CASE NO.:
Appeal (civil) 2006 of 2008

PETITIONER:
M.S.D.C. Radharamanan

RESPONDENT:
M.S.D. Chandrasekara Raja and another

DATE OF JUDGMENT: 14/03/2008

BENCH:
S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2006 OF 2008
(Arising out of SLP (C) No. 5246 of 2007)

S.B. SINHA, J.

1. Leave granted.

2. M/s. Shree Bhaarathi Cotton Mills Private Limited is a company registered and incorporated under the Companies Act, 1956 (For short, 'the Act'). Out of the 2,84,000 equity shares in the company of Rs.10/- each, 2,83,999 shares are held by the first respondent and his son (appellant herein). The remaining one share is held by M/s. Visva Bharathi Textiles Private Limited, shares in which again is held equally by the first respondent and the appellant. Thus, for all intent and purport, all shares of the company are held by the appellant and the first respondent.

3. Whereas the first respondent is the Managing Director of the Company, the appellant is the Director thereof. Indisputably the parties are not on good terms.

4. Respondent No.1 filed an application purported to be under Sections 397 and 398 of the Act alleging several acts of oppression on the part of appellant herein before the Company Law Board, Additional Principal Bench, Chennai. The said application was registered as C.P. No. 2 of 2004. By reason of an order dated 16th August, 2004, the Company Law Board while opining holding there was no act of mala fide or oppression on the part of the appellant, opined that there exists a deadlock in the affairs of the company. It directed the appellant to purchase 2,84,000 shares held by the first respondent at a value to be determined by a chartered valuer.

5. An appeal was filed thereagainst by the appellant before the High Court of Judicature at Madras under of Section 10F of the Act which was registered as C.M.A. No. 174 of 2004.
By reason of the impugned judgment dated 11th October, 2006 a Division Bench of the High Court dismissed the same opining that the Company Law Board could very well look into the justifiability of the situation and was, thus, right in arriving at its conclusion that there existed a deadlock situation. It was opined that in such a situation it would be impossible for both of them to pull on together as there was incompatibility between them. The High Court noticed that the appellant herein even intended to file a criminal complaint against his father, the first respondent for alleged mis-appropriation of a sum of Rs.8,15,000/-. A suit for partition, it was furthermore noticed, was pending. It was directed:
"77. \005.. However, if there is any dispute regarding the

method of valuation of the shares and the ultimate valuation arrived at by the valuer, it is open for either parties to approach the Company Law Board for getting the valuation finalised. Thereupon, at the first instance, the second respondent shall purchase the shares of the petitioners, within six months from the date of finalisation of such valuation and on his failure to do so, the petitioner in C.P., shall purchase the shares of the second respondent, within six months thereafter. In the event of both the alternatives failing, the purchase of shares of either the petitioner or the second respondent could be transferred to third parties depending upon the exigency. The Company Law Board is at liberty to pass such further orders under Section 402 of the Companies Act, in commensurate with the views expressed by this court, for the smooth running of the company.

78. In view of the reasons given for deciding the aforesaid point this civil miscellaneous appeal is partly allowed by modifying the order passed by the Company Law Board. The submission made by learned Counsel for the petitioner is recorded as aforesaid."

6. Mr. C.A. Sundaram, learned Senior counsel appearing on behalf of the appellant, in support of the appeal, submitted :

1. The Company Law Board was not justified in issuing the impugned direction in purported exercise of its jurisdiction under Section 402 of the Act directing him to purchase the shares of the respondent despite arriving at a finding of fact that no act of oppression has been committed by the appellant.
2. The condition precedent for exercise of such power being oppression on the part of a Director of a company being not satisfied, the impugned judgment is wholly unsustainable.
3. The High Court committed a manifest error in passing the impugned judgment in reversing the findings of fact arrived at by the Company Law Board; although no appeal therefrom had been preferred by the first respondent so as to hold that the acts of omission and commission on the part of the appellant constituted such an oppression.
4. Both the High Court as also the Company Law Board committed a serious error in granting the relief in favour of the first respondent without taking into consideration that the grant of relief shall not only be in the interest of the company but also must have a direct nexus with the affairs of the company and conduct of its business.
5. In any view of the matter, having regard to the prayers made by the first respondent in his application before the Company Law Board, appointment of an Additional Director would have served the purpose.
6. As the appellant does not have the necessary fund to purchase the shares of the first respondent, he could not be forced to sell his shares.

7. Mr. K. Parasaran, learned Senior counsel, appearing for the respondents, on the other hand, would contend :-

1. Appellant did not raise any ground in the special leave petition that he is not in a position to purchase the shares of the Respondent No.1.
2. The company being a private limited company, which is in the nature of a quasi partnership concern, the Court should take a holistic view of the matter and so viewed the judgments of the Company Law Board as also the High Court are unassailable.
3. Appellant having not acceded to the proposal of respondent No.1 in regard to the appointment of the Additional Director, it does not lie in the month to say that appointment of the Additional Director would serve the purpose.

4. The Company Law Board, in exercise of its jurisdiction under Sections 397 and 398 read with Section 402 of the Companies Act has the requisite jurisdiction to direct a share holder to sell his shares to the other, although no case for winding up of the company has been made out or no actual oppression on the part of the Director has been proved.

8. A shareholder of a company or a Director has several remedies under the Act. Section 433 of the Act envisages filing of an application for winding up thereof, inter alia, in a case where the Company Law Board may form an opinion that it is just and equitable that the company should be wound up.

9. Section 443 of the Act provides for the powers of Company Law Board in a winding up proceeding. Sub-section (2) thereof provides that a company may be directed to be wound up when a petition is presented for winding up on the ground that it is just and equitable.
The Company Law Board may refuse to do so, if in its opinion some other remedy is available to the petitioners and that they are acting unreasonably.
The applicant, thus, in a given case, when it would not be in the interest of the company to be wound up, may take recourse to other remedies available in law. Making out a case of oppression is one of them.

10. An application under Section 397 of the Act may be filed in the following circumstances :-

1) Where the affairs of the company are being conducted in the manner prejudicial to public interest; or
2) In a manner oppressive to any member or members.

11. Sub-section (2) of Section 397 of the Act, however, provides that in the event the Court is of the opinion that the company's affairs are being conducted in a manner oppressive to any member or members or furthermore held that directing winding up the company would unfairly prejudice such member or members, but the same otherwise justifies the making of a winding up order on the ground that it is just and equitable that the company should be wound up. It may make such other or further order as may think fit and proper with a view to bringing to an end to the matters complained of.

Interpretation of Section 397(2) of the Act came up for consideration before a Division Bench of this court in Hanuman Prasad Bagri & Ors. vs. Bagress Cereals Pvt. Ltd. & Ors. [[2001] 2 SCR 811]. This court while examining the conditions laid down in the section, opined that:
" No case appears to have been made out that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members. Therefore, we have to pay our attention only to the aspect that the winding up of the company would unfairly prejudice the members of the company who have the grievance and are the applicants before the court and 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. In order to be successful on this ground, the Petitioners have to make out a case for winding up of the company on just and equitable grounds. If the facts fall short of the case set out for winding up on just and equitable grounds no relief can be granted to the Petitioners. On the other hand the party resisting the winding up can demonstrate that there are neither just nor equitable grounds for winding up and an order for winding up would be unjust and unfair to them."

After reviewing the decision of the High Court on the above test, this

Court held that no reasons prevailed for interference with the order and thus dismissed the appeal.

12. Section 398 of the Act provides for filing of an application for the reliefs in cases of mismanagement.

Section 402 provides for the powers of the Company Law Board on an application made under Section 397 or 398 of the Act which includes the power to pass any order providing for the purchase of the shares or interests of any member of the company by other member (s) thereof or by the company.

13. Ordinarily, therefore, in a case where a case of oppression has been made a ground for the purpose of invoking the jurisdiction of the Board in terms of Sections 397 and 398 of the Act, a finding of fact to that effect would be necessary to be arrived out. But, the jurisdiction of the Company Law Board to pass any other or further order in the interest of the company, if it is of the opinion, that the same would protect the interest of the company, it would not be powerless. The jurisdiction of the Company Law Board in that regard must be held to be existing having regard to the aforementioned provisions.

14. The deadlock in regard to the conduct of the business of the company has been noticed by the Company Law Board as also the High Court. Keeping in view the fact that there are only two shareholders and two Directors and bitterness having crept in their personal relationship, the same, in our opinion, will have a direct impact in the matter of conduct of the affairs of the company.

15. When there are two Directors, non-cooperation by one of them would result in a stalemate and in that view of the mater the Company Law Board and the High Court have rightly exercised their jurisdiction.

16 Before us, learned counsel for the parties, have referred to a large number of decisions operating in the field.
We may notice the legal principle emerging from some of them.

17 In S.P. Jain vs. Kalinga Tubes Ltd.: (1965) 2 SCR 720 this Court compared the provisions of Section 397 with Section 210 of the English Act to hold:-

"The law always provided for winding up, in case it was just and equitable to wind up a company. However, it was being felt for some time that though it might be just and equitable in view of the manner in which the affairs of a company were conducted to wind it up, it was not fair that the company should always be wound up for that reason, particularly when it was otherwise solvent. That is why Section 210 was introduced in the English Act to provide an alternative remedy where it was felt that, though a case had been made out on the ground of just and equitable cause to wind up a company, it was not in the interest of the shareholders that the company should be wound up and that it would be better if the company was allowed to continue under such directions as the court may consider proper to give."

The Court analysed the decision in Re. H.R. Harmer Limited : [1958] 3 All. E.R. 689 in the following terms :-
"19. In Harmer's case, it was held that " the word ' oppressive ' meant burdensome, harsh and wrongful". It was also held that " the section does not purport to apply to every case in which the facts would justify the making of a winding up order under the ' just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression." It was also

held that " the result of applications under Section 210 in different cases must depend on the particular facts of each case, the circumstances in which oppression may arise being so infinitely various that it is impossible to define them with precision." The circumstances must be such as to warrant the inference that " there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy". The phrase "oppressive to some part of the members" suggests that the conduct complained of " should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every share holder who entrusts his money to a company is entitled to rely . . . But, apart from this, the question of absence of mutual confidence per se between partners, or between two sets of shareholders, however relevant to a winding up, seems to me to have no direct relevance to the remedy granted by Section 210. It is oppression of some part of the shareholders by the manner in which the affairs of the company are being conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not . . . come within Section 210. It is not lack of confidence between share holders per se that brings Section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs and oppression involves ... at least an element of lack of probity or fair dealing to a member in the matter of his proprietary right as a shareholder."

It is true that observations in Harmer's case was held to be applicable in a case falling within the purview of Section 397 of the Act but the statement of law that it was not enough that only a just and equitable case for winding up of the company should be made out but it must also be found that conduct of the majority shareholders was oppressive to the minority members, cannot be said to be exhaustive.

18 The question came up for consideration yet again before a three judge Bench of this Court in Needle Industries (India) Ltd. vs. Needle Industries Newey (India) Holding Ltd., : (1981) 3 SCC 333 wherein Chandrachud, C.J. upon considering a large number of decisions of this Court as also the English Courts including S.P. Jain and Harmer Ltd. (supra) categorically held :-

"172. Even though the company petition fails and the appeals succeed on the finding that the Holding Company has failed to make out a case of oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in which they would have been, if the meeting of May 2 were held in accordance with law."

19. The provisions of the Act vis-'-vis the jurisdiction of the Company Law Board must be considered having regard to the complex situation(s) which may arise in the cases before it. No hard and fast rule can be laid down. There cannot be any doubt whatsoever that the acts of omission and commission on the part of a member of a company should be qua the management of the company, but it is difficult to accept the proposition that the just and equitable test, which should be held to be applicable in a case for winding up of a company, is totally outside the purview of Section 397 of the Act. The function of a Company Law Board in such matters is first to see as to how the interest of the company vis-a-vis its shareholders can be

safeguarded. The Company Law Board must also make an endeavour to find out as to whether an order of winding up will serve the interest of the company or subvert the same. Further, if an application is filed under Section 433 of the Act or Section 397 and/or 398 thereof, an order of winding up may be passed, but as noticed hereinbefore, the Company Law Board in a winding up application may refuse to do so, if any other remedy is available. The Company Law Board may not shut its doors only on sheer technicality even if it is found as of fact that unless the jurisdiction under Section 402 of the Act is exercised, there will be a complete mismanagement in regard to the affairs of the company.

20. Sections 397 and 398 of the Act empower the Company Law Board to remove oppression and mismanagement. If the consequences of refusal to exercise jurisdiction would lead to a total chaos or mismanagement of the company, would still the Company Law Board be powerless to pass appropriate orders is the question.

If a literal interpretation to the provisions of Section 397 or 398 is taken recourse to, may be that would be the consequence. But jurisdiction of the Company Law Board having been couched in wide terms and as diverse reliefs can be granted by it to keep the company functioning; is it not desirable to pass an order which for all intent and purport would be beneficial to the company itself and the majority of the members? A court of law can hardly satisfy all the litigants before it. This, however, by itself would not mean that the Company Law Board would refuse to exercise its jurisdiction, although the statute confers such a power on it.

21. It is now a well settled principle of law that the Courts should lean in favour of such construction of statute whereby its jurisdiction is retained enabling it to mould the relief, subject of course, to the applicability of law in the fact situation obtaining in each case.

In Pearson Education Inc. (formerly Prentice Hall Inc.) Vs. Prentice Hall India (P) Ltd. and Ors. [134 (2006) DLT 450], as regards the jurisdiction of the Company Law Board and the High Court under Sections 397/398 and 402, a learned single judge of the Delhi High Court held:

"Jurisdiction of the CLB (and ultimately of this Court in appeal) under Sections 397/398 and 402 is much wider and direction can be given even contrary to the provisions of the Articles of Association. It has even right to terminate, set aside or modify the contractual arrangement between the company and any person [see Section 402(d) and (e)]. Section 397 specifically provides that once the oppressiois established, the Court may, with a view to bringing to an end the matters complained of, make an order as it thinks fit. Thus, the Court has ample power to pass such orders as it thinks fit to render justice and such an order has to be reasonable. It is also an accepted principle that "just and equitable" provision in Section 402(g) is an equitable supplement to the common law of the company to be found in its Memorandum and Articles of Association."

22. In a case of this nature, where there are two shareholders and two Directors, any animosity between them not only would have come in the way of proper functioning of the company but it would also affect the smooth management of the affairs of the company. The parties admittedly are at logger heads. A suit is pending regarding title of the shares of the Company. A contention had been raised by the appellant before the Company Law Board that the 1st respondent having filed a wealth-tax return as Karta of Hindu Undivided Family, he not only has 50 % shares in the Company but also 50% shares in the H.U.F.; whereas the contention of the 1st respondent in that behalf is that the appellant had already taken his half share in the joint family property and the H.U.F. mentioned in the Wealth Tax Return pertains to the smaller H.U.F. which consists of himself and his daughters.

1st respondent is about 80 years old. Because of his old age, he is not in a position to look after the affairs of the company. Even in the grounds of appeal before us, a contention has been raised that it was the 1st respondent, who is the oppressor. We have noticed hereinbefore that, rightly or wrongly, appellant also intended to file a criminal case against the 1st respondent alleging that he had misappropriated a huge amount as a Director of the company.

23. Before the Company Law Board, several grounds to establish a case of oppression had been made out :-

1) Non co-opting of a third Director on the Board ;
2) Non clearance of accumulated stocks ;
3) Surrender of the surplus power in favour of TNEB ;
4) Non issue of duplicate share certificates ;
5) Non redemption of preference shares ;
6) Non sanctioning of increment to the staff members ;
7) Dead lock in the affairs of the company.

24. In regard to the first ground, admittedly, A. Jayakumar, son-in-law of the 1st respondent being the brother-in-law of the appellant was nominated as a Director of the company. Appellant indisputably did not agree in that behalf. However, the first respondent left it to the discretion of the Company Law Board to appoint a third Director, but we are informed at the bar that even the same was objected to by the appellant.

25. It is in the aforementioned situation the Company Law Board has opined that such an impasse could have been removed by resorting to appointment of an additional Director. What the Board failed to notice was that when the appellant himself intended to become the Managing Director, he would like to have his own man in the Board which was not acceded to by the 1st respondent.

26. Surrender of surplus power in favour of TNEB may be a business decision but such a decision will have a direct impact on the conduct of the business. It at least shows that the parties were at logger heads. It is in the aforementioned situation, the High Court opined :-
"The Company Law Board should have categorically held that such surrender was beneficial to the company and the second respondent unjustifiably objected to it. Admittedly, the second respondent was not in favour of such surrender on the ground that it was required for future expansion of the factory activities. Such a plea of the second respondent is based on mere conjectures and surmises and not borne out by any proposed project for future expansion. As such the Company Law Board very well could have held that the second respondent was oppressive."

27. In relation to the non-issue of duplicate share certificates the Company Law Board opined :-
"That is why the petitioner took up the very same issue again at the Board meeting convened on 20.03.2004, after filing of the company petition. It is on record that the second respondent did not attend the Board meeting on 20.03.2004 on the ground that the subject matter is sub-judice before the CLB. Thus, there is no ultimate denial of the issue of duplicate share certificates by the second respondent in favour of the petitioner."

28. The High Court, however, in this regard opined "recording this, the Company Law Board could have very well held that the second respondent was not justified in causing obstruction to the issuance of such share certificates."
29. A ground has also been taken in the memo of appeal contending :

"The Division Bench entirely failed to appreciate that the Petitioner being a whole time director and also being a 50% shareholder the Petitioner has a right to refuse to give his consent to certain transactions if the Petitioner is of the opinion that the same is not good for the business of the Respondent No.2 company or that the same is against the interests of the company. The Petitioner has merely exercised his right as a whole time director in not agreeing to certain resolutions and that by itself neither amounts to a dead lock of oppression."

We have referred to the views taken by the Company Law Board as also the High Court, not being oblivious of the objection of Mr. Sundaram, that in relation to those findings, the 1st respondent did not prefer any appeal.

30. Without going into the legal issue, however, we are of the opinion that the same is only evidence of the instances as to how a dead lock in the affairs of the company was viewed. Both the Company Law Board as well as the High Court have arrived at a concurrent finding that as there was no mutual trust and confidence between the parties and, thus, it would be impossible for the company to run the same smoothly.

We are not again oblivious of the observations made by this Court in S.P. Jain case that the same by itself would not be a ground of winding up; but the ground of lack of mutual trust and confidence cannot be taken into consideration in isolation. The same has to be considered having regard to large number of other factors, the cumulative effect thereof would be extremely significant to arrive at one or the other conclusion.

31. We may take notice of the fact that the appellant had made the following allegations against the 1st respondent in the list of dates :-

"It is respectfully submitted that the Respondent No.1 did not maintain proper books of minutes of meetings or attendance registers, did not allow the Petitioner herein to use the company guest house in Chennai, the Respondent No.1 attempted to bring in a third director to marginalize the role of the Petitioner, the Respondent No.1 siphoned off Rs.8,15,000/- of the company money, the Respondent No.1 attempted to transfer by way of gifts properties given as collateral security to financial institutions and so on. When the Petitioner herein either asserted his rights or attempted to thwart the wrongful acts of the Respondent No.1, the Respondent No.1 became abusive."

32. We may also notice that in his reply statement before the Company Law Board it was stated by the appellant :-

"5.10 The Petitioner-Managing Director has become quite old. In fact under the Companies Act, in case of Public Companies there exist sufficient safeguards to restrict appointment of Managing Directors over the age of 70 without prior permission of the Central Government. Such provisions have been thoughtfully provided considering the inherent weaknesses that will emerge out of old age. In order to continue the smooth functioning of the enterprise, it would be very much conducive if the Managing Director gracefully retires from the post and lets a much younger and still experienced person to take over the mantle of the company. And further more, so, considering that the younger person is the only son of the present Managing Director, it is quite natural that the take-over of the mantle that should be mooted."

It was further averred :-

"6. There has been no oppression or mismanagement as averred by the Petitioner. It is a fact that the Petitioner, who is the Managing Director of the Company

is in a more convenient position to oppress the 2nd Respondent but on the other hand, the Petitioner has been alleging the opposite, without any basis. The mere fact that one of the two directors/shareholders decides to exercise his proprietary right as a shareholder/director to vote for or against any resolution does not amount to deadlock in management or oppression."

33. In a case of this nature, it is necessary to take a holistic approach of the matter. What might not be permissible for the affairs of a public limited company or even a private company having large number of shareholders and Directors, may be permissible in a case of this nature where a company for all intent and purport a quasi partnership concern. The Parliament, while enacting a statute, cannot think of all situations which may emerge in giving effect to the statutory provision.
The situation obtaining in the present case in that sense is a pathetic one. Both the Company Law Board as also the High Court has no doubt that the acrimony between the parties is resulting in mismanagement of the conduct of affairs of the company. Therefore, a conclusion as regards the dead lock in the affairs of the company cannot be faulted with.
34. In Hind Overseas (P) Ltd. vs. Raghunath Prasad Jhunjhunwalla and another [(1976) 3 SCC 259] this Court upon noticing a large number of decisions opined :-
"37. Section 433 (f) under which this application has been made has to be read with Section 443(2) of the Act. Under the latter provision where the petition is presented on the ground that it is just and equitable that the Company should be wound up, the court may refuse to make an order of winding-up if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the Company wound up instead of pursuing that other remedy.
38. Again under Sections 397 and 398 of the Act there are preventive provisions in the Act as a safeguard against oppression in management. These provisions also indicate that relief under Section 433 (f) based on the just and equitable clause is in the nature of a last resort when other remedies are not efficacious enough to protect the general interests of the Company."

35. This Court noticed that although the Indian Companies Act is modelled on the English Companies Act, the Indian Law is developing on its own lines. It was opined that the principle of 'just and equitable clause' is essentially equitable consideration and may, in a given case, be superimposed on law.
The Court in arriving at the said conclusion considered the decision of House of Lords in Re : Ebrahimi and Westbourne Galleries Ltd. : 1973 AC 360 whereupon strong reliance has been placed by Mr. Sundaram as also in Re: Yenidje Tobacco Co. Ltd. : (1916) 2 Ch. 412 amongst others.
What is important is not the interest of the applicant but the interest of the shareholders of the company as a whole. If such a principle is applied in a case of winding up of a company, we do not see any reason not to invoke the said principle in a case under Section 397 of the Act, subject of course to the applicability of the well known judicial safeguards.
A similar question came up for consideration in Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad 2005 (11) SCC 314 wherein this Court upon noticing a large number of decisions including Needle Industries (India) Ltd. (supra) observed :-
"191. In Shanti Prasad Jain referring to Elder case it was categorically held that the conduct complained of must relate to the manner of management of the affairs of the company and must be such so as to oppress a minority of the members including the petitioners qua shareholders. The Court, however, pointed out that that law, however, has not defined what oppression is for the

purpose of the said section and it is left to the court to decide on the facts of each case whether there is such oppression."

It was furthermore held
"196. The court in an application under Sections 397 and 398 may also look to the conduct of the parties. While enunciating the doctrine of prejudice and unfairness borne in Section 459 of the English Companies Act, the Court stressed the existence of prejudice to the minority which is unfair and not just prejudice per se.

197. The court may also refuse to grant relief where the petitioner does not come to court with clean hands which may lead to a conclusion that the harm inflicted upon him was not unfair and that the relief granted should be restricted. (See London School of Electronics, Re.)

198. Furthermore, when the petitioners have consented to and even benefited from the company being run in a way which would normally be regarded as unfairly prejudicial to their interests or they might have shown no interest in pursuing their legitimate interest in being involved in the company. [See RA Noble & Sons (Clothing) Ltd., Re.]
199. In a given case the court despite holding that no case of oppression has been made out may grant such relief so
201. In Shanti Prasad Jain v. Union of India it was held that the power of the Company Court is very wide and not restricted by any limitation contained in Section 402 thereof or otherwise. "

36. It was opined that the burden to prove oppression or mismanagement is upon the applicant. The Court, however, will have to consider the entire materials on record and may not insist upon the applicant to prove each act of oppression. It was furthermore observed that an action in contravention of law may not per se be oppressive, whereas the conduct involving illegality and contravention of the Act may be suffice to warrant grant of any remedy.

37. Reliance has been placed by Mr. Sundaram on Kilpest (P) Ltd. vs. Shekhar Mehra : (1996) 10 SCC 696, which has also been noticed in Sangramsinh P. Gaekwad (supra) opining :

"The real character of the company, as noticed hereinbefore, for the purpose of judging the dealings between the parties and the transactions which are impugned may assume significance and in such an event, the principles of quasi-partnership in a given case may be invoked.

231. The ratio of the said decision, with respect, cannot be held to be correct as a bare proposition of law, as was urged by Mr. Desai, being contrary to larger Bench judgments of this Court and in particular Needle Industries. It is, however, one thing to say that for the purpose of dealing with an application under Section 397 of the Companies Act, the court would not easily accept the plea of quasi-partnership but as has been held in Needle Industries the true character of the company and other relevant factors shall be considered for the purpose of grant of relief having regard to the concept of quasi-partnership."

38. Submission of Mr. Sundaram that the appointment of an additional Director could be a sufficient relief which the court may grant cannot be accepted. Appellant rejected such an offer. At this stage bitterness and acrimonious between the parties have ensued.

In a recent decision of J.K. Paliwal and Others vs. Paliwal Steels Ltd. and others [(2007) 5 Comp LJ 279 (CLB)], on the role of the directors in terms of Section 397 and 398 , the Company Law Board held that the role of the directors was well settled and they were the trustees of the company. It was thus opined that the directors were required to act on behalf of the company in a fiduciary capacity and their acts and deeds have to be exercised for the benefit of the company.

39. In Girdhar Gopal Dalima and others vs. Bateli Tea Co. Ltd. and others : (2007) 1 Comp.LJ 450 (CLB) the Company Law Board held that once the Company Law Board gives a finding that acts of oppression have been established, winding up of the company on just and equitable grounds becomes automatic.

40. We, in the facts and circumstances of this case, are of the opinion that it is not a fit case where we should interfere with impugned judgment in exercise of our discretionary jurisdiction under Article 136 of the Constitution of India. The appeal fails and dismissed with costs. Counsel's fees assessed at Rs. 50,000/-.