8, 1983, which has been filed in reply to the aforesaid affidavits of respondents Nos. 2 and 3. It is alleged, in this affidavit, inter alia, that respondent No. 2 never appeared before the special officer appointed in this proceeding nor rendered any assistance to the special officer to prepare the inventory as directed. This would establish that respondent No. 2 is not competent to run the company or to act as a director.

45. It is further alleged that respondent No. 2 purchased fourteen partly paid-up shares of the company from one S.C. Khan and two partly paid up shares were allotted to her at the paid-up value of Rs. 1,000. Apart from the purchase of the said two shares, no other money has been invested by respondent No. 2 in the company. On the other hand, the petitioner, it is alleged, advanced large sums of money to the suppliers of the company between June, 1979, and February, 1983, as the company did not have ready funds. The petitioner, however, has subsequently been reimbursed the amounts so advanced to the suppliers.

46. It is alleged that respondent No. 3 is admittedly guilty of having committed professional misconduct.

47. Learned counsel for the petitioner submitted at the hearing that the petitioner was one of the promoters of the company and had been associated with the company since its inception. He was technically qualified and was responsible for running the entire business of the company. Respondent No. 2, on the other hand, was a dummy of respondent No. 3 and had no experience whatsoever either in running a company or any business. She had never taken any active part in the business or management of the company.

48. It was submitted further that respondent No. 3, ostensibly the auditor of the company and in charge of its tax matters, took part in the affairs of the company beyond his duties as an auditor and was in fact a de facto director of the company.

49. It was next submitted that, admittedly, there was a deadlock in the management of the company. The two directors had fallen out. Respondent No. 2 ceased to attend the board meetings and stopped the operation of the bank account of the company. There were also disputes between respondent No. 2 and

the employees of the company. The employees, in fact, have appeared in the proceedings and supported the petitioner. There was no possibility of the petitioner obtaining any relief in the domestic forum.

50. In order to resolve the deadlock in the management, the petitioner took certain steps in good faith and a meeting was convened on December 31, 1982, to co-opt another director and to increase the share capital of the company. The said steps, it was submitted, were neither detrimental nor prejudicial to the interests of the company. Respondent No. 2, however, put a stop to the efforts of the petitioner by filing a suit in the District Court of Alipore and obtaining an interim order therein.

51. It was last submitted that, in the facts and circumstances of the instant case, in the interest of the company, the petitioner should be given the option to purchase the shares of respondent No. 2 though the petitioner is in a slight minority. Respondent No. 2 was interested in continuing the deadlock and was not being supported by the workers. Whether respondent No. 2 was in majority in the company would depend on the result of the suit filed in the Alipore Court where the validity of the further issue of shares remained to be adjudicated. Even assuming that respondent No. 2 was in the majority and was being oppressed, she could be directed to sell her share as the petitioner is in a position to run the company. Respondent No. 2 is not competent technically or otherwise and without the support of the employees was not in a position to run the company.

52. In support of his contentions, learned counsel for the petitioner cited the following decisions:

(a) Bhalchandra Dharmajee Makaji v. Alcock, Ashdown and Co. Ltd. [1972] 42 Comp Cas 190 (Bom).

In this case, in an application under Sections 397 and 398 of the Companies Act, 1956, several shareholders of the company alleged that as a result of mismanagement of its affairs and misappropriation of its funds, the company was facing two applications for winding-up by its creditors. It was contended that a large number of workmen skilled and experienced in shipbuilding and ship repairing who were in the employment of the company would lose their jobs and

their expertise would be lost if the company was wound up. A learned judge of the Bombay High Court in appointing a special officer over the company in the said application observed as follows (p. 195) :

' It is necessary to see that people who put their labour and lives into a concern get fair wages, continuity of employment and a recognition of their right to their jobs where they have trained themselves to highly skilled and specialised work. In deciding whether the court should wind up a company or change its management the court must take into consideration not only the interest of the shareholders and creditors but also public interest in the shape of the need of the community and the interest of the employees.' (b) *Promode Kumar Mittal v. Southern Steel Ltd.* [1980] 50 Comp Cas 555 (Cal).

This decision was cited for the following observations of a learned judge of this court (p. 559) :

' ... it appears to me from the provisions of the Companies Act, 1956, and the articles of association of the company that for an adjourned meeting no fresh notice is necessary...the article applicable...is Article 146 which gives power to the directors present in the meeting which failed for want of quorum to adjourn the said meeting to such day, time and place as the directors or directors present at the meeting may fix. ' (c) *National Textile Workers' Union v. P.R. Ramakrishnan* [1983] 53 Comp Cas 184 (SC).

This decision was cited for the following observations in the majority judgment of the Supreme Court (p. 207) :

' We are, therefore, of the view that the workers are entitled to appear at the hearing of the winding-up petition whether to support or to oppose it so long as no winding-up order is made by the court. The workers have a locus to appear and be heard in the winding-up petition both before the winding-up petition is admitted...also after the admission,..even when an application for the appointment of a provisional liquidator is made by the petitioner in a winding-up petition, the workers would have a right to be heard if they so wish because the appointment of a provisional liquidator may adversely affect the interest of the workers. ' (d) *Hind*

Overseas P. Ltd. v. Raghunath Prasad Jhunjunwalla [1976] 46 Comp Cas 91 (SC).

This decision was cited for the following observations of the Supreme Court (headnote):

' When more than one family or several friends and relations together form a company and there is no right as such agreed upon for active participation of members who are sought to be excluded from the management, the principles of dissolution of partnership cannot be liberally invoked. Besides, it is only when shareholding is more or less equal and there is a case of complete deadlock in the company on account of lack of probity in the management of the company and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, that there may arise a case for winding-up on the just and equitable ground. In a given case, the principles of dissolution of partnership may apply squarely if the apparent structure of the company is not the real structure and on piercing the veil it is found that in reality it is a partnership. ' (e) Sahasrangsu Sen v. Brahmaputra Fertilisers and Distributors P. Ltd. [1977] 81 CWN 82.

In this case, a learned judge of this court held, on the facts, that a person not shown as a director on record could be held to be a de facto director of the company concerned.

53. Learned counsel for respondents Nos. 2 and 3 submitted, on the other hand, that, in the facts of the instant case, the petitioner was not entitled to invoke Section 397 of the Companies Act. It was necessary for the petitioner to plead and prove facts showing that there has been oppression to a member or members of the company in their status as members and not in their status as directors. The petitioner was also required to make out a case for winding-up of the company on just and equitable grounds.

54. The only complaint against respondent No. 2 was her alleged refusal to attend the board meetings which affected the right of the petitioner as a director and not as a member of the company. The issue of the disputed show cause notice to the

said employee of the company or permitting respondent No. 3, the auditor of the company, to make entries in the books did not constitute acts of oppression within the meaning of Section 397.

55. It was submitted that the petitioner also has failed to establish a case for the winding-up of the company on just and equitable grounds. The principles of partnership on the basis of which this provision has been invoked do not exist in the instant case as the shareholding of the parties is not equal and there was no pre-existing partnership between them.

56. It was next submitted that there has been no ouster of the petitioner from his office as director nor was there any complaint of ouster. Mismanagement or damage to business as a result of inaction or non-action of respondent No. 2 was also not established. There was no evidence of removal of books by the respondents. Accounts up to 1982 had been signed by the petitioner and were filed. There was no complaint of misappropriation.

57. Respondent No. 2 was invited by the petitioner himself to become a director of the company without any question being raised as to her competency or ability. The petitioner also admittedly acquiesced all along to the presence of respondent No. 3 at the meetings of the company and its board.

58. Learned counsel next submitted that only eight persons were employed by the company and their supposed interest in the company could not override the interest of a member who held the majority of the shares. The workers might have locus standi to make representations if the company was going to be wound up, but no authority was cited to show that the workers were entitled to have a say in the management while the company was functioning.

59. It was next submitted that the petitioner acted wrongfully in allotting to himself further shares unilaterally and thereby altering and disturbing the existing majority. The issue of the said shares was the subject-matter of a suit pending in the court.

60. The petitioner convened the board meetings after December 31, 1982, to oust respondent No. 2 from the board as also to reduce her to a minority.

61. From the xerox copy of the bank pass book annexed by the petitioner in his petition, it appeared that respondent No. 2 in fact advanced money to the company and a sum of Rs. 6,000 was shown to have been refunded by the company on June 8, 1982, against such advances.

62. It was submitted that the petitioner was the wrongdoer and was not entitled to any relief in this application.

63. Learned counsel contended that the law was settled that if there was any oppression or inequity or deadlock--normally, the majority was directed to buy the shares of the minority except where the majority was the victim of oppression. Only where the minority was being oppressed and was not in a position to obtain relief in the domestic forum would the court require the majority to buy up the shares of the minority. If option to purchase was given at all, the same must be given to the oppressed majority, i.e., respondent No. 2.

64. In support of his contentions learned counsel for the respondents cited the following decisions:

(a) *Nanlal Zaver v. Bombay Life Assurance Co. Ltd.* : [1950]1SCR391 .

This decision was cited for the following observations of the Supreme Court (p. 203):

' It is well established that directors of a company are in a fiduciary position vis-a-vis the company and must exercise their power for the benefit of the company. If the power to issue further shares is exercised by the directors not for the benefit of the company but simply and solely for their personal aggrandisement and to the detriment of the company, the court will interfere and prevent the directors from doing so. ' (b) *In re Albert David Ltd.* [1964] 68 CWN 163. In this case, an application under Sections 397 and 398 had been moved by a group of shareholders of a company who were ostensibly in the majority but had been ousted from management. P.C. Mullick J. observed, inter alia, as follows:

' It is against the fundamental principle of company law that the minority should carry on the management without any election, as provided for in the Act and the

majority of shareholders should be kept out of management. ' (c) In re Sindhri Iron Foundry (P.) Ltd. [1964] 34 Comp Cas 510 (Cal);68 CWN 118. In this case, another learned judge of this court approved the views of P.C. Mullick J. in In re Albert David Ltd. [1964] 68 CWN 163 followed the same.

(d) In re Bengal Luxmi Cotton Milts Ltd. [1965] 35 Comp Cas 187;69 CWN 137. The decision was cited for the following observations (at pp 219 and 220 of 35 Comp Cas):

'...the extraordinary and summary jurisdiction of the court under Section 397 and 398 ought not to be exercised when suits covering the same subject have been instituted in this court and interim orders have been obtained restraining voting rights and alienation of shares. If those suits had not been instituted, and the remedy relating to the alleged wrongful sale of the shares not sought for in those suits, the position would have been different. It would have been, in that event, open to this court to go into the questions of propriety, legality and validity of the transfer of the shares. But the suits are pending and are ready for hearing and so far as the question of validity and legality of the transfer of the shares is concerned, this court must stay its hands.....This court in exercise of its jurisdiction under Section 397 and 398 should not interfere with the legality and validity of the sale of shares, which is the subject-matter of two pending actions.' (e) Ramshankar Prosad v. Sindri Iron Foundry (P.) Ltd, [1966] 70 CWN 520.

This judgment in appeal from the decision. In re Sindhri Iron Foundry (P.) Ltd. [1964] 34 Comp Cas 510 (Cal); 68 CWN 118, was also cited. The judgment of the first court was upheld.

(f) Mohta Bros. (P.) Ltd. v. Calcutta Landing and Shipping Co. Ltd, [1970] 40 Comp Cas 119 (Cal); 73 CWN 425.

This decision of a Division Bench of this court was cited for the proposition that negligence and inefficiency, even assuming such are proved, do not amount to mismanagement or oppression as contemplated in sections 397 and 398 of the Companies Act.

(g) *Howard Smith Ltd. v. Ampol Petroleum Ltd.* [1974] AC 821 (PC).

This decision of the Privy Council was cited for the following observations (at p. 837): 'Just as it is established that directors, within their management powers, may take decisions against the wishes of the majority of shareholders, and indeed that the majority of shareholders cannot control them in the exercise of these powers while they remain in office..... so it must be unconstitutional for directors to use their fiduciary powers over the shares in the company purely for the purpose of destroying an existing majority, or creating a new majority which did not previously exist. To do so is to interfere with that element of the company's constitution which is separate from and set against their powers. '

65. Learned counsel for the respondents also cited an unreported judgment of a Division Bench of this court in *Tea Brokers P. Ltd. v. Hemendra Prosad Barooah* (AFOO No. 312 of 1972 dated February 19, 20, 1974). A.N. Sen J., as His Lordship then was, observed in his judgment, inter alia, that except in unusual circumstances, a majority group of shareholders in a company should never be ordered or directed to sell their shares to the minority group. It was observed further that where the minority complained of oppression by the majority which was more usual, the ends of justice required that the minority should be directed to leave the company against receipt of proper compensation. To ask the majority who are normally entitled to run the affairs of the company to go out of the company will not meet the ends of justice and except in extraordinary circumstances it would be unfair and unjust to deprive the majority shareholders of their valuable rights for all times to come.

66. In the facts and circumstances of the instant case, it has been established by the petitioner that there is a deadlock in the management of the company. One of the two directors, namely, respondent No. 2, has ceased to attend the board meetings and has stopped the operation of the bank account of the company. It was open to respondent No. 2 who holds the majority in the company to resolve the deadlock by calling a general meeting of the company and appoint an additional director but for reasons best known to her she has not chosen to do so.

67. The petitioner who is in a minority sought to resolve the deadlock in his own way. He held a board meeting all by himself and issued to himself further shares thereby converting himself into a majority. He also co-opted another director. The said acts of the petitioner have been challenged by respondent No. 2 and is now pending adjudication in Title Suit No. 19 of 1983 in the District Court of Alipore. In the present proceedings, neither of the parties has invited the court to adjudicate on the validity or otherwise of the said acts of the petitioner.

68. The next point to be considered is whether the petitioner has been subjected to oppression. It has not been established that there was any positive act by respondent No. 2 which can be held to constitute oppression on the petitioner. The conduct of respondent No. 2 consists of non-action and non-co-operation. Such conduct, no doubt has resulted in mismanagement in the affairs of the company and its shareholders and to that extent may be contended has indirectly resulted in oppression to the petitioner, the minority, whose interest may said to have been prejudiced by reason of the non-functioning of the company. On the other hand, the steps taken by the petitioner to remedy the situation and resolve the deadlock by issue of further shares and co-opting an additional director has resulted in a material change in the ownership of the company's shares. It would have been open to respondent No. 2 to seek relief under Section 398 of the Companies Act on this ground.

69. It has been contended on behalf of respondent No. 2 that this application is not maintainable inasmuch as the petitioner has not made out a case which would justify winding-up of the company on the ground that it is just and equitable to do so and a case of oppression has not been made out. The company is a private limited company with two shareholders who are also the two directors. Its stands admitted that there is mutual lack of confidence in the conduct and management of the company's affairs and as respondent No. 2 constitutes the majority, it may not be possible for the petitioner to remedy such mismanagement in the domestic forum. To that extent this application satisfies the requirements of Section 398 and, in the facts, the principles governing the dissolution of a partnership, in my view, are attracted and this company could be wound up on just and equitable grounds. I hold that this application is maintainable.

70. It is next to be considered as to what relief the petitioner is entitled. Neither of the parties is willing to sell his or her shares to the other. The petitioner claims the right to buy the shares of respondent No. 2 on the ground that he holds almost the same number of shares as respondent No. 2 and is in a minority only in a technical sense. The petitioner also relies on the support of the workers of the company. His additional grounds are that he alone has the experience and technical qualification to run the company while respondent No. 2 is not competent technically or otherwise to manage the company by herself.

71. The contention of respondent No. 2, on the other hand, is that she is in a majority and it is settled law so far as this court is concerned that the majority should never be forced to sell its shares to a minority.

72. In view of the decisions, *In re Albert David Ltd.* [1964] 68 CWN 163, *In re Sindhri Iron Foundry (P.) Ltd.* [1964] 34 Comp Cas 510 (Cal); 68 CWN 118 and *Tea Brokers (P.) Ltd.* (AFOO No. 312 of 1972--February 19, 20, 1974), the contentions of respondent No. 2 cannot be brushed aside. Whatever be her competence, she, in my view, cannot ultimately be kept out of the management. Majority is a matter of arithmetic and in law she also should not be directed by this court to sell her shares to the petitioner.

73. The fact that the employees are supporting the petitioner makes little difference to the legal position. No authority has been cited for the proposition that the workers, as such, have a right to intervene in the management of the company.

74. In view of the suit pending in the Alipore Court, I refrain from adjudicating on the issue of further shares by the petitioner following *Bengal Luxmi Cotton Mills Ltd.* [1965] 35 Comp Cas 187 ; 69 CWN 137 and I note that as long as the said suit is pending, it will not be possible to quantify the valid shares held by the petitioner and give any direction for sale of such shares.

75. To do justice between the parties as was done by the Supreme Court in *Needle Industries'* case [1981] 51 Comp Cas 743, I dispose of this application by the following order :

76. The special officer appointed earlier is discharged. Mr. Ahin Chowdhury, Barrister-at-Law, is appointed as the special officer. The special officer will be entitled to attend the meetings of the board of directors and no resolution will be passed by the directors by circulation or otherwise without the same being endorsed by the special officer. In case of disagreement between the directors, the decision of the special officer will prevail.

77. The special officer is directed to arrange for directors' meetings once every month if possible and subject to his convenience and arrange for passing of resolutions, the directors apart, from those passed at the monthly meetings by circulation. The special officer will be entitled to a fee of Rs. 85 per meeting to be paid by the company. Apart from the monthly meetings the parties will be entitled to call further meetings of the board of directors on notice to the special officer. The party requisitioning such further meeting will pay the fee of the special officer for the said meeting. After the disposal of Title Suit No. 19 of 1983 pending in the Alipore Court, the special officer will call a general meeting of company to elect a new board of directors and, thereafter, hand over the charge of the company to the new board. Save as aforesaid, all other interim orders are vacated. Liberty to apply. All parties and the special officer to act on a signed copy of the minute.

78. In view of the order passed in the main application, there will be no order in the stay application.