Karnataka High Court Synchron Machine Tools P. Ltd. And ... vs U.M. Suresh Rao on 17 September, 1992 Equivalent citations: 1994 79 CompCas 868 Kar, ILR 1992 KAR 3329, 1992 (4) KarLJ 490 Author: K Swami Bench: K Swami, K S Bhat, R Ramakrishna JUDGMENT K.A. Swami, J. 1. This petition is filed under sections 397 and 398 of the Companies Act, 1956 (hereinafter referred to as "the Act"), for the following reliefs : "1. declare that the transfer of 25 equity shares held by Sri B. K. P. Rao (fourth respondent) in favour of his wife, Smt. B. K. Anupama Rao (third respondent), is invalid and illegal and direct that out of the said 25 shares originally held by Sri B. K. P. Rao, 12 shares be transferred to the petitioner; 2. quash the proceedings of the extraordinary general meeting of the members of the company held on November 12, 1987, and annual the resolution passed at the extraordinary general meeting of the company on November 12, 1987, declining to appoint the petitioner as director and direct that the petitioner shall continue as a wholetime director of the company with all such powers as originally conferred upon him and that he is entitled to draw remuneration as such; 3. direct amendment of the articles of association of the company by providing that the petitioner shall be a director of the company for life and that he shall not be removed from his office without the permission of this hon'ble court; 4. give necessary directions to ensure that in the management of the affairs, business and funds of the company, the petitioner shall have equal participation to the same extent as respondent No. 2; 5. enquire into and determine the loss caused to the company as a result of the wrong decision of the second respondent to retrench eleven workers of the company in the year 1984 and direct recovery of the said amount from the second respondent personally; 6. enquire into and determine the amounts paid by the company as return on capital brought in by Sri B. K. P. Rao (fourth respondent) in the guise of consultancy fee to him and his son, Sri Ananthakrishna Rao, and direct recovery of the said amounts from the fourth respondent with interest at the prevailing bank rate; 7. restrain the second respondent by a permanent injunction from making any representation or holding out to the public, employees of the company, bankers, etc., that the petitioner is not entitled to represent the company; 8. if the acts of oppression and mismanagement of respondent No. 2 cannot be effectively redressed then to order that the company be wound up under section 433(f) of the Companies Act." 2. The petitioner is a member of the first respondent-company, Synchron Machine Tools Pvt. Ltd. (hereinafter referred to as "the company"). The registered office of the company is situated at 48/D, 'N' Block, Third Stage, Rajajinagar, Bangalore-10. The company was incorporated under the Act on March 17, 1975. The nominal capital of the company is Rs. 5,00,000 divided into 500 equity shares of Rs. 1,000 each. The paid-up capital of the company is rupees one lakh. The petitioner holds 38 equity shares of Rs. 1,000 each fully paid. Thus, the shareholding of the petitioner exceeds 10 per cent. of the paid-up share capital of the company which as already pointed out is rupees one lakh. Consequently, it may be pointed out at the outset that, the petitioner satisfies the requirement of section 399(1)(a) of the Act to maintain the petition under sections 397 and 398 of the Act. 3. The objects of the company, as stated in the memorandum of association, are manifold and they

are as follows : 1. To carry on the business of manufacturers of various types of small tools, cutting tools, hand tools, precision tools, pneumatic tools, thread gauges, ring gauges, plug gauges, snap gauges, special gauges, engineers steel scale, surface plates, angle plates, straight edges, swivel base, special reamers, cutters, ground taps and dies, gear-hobs, drill bits, and boring bits, and different types of accessories such as face plates, lathe chucks, milling vice, rotary tables, dividing heads, collects, drill chucks, measuring instruments and other precision equipment, devices for mechanical, electrical and hydraulic operations, finished and semi-finished machine parts, accessories and components for engineering and other allied industries. 2. To carry on the business of manufacturers of various types of tools required for engineering and allied industries such as press-tools, punching dies, blanking dies, compound dies, progressive dies, plastic moulding dies for compression moulds, injection moulds, transfer moulds, moulding dies for gravity and pressure die-castings, forging dies, sintering dies, jigs and fixtures for machining, assembly, erection and installation operations. 3. To carry on the business of manufacturers of pressed parts, deep draw parts, formed parts, coined parts, stampings and laminations, strips and bands using both ferrous and non-ferrous sheets. 4. To carry on the business of manufacturers of plastic moulded parts using compression moulding, injection moulding, transfer moulding, blow moulding, film-blowing, and other techniques. 5. To carry on the business of manufacturers of machines, machined parts, machine elements, components, machine tools, hardware, fastenings, clutches and couplings, clamps, bearings, gears, springs, beltings, agricultural and other implements, rolling stocks, foundry equipment." 4. In addition to these main objects, the memorandum of association also specifies several objects incidental or ancillary to the attainment of the main objects and it also specifies several other objects which are not included in the main objects as incidental or ancillary. For our purpose, it is not necessary to refer to the same. 5. At this stage certain facts which are undisputed may also be referred to. At the time of incorporation of the company, there were only three shareholders, namely, S. M. Khanapure; Adam Hajee Ebrahim; and N. V. Rao - second respondent. They subscribed to one share each. These three were also the first directors of the company. 6. Before I state the grounds on which the aforesaid reliefs are sought, it is also relevant to notice that on the date the petition was filed there were only three shareholders of the company. The petitioner holds 38 equity paid-up shares. The second respondent holds 37 equity paid-up shares. The third respondent, Smt. B. K. Anupama Rao, holds 25 equity paid-up shares. It is also an admitted fact that respondent No. 3 is the wife of respondent No. 4; that respondent No. 2 is the son-in-law of respondents Nos. 3 and 4; that respondent No. 2 is the son of the petitioner's mother's brother, as such, respondent No. 2 is the first cousin of the petitioner. 7. The grounds for seeking the aforesaid reliefs are as follows : Even though the company was incorporated on March 7, 1975, with the aforesaid three directors for more than one year, it did not commence any business, therefore, Sri Khanapure and Sri Adam Hajee Ebrahim resigned on January 27, 1976. Consequently, the second respondent alone was left as director of the company. At that time, the petitioner was looking out

for a good project and had undertaken a market survey for locating a suitable engineering project to set up a small scale industry. For this purpose, he had also collected sufficient data. However, when he came to know of the fact that the second respondent was interested in setting up a small scale industry, the petitioner joined the second respondent. After Sri Khanapure and Adam Hajee Ebrahim tendered their resignations, the petitioner was co-opted as director of the company on January 27, 1976. The specific case of the petitioner is that from then onwards it was agreed and understood that the petitioner and the second respondent would be equal partners in the venture. 8. The project report which was prepared by the petitioner was revised and the Canara Bank was approached for grant of financial assistance to set up the unit, and the loan was obtained from the bank on concessional terms on the basis that the petitioner and the second respondent were unemployed engineers. They also filed a joint affidavit on February 11, 1976, to the effect that they were unemployed engineers and secured seed money assistance from the Government of Karnataka in a sum of Rs. 75,000; that the petitioner and the second respondent also by mutual agreement inducted one Sri B. S. N. Rao, who was earlier working as the chief executive in a reputed engineering company at Bangalore, as a director and shareholder; that at the instance of the second respondent, his father-in-law, respondent No. 4, was also inducted into the company in order to raise capital in the year 1976; that it was decided to issue in all 100 shares - 25 shares to each of the four individuals. 9. The work of the company also was divided between the petitioner and the second respondent; that in the annual returns filed up to September 15, 1976, and November 16, 1977, it is shown that 25 shares held by respondent No. 4 have been transferred to his wife, Smt. B. K. Anupama Rao, respondent No. 3; that this transfer was not made in accordance with the procedure prescribed for transfer of shares to non-members; that, according to article 20 of the articles of association of the company, a member proposing to transfer his shares is required to give a notice to the board of directors of the company and upon receipt of such notice the board is required to offer the said shares to existing members of the company in proportion to their shareholding in the company; that this procedure was not followed for transfer of the shares held by respondent No. 4 to respondent No. 3; that the petitioner in this regard alleges that the transfer of shares in this manner was a calculated move on the part of the second respondent to acquire a larger voting power; that Sri B. S. N. Rao in the year 1978, undertook a project consultancy work at Delhi, therefore, he resigned from the board; that the shares held by him, in accordance with the understanding between the petitioner and the second respondent, ought to have been transferred to the petitioner to maintain parity in the shareholding of the company; that at that time the relationship between the petitioner and the second respondent was cordial, therefore, on the suggestion of the second respondent the shares held by Sri B. S. N. Rao were distributed between the petitioner and the second respondent and the petitioner was allotted thirteen shares and the second respondent, twelve shares. In this regard, it is alleged in the petition by the petitioner that this was also the calculated move of the second respondent with a particular design in mind; that after the resignation

of Sri B. S. N. Rao on May 24, 1978, there were only two directors of the company, namely, the petitioner and the second respondent from May 24, 1978, till November 12, 1987; that though initially there were hurdles in the progress of the company, in the later years the company started earning profits; that as per the balance-sheet and profit and loss account for the year 1985-86 the company had made profits. The petitioner and the second respondent by the resolution dated September 30, 1978, were made whole-time directors with effect from April 1, 1977, with a salary of Rs. 2,500 per month each and other perquisites. This was also intimated to the Registrar of Companies by filing form No. 23. 10. In the year 1984, the company thought of revamping its production system by installing sophisticated machines with a view to reorganise its unit to improve its profitability; that the petitioner worked out the details and found that some of the existing machines were required to be sold and new machines were required to be acquired; that in this process eleven workers were retrenched. However, the second respondent refused to agree to sell two machines which had become obsolete; that as a result of it, new machines could not be acquired; that at the same time the company lost the services of eleven skilled workers who were retrenched; that these retrenched workers have raised disputes and the same are pending and this has resulted in exposing the company to substantial claims on account of back-wages, etc. 11. The petitioner and the second respondent also started two partnership firms one called "ACE Industries" in which the petitioner's wife and the wife of the second respondent were equal partners and another partnership firm called "Electro Fab"; that in Electro Fab the petitioner and the second respondent were partners each holding 50 per cent. interest and the profits and losses were to be shared equally; that the office of these two firms were located in the premises of the first respondent-company; that these two firms purchased some of the items of machinery required for the business operation of the first respondent-company and they were used by the company to execute the work orders; that due to differences between the petitioner and the second respondent these two firms stand dissolved; and the arbitrators have been appointed to work out the mutual rights of the partners. A significant part of the machinery required by the company for its business is owned by these firms; that, therefore, it is impossible for the company to carry on its business without the use of those machines; that the second respondent started acting unreasonably in the matter of the company's business and, therefore, serious differences arose between the petitioner and the second respondent from the year 1984; that towards the end of the year 1984, the differences between the petitioner and the second respondent escalated and reached the pith. 12. There were attempts made by the parties and their well-wishers to bring about a settlement and to resolve the difference; that Sri K. P. Rao and Sri Sadashiva Rao, partners of K. P. Rao and Co., chartered accountants of the first respondent-company, held several discussions with the parties; that in the light of these discussions Sri B. K. P. Rao, by his letter dated January 11, 1985, addressed to Sri K. P. Rao offered to sell twelve shares out of the 25 shares held by his wife to the petitioner; that this was done to maintain parity in the shareholding between the petitioner and the second respondent;

that he demanded Rs. 7,000 per share which was wholly exaggerated; therefore, the petitioner wrote to Sri K. P. Rao that though the offer of shares was in the right spirit, the price indicated per share was extremely high, therefore, requested him to assess the fair value of share for the purpose of enabling the transfer of shares. Sri B. K. P. Rao sent a note dated February 11, 1985, to the auditors of the first respondent-company as to the method of valuation; that before any action could be taken by Sri K. P. Rao, Sri B. K. P. Rao by his letter dated February 27, 1985, withdrew his offer; that this withdrawal of offer was not in conformity with the provisions of the articles of association of the company. 13. That Sri B. K. P. Rao was not in the management of the company. Therefore, he was not eligible to be paid any salary or remuneration from the company; that the company agreed to give return on his investment of Rs. 25,000 in the company at the prevailing bank rate of interest in the form of consultation fee to be paid in the name of his son, Sri A. Ananthakrishna Rao, during the period when Sri B. K. P. Rao was in the service of Binny Ltd. that Ananthakrishna Rao was a young man with no experience and was in fact working as a trainee in Kirloskar Electric Co. Ltd.; that he did not render any assistance to the company; that this arrangement of paying the amount in the form of consultation fee was continued and paid to Sri B. K. P. Rao even after his retirement from the company; that it was pointed out by the petitioner that the company could not afford to continue this arrangement and that it was a serious drain on the company's resources; as such it should be discontinued; that at this stage differences between the petitioner and the second respondent escalated further and resulted in a deadlock in the management of the company; that the second respondent held out a threat to the petitioner that he and his relative, respondent No. 3, held majority of shares, as such they could throw the petitioner out from the company at any time; that the second respondent also falsely spread words in the social and business circles that the petitioner was only an employee of the company and was never a director. 14. That the second respondent made attempts to prevent payment of remuneration to the petitioner, that all cheques on behalf of the company were being signed by both the petitioner and the second respondent; that the second respondent declined to sign the cheques when it came to payment of remuneration to the petitioner; that this attitude of the second respondent resulted in stalemate and the second respondent completely stopped signing cheques on behalf of the company; that there was exchange of letters between the petitioner and the second respondent in this regard containing allegations and counter-allegations; that differences between the petitioner and the second respondent still worsened when the second respondent all of a sudden by his letter dated August 24, 1987, sent a requisition to the company under section 169 of the Act to convene an extraordinary general meeting of the company to comply with article 29(e) of the articles of association of the company in order to appoint the petitioner, the second respondent and one outsider by name Dr. Ghatge as director of the company; that the petitioner replied to the letter dated August 24, 1987, and pointed out that there was no violation of article 29(e) of the articles of association of the company and that there was no need to appoint any outsider as director of the

first respondent-company; that the petitioner learnt that the second respondent on misrepresenting the facts to Dr. Ghatge had requested him to become a director of the first respondent-company; that the requisition letter dated August 24, 1987, of the second respondent was followed by the notice dated October 9, 1987, convening the extraordinary general meeting (EGM) on November 12, 1987; that the petitioner, apprehending that an attempt was being made oust him from the company, convened a board meeting by his notice dated October 28, 1987, on November 7, 1987, proposing to co-opt two directors; that the second respondent informed the petitioner that convening of the board meeting was illegal and as such he should not attempt to do the same; that, therefore, the petitioner had no option but to requisition a meeting under section 169 of the Act on November 10, 1987; that the second respondent by his reply dated November 7, 1987, informed that the board was not competent to meet and discuss when the extraordinary general meeting of the company convened by the second respondent was to be held on November 12, 1987; that in the extraordinary general meeting of the company held on November 12, 1987, the petitioner was present; that two other persons by name Sri Keshavan, claiming to be an advocate and Sri Vijaya Krishna, claiming to be a chartered accountant, were kept present in the said meeting which was not permissible; that the second respondent did not put the resolution proposing to elect the petitioner as a director to vote by show of hands; that he straightaway directed vote by poll; that the polling slips were distributed and votes were cast by three members, i.e., the petitioner and respondents Nos. 2 and 3; that at that time Sri Keshavan and Vijayakrishna both attempted to participate in the meeting and tried to interfere with the petitioner's right to vote; that the request of the petitioner to direct these two persons to withdraw from the meeting was overruled by the second respondent; that respondents Nos. 2 and 3 voted against the resolution to appoint the petitioner as director; that the other two resolutions proposing to appoint the second respondent and Dr. Ghatge as directors were declared as passed whereas that of the petitioner was declared as lost as respondents Nos. 2 and 3 voted against the petitioner; that after the meeting the petitioner learnt that the second respondent requested Dr. Ghatge to meet him at the Golf Club for a board meeting of the company; that after Dr. Ghatge met the second respondent at the Golf Club and the second respondent informed him that he wanted to co-opt Sri B. K. P. Rao, father-in-law of the second respondent as a director of the company; that Dr. Ghatge on coming to know the evil intention of the second respondent tendered his resignation as director of the company which was also brought to the notice of the Registrar of Companies. 15. It is the further case of the petitioner that the company had been managed by the petitioner and the second respondent right from the inception; that the affairs of the company had been carried on by them as partners; that the petitioner and the second respondent all along considered themselves as equal partners; that the business of the company had been carried on by them jointly in every respect; that all the decisions were taken by mutual consent till differences arose between them; that the petitioner and the second respondent carried on the affairs of the company as partners was also further strengthened by the

fact that the two partnership firms were formed by them with equal shares; that the company was a small private company and its shares were closely held. Therefore, it is the case of the petitioner that the principles of partnership law would apply to the first respondent-company; that the conduct of the second respondent justified lack of confidence in the conduct and management of the company's affairs; that the rift was solely due to the desire of the second respondent to take over the control of the company and oust the petitioner; that the manner in which the company was incorporated and run for such a long period of time by the petitioner and the second respondent made it clear that both of them were equal partners; that the calculated moves spread over several years of the second respondent were an attempt to increase his percentage of shares by adopting illegal means and by failing to comply with the provisions of the articles of association; that even though the company has been in existence for more than one decade, it has not maintained the minutes of the board of directors meeting; that the share certificates have not been printed and the members' register and other statutory registers have not been maintained; that there is a deadlock in the company and as such in the facts and circumstances of the case, it is just and equitable to wind up the company as the affairs of the company are being conducted in a manner oppressive to the petitioner who is a member of the company. But, in the facts and circumstances of the case, the winding up of the company would unfairly prejudice the petitioner and as such it is necessary to bring to an end the oppression carried out by the second respondent. 16. That at the extraordinary general meeting held on November 12, 1987, respondents Nos. 2 and 3 have exercised their voting rights in a manner prejudicial to the interest of the company and its members; that the decision to vote against the petitioner was motivated by their desire to oust the petitioner from the management and control of the company; that the manner of exercise of voting power by respondents Nos. 2 and 3 left no room for doubt that their intention was to bring about a material change in the management and control of the company by alteration in its board of directors; that by reason of the change in the board of directors, it is likely that the affairs of the company would be conducted in a manner prejudicial to public interest and in a manner prejudicial to the interest of the company and its members; that after being in management from the time company's factory was set up in the year 1976, the petitioner finds himself out of office as director and this is only due to his differences with the second respondent which is all the making of the second respondent and his desire to aggrandize unto himself the power of full control over the affairs and funds of the company to the exclusion of the petitioner. Thus, the petitioner has sought for the reliefs extracted above on the grounds that he and the second respondent are equal partners of the company; that an attempt is made to oust him from the management of the company; that this is against the interest of the company and the petitioner who is shown as a minority shareholder and as such he is entitled to be protected from such oppression; that the transfer of the shares from the fourth respondent to the third respondent was illegal and unsustainable; that the company is a small private company governed by the principles of partnership; that the attempt to oust

the petitioner from the management has the result of materially changing the management and control of the company; that the removal of the petitioner as a director is detrimental to the interest of the company and the petitioner; that this is as a result of the second and the third respondent exercising their voting right to oppress the petitioner and that the petitioner has also been deprived of the remuneration and the perquisite he was entitled to draw as a wholetime director. 17. The respondent have filed a common statement of objections, inter alia, contending that there was no understanding between the petitioner and the second respondent; that the petitioner was entitled to 50 equity shares in accordance with the understanding with the company; that the petitioner and the second respondent would be equal partners in the venture is denied; that the first respondent being a body corporate incorporated under the Act; that the business of the first respondent did not arise out of any previous partnership; that there was no understanding of equal partnership in the venture between the petitioner and the second respondent; that respondents Nos. 2 and 4 were solely responsible for conceiving the business venture; that the petitioner had no role at all to play when the business venture was conceived; that it is not true that Hajee and Khanapure resigned because the company did not commence any business; that Khanapure resigned as a result of differences of opinion on the salary to be paid to him; that the allegation that the second respondent had no entrepreneurial experience or technical knowledge is grossly incorrect apart from being unjustifiedly malicious; that at no point of time there was any understanding between the petitioner and the second respondent that they would be equal partners in the first respondent-company; that there was no justification, need or reason for such an understanding to be arrived at; that the petitioner held one share and respondent No. 2 held two shares; that the difference in the shareholding commenced from the date the petitioner was co-opted; that the transfer of one share held by Khanapure to the petitioner and one share held by Hajee Ibrahim to the second respondent was approved and carried out at the meeting of the board of directors held on January 27, 1976, wherein the petitioner was also present and he neither objected to the transfer of an additional share to the second respondent nor demanded equality of shareholdings; that on the contrary he acquiesced and consented to the shareholding of the second respondent being two and his being one. As such for the first time in the petition he has claimed a right to own shares equally with the second respondent. 18. That the first respondent-company was opened even before the petitioner became a member of the company; that it is true that the petitioner and the second respondent furnished affidavits to the Department of Industries and Commerce but it is not factually correct that in that affidavit, the petitioner and the second respondent had stated that they were setting up a small scale industry with shares in equal proportion; that prior to co-opting the petitioner, he had represented to the second respondent that he had varied experience on the shop floor and that he would be capable of managing the entire production department of the first respondent-company and that he would effectively replace Mr. Khanapure by virtue of his experience in the shop floor; that on these representations, the second respondent agreed to co-opt the petitioner to the

board; and one share held by Khanapure was transferred to the petitioner; but later on it transpired that the petitioner did not in fact have any experience whatsoever in the production department or on the shop floor. Therefore, in the interest of the company, on the suggestion of the second respondent Sri B. S. N. Rao was included as a member of the board of directors of the company as he was qualified and had wide experience on the shop floor. Therefore, it is false to allege that Sri B. S. N. Rao was co-opted at the instance of the petitioner. Of course, the petitioner was a consenting party to the inclusion of Sri B. S. N. Rao; that at the stage when B. S. N. Rao was co-opted, the petitioner insisted for allotment of shares. Therefore, 25 shares were allotted to Mrs. Anupama Rao, wife of Sri B. K. P. Rao as Sri B. K. P. Rao had been involved in the first respondent-company from its inception and was practically responsible for the venture itself; that the petitioner did not object to the allotment of shares to Mrs. B. K. Anupama Rao; that in the meeting of the board of directors held on August 14, 1976, wherein the petitioner was present, it was resolved to allot 25 shares to Mrs. B. K. Anupama Rao without her being co-opted as a director of the board; that the petitioner's claim of expertise and technical skill was per se false; that the entire process of selection of plant and machinery, placing orders therefor, inspection and installation, etc., were supervised by B. S. N. Rao and not by the petitioner. 19. That in the board meeting held on October 1, 1976, there was allocation of responsibilities amongst the petitioner, the second respondent and B. S. N. Rao. The petitioner was to look after the marketing, appointment of personnel, their promotions, disciplinary proceedings against them and their removal, liaison with banks, and placing of orders for machinery. That the allegation that B. K. P. Rao transferred 25 shares to his wife Smt. B. K. Anupama Rao is not factually correct; that in the board meeting held on August 14, 1986, the initial allotment of 25 shares itself was to Mrs. Anupama Rao. Therefore, there was no question of transfer of shares from B. K. P. Rao to Mrs. B. K. Anupama Rao; that even otherwise, if any such transfer had taken place, the petitioner was also a consenting party to the transfer as he had signed the annual reports up to September 15, 1976, and November 16, 1976, in his capacity as a director. As such he is precluded and estopped from challenging the legality or validity of such transfer; that the transfer of shares was contrary to the procedure prescribed in the articles of association is also untenable; that apart from the fact that there was no such transfer and even if such transfer had taken place, the petitioner being a consenting party is precluded from challenging the same at the belated stage; that there was no motive for transfer of shares as alleged by the petitioner even assuming that there was transfer; that at any rate, it does not constitute oppression of minority shareholders or mismanagement; that it is true that B. S. N. Rao resigned on May 24, 1978, that there was no understanding at any stage to transfer the shares held by B. S. N. Rao to the petitioner; the petitioner agreed to the transfer of shares held by B. S. N. Rao - 12 shares to the second respondent and 13 shares to him. As such he is precluded from challenging the transfer of shares or attribute motives to the second respondent; that the petitioner, in law, was not entitled to the transfer of all the 25 shares held by B. S. N. Rao; that it is

true that on the resignation of B. S. N. Rao on April 28, 1978, there were only two directors - the petitioner and respondent No. 2; that even then, there was no understanding either express or implied that the petitioner and respondent No. 2 would be equal partners in the company; that apart from the petitioner and respondent No. 2, the only other member of the company was Smt. B. K. Anupama Rao; that on the resignation of B. S. N. Rao, the total shareholding was 100 shares which were divided and held as follows : 1. Petitioner .... 38 shares 2. Respondent No. 2 .... 37 shares 3. Respondent No. 3 .... 25 shares

20. It is true that the petitioner and respondent No. 2 signed all the documents and furnished personal guarantees to the banks but this did not enable the petitioner or create any right in him to claim 50 per cent. shareholding in the first respondent-company as there was no such understanding that they would be equal partners; that the allegations that the petitioner was completely all along in charge of the production activities of the company is not correct. From October 1, 1976, duties of each of the directors were specified. The responsibility of production was of B. S. N. Rao and not of the petitioner. The petitioner had no knowledge or experience either of the shop floor or of production. Therefore, the petitioner being solely in charge of the production is not only untenable but factually incorrect. There was a concept of reorganisation but it is not true that the petitioner worked out details of reorganisation as alleged in the petition.
21. Eleven workers were retrenched because they were found to be surplus and the petitioner was a consenting party to it. It is true that respondent No. 2 unreasonably refused to participate in the economic reorganisation of the company or that he objected to the sale of two machines or that the said machines had become obsolete; that the second respondent was agreeable for sale of such machines but the offers received for the machines were not satisfactory. Therefore, the petitioner and the second respondent jointly decided not to sell the machines; that all the machines are being used; that industrial disputes are pending and there is nothing special about it; it is a normal feature of every industrial venture. From this it cannot be inferred that there is mismanagement.
22. It is true that two partnership firms known as Ace Industries and Electrofab were formed by the petitioner and the second respondent; that in Ace Industries the wife of the petitioner and the wife of the second respondent were the partners and in Electrofab, the petitioner and respondent No. 2 were partners. In both the firms, the parties had 50 per cent. interest but the business carried on by the firms was not intimately connected with that of the first respondent. The fact that the petitioner and respondent No. 2 were equal partners in the partnership firm did not in any manner establish the right of the petitioner to be equal shares in the first respondent-company; that it is not true that the second respondent started acting unreasonably in the matter of the company's business from 1984. In fact the petitioner is involved in the establishment of another industry of which

the petitioner and his wife are directors. The petitioner established another industry by name Supangita Engineers P. Ltd. in about the month of June, 1985, while he was a director of the first respondent-company. Therefore, he became irregular in the discharge of his duties as a director of the respondent-company. Hence, differences between the petitioner and the second respondent developed; that establishment of another factory during the tenure as a director of the first respondent-company showed lack of bona fides on the part of the petitioner; that change of board of directors was made at the instance of the petitioner; the former auditors of the first respondent-company were Aru and Dev; K. P. Rao and Co. were appointed at the instance of the petitioner, as auditors of the company in place of Aru and Dev., K. P. Rao and Co. were responsible for the petitioner being released from the partnership business of manufacture of fasteners; that the second respondent had all along believed that the intention of the petitioner in appointing K. P. Rao and Co. as chartered accountants of the company was bona fide. It was because of this that K. P. Rao and Co. were also involved in attempts to sort out differences of opinion between the petitioner and the second respondent; that out of 25 shares held by Smt. B. K. Anupama Rao, 12 shares were offered to the petitioner and 13 shares were offered to the second respondent by Sri B. K. P. Rao; that the petitioner has deliberately withheld the latter portion of the letter of B. K. P. Rao, which states that he was willing to sell 13 shares held by his wife to the second respondent; that the offer was made to K. P. Rao and not to the petitioner directly; that failure of negotiation regarding the sale and purchase of shares was due to the unreasonable attitude adopted by the petitioner; that the petitioner valued the shares at Rs. 896.98 per share whereas the third respondent valued them at Rs. 7,000 per share.

23. That Sri B. K. P. Rao had invested Rs. 25,000 in the shares of the company and no dividend was declared; that he was also advising the company; further he had advanced a loan of Rs. 50,000 to meet its immediate requirement; that B. K. P. Rao was paid Rs. 300 from October 12, 1978, up to August 17, 1984, by cheques; that the petitioner is a consenting party as the cheques were signed by him; that the payment of Rs. 300 per month cannot be held to constitute oppression or mismanagement. The allegation that the second respondent prevented payment of remuneration to the petitioner is denied; that it is the petitioner who is responsible for such a situation; that the petitioner himself signed the cheques; that the petitioner signed the cheques in relation to the payments to be made to the suppliers only after those cheques were sent by registered post for signature of the petitioner; that it is denied that the second respondent made attempts to oust the petitioner from the management; that under article 29(e) of the articles of association, one-third of the directors shall retire each year; that this provision was not given effect to by inadvertence; therefore, an attempt was made to regularise the directorship of both. Therefore, a notice dated April 28, 1987, was issued to call for an

extraordinary general meeting to consider and pass resolutions appointing the petitioner, the second respondent and one Dr. V. M. Ghatge as directors of the first respondent-company; that the extraordinary general meeting held on November 12, 1987, was not with a view to oust the petitioner; that Dr. Ghatge had experience in similar industry, therefore, he was suggested by the second respondent to be a director of the first respondent-company; that there was no design or mala fide intention on the part of the second respondent in proposing the name of Dr. Ghatge; that there was no misrepresentation of facts to Dr. Ghatge made by the second respondent as alleged by the petitioner; that before the extraordinary general meeting to be held on November 12, 1987, the petitioner issued a letter calling for a board meeting on November 7, 1987, to co-opt Mr. Sridhar and Mr. Raghuraj as directors; that convening of the board meeting was illegal, therefore, the petitioner was informed accordingly by the letter dated November 3, 1987; that there was nothing illegal in the extraordinary general meeting held on November 12, 1987; that the petitioner in spite of having convened a board meeting on November 10, 1987, and in spite of having issued a letter separately convening the extraordinary general meeting, in fact, attended the extraordinary general meeting on November 12, 1987; that it is not false that the second respondent unilaterally assumed chair and conducted the meeting as alleged; the second respondent had been appointed as chairman of the board. Therefore, the question of the second respondent unilaterally assuming the chair did not arise; that the petitioner did not at any time object to the convening of the meeting as alleged by him; that on the contrary, he was a consenting party to the entire proceedings; that no objection of any nature was raised by the petitioner during the proceedings of the meetings; that the presence of Sri Keshavan was not illegal; he was duly appointed as legal adviser of the first respondent-company at the board meeting held on May 4, 1987; the allegation that the voting by poll was straightaway resorted to without in the first instance taking a vote by show of hands is grossly incorrect and denied as false. The voting on the resolution nominating the petitioner as director was in the first instance held by show of hands. However, before the results of such poll were declared, one of the shareholders, viz., Smt. Anupama Rao, demanded a poll in pursuance of which a poll was conducted; that it is grossly incorrect to aver that the petitioner took objection to the need to appoint a third director, viz., Dr. Ghatge; that at no time Dr. Ghatge had indicated his disinclination to be a member of the board; that the averment that Dr. Ghatge had indicated to the petitioner that he was not agreeable to act as a director of the first respondent-company is wholly untenable as the petitioner could not have had any knowledge of the same; that Dr. Ghatge resigned only because the petitioner had made a false representation to him that it would involve litigation; that the petition is the direct result of the failure of the petitioner to get elected as a director in the extraordinary general meeting held on November 12, 1987; that it is filed with a mala fide intention as

no right is vested in the petitioner to remain as a board director of the first respondent-company after the resolution so nominating him was lost; that all the averments made in the petition are afterthoughts and are motivated because of the failure of the petitioner to get elected as a director; that the petitioner was instrumental in making Dr. Ghatge resign; that after the resignation of Dr. Ghatge, the board of directors comprised only the second respondent. Therefore, by virtue of the right vested in the second respondent under regulation 75, he appointed Mr. Sunil Kothari as a second director. As such the board of directors of the first respondent-company now comprises the second respondent and Mr. Sunil Kothari; that the averments made in para 27 of the petition are denied as grossly incorrect and false; that in any event, the petitioner was involved during the period of seven years in the administration and running of the first respondent-company and in view of the fact that all the decisions and actions were taken by the petitioner and the second respondent jointly, the petitioner is not entitled to challenge the acts of the company for the past seven years; that the petitioner is guilty of delay and laches; that all the allegations of oppression and mismanagement are made for the first time. There are no bona fides in the petition; that the minutes of the meeting of the board of directors of the company have been maintained and would be produced separately; that in any event, the mere non-maintenance of minutes of the board meeting would not constitute oppression. The share certificates have not only been printed but have also been delivered to the shareholders. The register of members as required by the Act has been maintained. The relevant extracts therefrom will be produced separately.

24. That it is factually incorrect to say that the affairs of the company are being conducted in a manner oppressive to the petitioner. The petitioner himself refused to sign the cheques; that the alleged rift between the petitioner and the second respondent is not due to the desire of the second respondent to take control of the company and to oust the petitioner; that on the contrary, the conduct of the petitioner in using the company's time, contacts, infrastructural facilities and experience to set up an independent private limited company with the petitioner and his wife as directors would only support the contention of the second respondent that the petitioner sacrificed the interest of the first respondent-company in preference to his own private limited company. Therefore, if there were any calculated motives, it was attributable entirely to the petitioner himself who had engaged in setting up another parallel company in competition with the first respondent-company; that the petition has been filed only to harass the second respondent and to impede the functioning of the first respondent-company in view of the fact that the petitioner has lost the election as a member of the board of directors of the first respondent-company; that the contents of para 29 of the petition are grossly incorrect; that the petitioner having participated in the extraordinary general meeting held on November 12, 1987, and having contested the election for the directorship of the first respondent-company and lost it, has no right to challenge the

manner in which the members of the company exercised their right of voting; that the fact that the members of the company placed confidence in the second respondent and expressed lack of confidence in the petitioner would itself establish that the affairs of the company are not being conducted in any way prejudicial to the interest of the first respondent. The respondents have also denied the averment made in para 29 of the petition and the grounds raised in paragraphs 30(a) to (d). Consequently, it is the case of the respondents that the petitioner is not entitled to any of the reliefs sought for in the petition.

25. It is the further case of the respondents that the petition does not disclose any grounds justifying an order of winding up of the first respondent-company under section 433(f) of the Act nor granting any of the reliefs prayed for in the petition; that the petition is not maintainable as the petitioner has failed to show that he was compelled to submit to conduct which lacked probity or conduct that was unfair; that it is the inherent right of the shareholders to elect their directors. Therefore, the rejection of the petitioner's claim to be elected as a director of the first respondent company cannot constitute oppression as defined under the Act. That similarly mere dissatisfaction of the petitioner also cannot constitute oppression as defined under section 397 of the Act; that the petitioner has failed to establish that the first respondent-company or the second respondent has been guilty of illegal or unlawful acts continuously so as to warrant the presumption of mismanagement; that mere isolated acts of alleged mismanagement, if any, would not constitute oppression as defined in section 397 of the Act. Thus, the respondents have sought for dismissal of the petition. Therefore, it is the case of the respondents that the petitioner is not entitled to any reliefs and the petition is liable to be dismissed.
26. In support of his case, the petitioner has given evidence as PW-1 and has also examined Sri Sadashiva Rao, partner of K. P. Rao and Co., chartered accountants of the first respondent-company as PW-2 and has produced 49 documents which are marked as exhibits P-1 to P-49. In support of their case, the respondents have examined respondent No. 2 as RW-1 and got marked 37 documents as exhibits R-1 to R-37. In addition to these the respondents have produced 13 other documents, the genuineness of which is challenged by the petitioner. Therefore, those documents are marked for identification purpose as exhibits 1 to 13.
27. Having regard to the pleadings of the parties, evidence adduced by them and the arguments advanced on both sides, the following points arise for consideration :
28. Whether this is a case to which the principles of partnership are attracted ?
29. Whether the petitioner proves that the affairs of the first respondent-company are being conducted in a manner oppressive to him, and prejudicial to the interests of the first respondent ?
30. Whether the petitioner proves that the transfer of 25 equity shares held

by Sri B. K. P. Rao (respondent No. 4) in favour of his wife, Smt. B. K. Anupama Rao (respondent No. 3), is invalid ?

31. Whether the proceedings of the extraordinary general meeting of the members of the first respondent-company held on November 12, 1987, and the resolutions passed at the said extraordinary general meeting of the first respondent-company are liable to be declared as illegal and invalid and quashed ?
32. Whether the petitioner is entitled to continue as a wholetime director of the first respondent-company with all such powers as originally conferred upon him and is entitled to draw remuneration ?
33. Whether it is necessary to declare and issue directions that in the management of the affairs, business and funds of the first respondent-company, the petitioner shall have equal participation to the same extent as respondent No. 2 ?
34. Whether it is necessary to enquire into the determine the amounts paid by the first respondent-company to the fourth respondent and his son in the guise of consultancy fee and direct recovery of the said sum from the fourth respondent with interest at the prevailing bank rate ?
35. Whether it is necessary to restrain the second respondent by permanent injunction from making any representation or holding out to the public, employees of the company, bankers, etc., that the petitioner is not entitled to represent the first respondent-company ?
36. Whether the articles of association of the first respondent-company require to be amended ?
37. Whether it is just and necessary to direct that out of the 25 shares originally held by B. K. P. Rao (respondent No. 4) now standing in the name of his wife, Smt. B. K. Anupama Rao (respondent No. 3), 12 shares be transferred to the petitioner ?
38. Whether it is a case in which the first respondent-company has to be wound up under section 433(f) of the Act ?
39. What order ?
40. Before I take up point No. 1 for consideration, I consider it just and necessary to discuss the law on the point.
41. Law on the point : In the light of the contentions urged on both sides, I will now consider the law on the point. It is contention of Sri Sunderswamy, learned senior counsel for the petitioner, that the facts and circumstances of the case attract the principles laid down in Ebrahimi v. Westbourne Galleries Ltd. [1972] 2 All ER 492, whereas it is contended by Sri Santosh Hegde, learned senior counsel appearing for the respondents, that the first respondent is a company incorporated under the Act and as such the principles enunciated in Ebrahimi's case [1972] 2 All ER 492; [1973] AC 360, are not attracted. Further, the facts and circumstances of the case do not warrant the application of the principles of partnership; that the first respondent-company has not come into existence or formed out of an existing partnership. The specific case of the petitioner is that there has been an understanding between the second respondent and the petitioner,

when he joined the first respondent that he and the second respondent would be equal partners in the venture of the first respondent. Of course, if the case of the petitioner as to such an understanding between him and the second respondent is found established as a matter of course the principles of partnership are required to be applied. If, on the contrary, no such agreement or understanding is found as existing between the petitioner and the second respondent, it will have to be seen whether the facts proved warrant application of the principles enunciated in Ebrahimi's case [1972] 2 All ER 492; [1973] AC 360.

42. In Ebrahimi's case [1972] 2 All ER 492; [1973] AC 360, 379 as noticed by the Supreme Court in Hind Overseas Pvt. Ltd. v. Raghunath Prasad Jhunjhunwalla , it was held as follows (at pages 499, 500 of [1972] 2 All ER) : "The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own : that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act, 1948, and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way. It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The super-imposition of equitable considerations requires sometime more, which typically may include one, or probably more, of the following elements :

(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company;
(ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business;

(iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere ... A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in."

31. In Hind Overseas' case [1976] 46 Comp Cas 96 (SC) there was a petition filed for winding up under section 433(f) of the Act. The learned company judge dismissed the petition holding that the principle of dissolution of partnership applied to companies either on the ground of complete deadlock or on the ground of being domestic or family companies. A complete deadlock would be created where the board has two real members or the ratio of shareholding is equal. In the case of domestic or family companies, the courts have applied the dissolution of partnership principle where shareholdings are more or less equal and there is ousting not only from management but from benefits as shareholders. Lack of probity has to result in prejudice to the company's business, affecting rights of complaining parties as shareholders and not as directors. If a deadlock can be resolved by the articles there is no deadlock to bring in winding-up and if there are alternative remedies the company should not be wound up. The learned company judge also held that he was unable to hold that the substratum of the company had gone. However, in the appeal, it was reversed and winding-up was ordered. The matter was taken to the Supreme Court. After referring to Ebrahimi's case [1972] 2 All ER 492; [1973] AC 360 and also Yenidje Tobacco Co. Ltd.'s case [1916] 2 Ch 426 (CA) and other cases, the Supreme Court held as follows (at page 104 of 46 Comp Cas) : "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 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, 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. On the allegations and submissions in the present case, we are not prepared to extend these principles to the present company. The principle of 'just and equitable' clause baffles a precise definition. It must rest with the judicial discretion of the court depending upon the facts and circumstances of each case. These are necessarily equitable considerations and may, in a given case, be superimposed on law. Whether it would be so done in a particular case cannot be put in the strait-jacket of an inflexible

formula. In an application of this type allegations in the petition are of primary importance. A prima facie case has to be made out before the court can take any action in the matter. Even admission of a petition which will lead to advertisement of the winding up proceedings is likely to cause immense injury to the company if ultimately the application has to be dismissed. The interest of the applicant alone is not of predominant consideration. The interests of the shareholders of the company as a whole apart from those of other interests have to be kept in mind at the time of consideration as to whether the application should be admitted on the allegations mentioned in the petition. The question that is raised in this appeal is as to what is the scope of section 433(f) of the Act. Section 433 provides for the circumstances in which a company may be wound up by the court. There are six recipes in this section and we are concerned with the sixth, namely, that a company may be wound up by the court if the court is of the opinion that it is just and equitable that the company should be wound up. Section 222(f) of the English Companies Act, 1948, is in terms identical with the Indian counterpart, section 433(f). It is now well established that, the sixth clause, namely, 'just and equitable' is not to be read as being ejusdem generis with the preceding five clauses. While the five earlier clauses prescribe definite conditions to be fulfilled for the one or the other to be attracted in a given case, the just and equitable clause leaves the entire matter to the wide and wise judicial discretion of the court. The only limitations are the force and content of the words themselves, 'just and equitable'. Since, however, the matter cannot be left so uncertain and indefinite, the courts in England for long have developed a rule derived from the history and extent of the equity jurisdiction itself and also born out of recognition of equitable considerations generally. This is particularly so as section 35(6) of the English Partnership Act, 1890, also contains, inter alia, an analogous provision for the dissolution of partnership by the court. Section 44(g) of the Indian Partnership Act also contains the words 'just and equitable'. Section 433(f) under which this application has been made has to be read with section 443(2) of the Act. Under the latter provision where the petition is presented on the ground that it is just and equitable that the company should be wound up, the court may refuse to make an order of winding up if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy. Again under sections 397 and 398 of the Act, there are preventive provisions in the Act as a safeguard against oppression in management. These provisions also indicate that relief 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 interest of the company."

32. The Supreme Court also went into the evidence and reversed the reasoning of the Division Bench as may be noticed from paragraphs 46, 47 and 48 of the judgment (see Hind Overseas' case [1976] 46 Comp Cas 91 at pp. 108,

109) and allowed the appeal and dismissed the petition for winding-up. Thus, in Hind Overseas' case [1976] 46 Comp Cas 91 though the Supreme Court enunciated the principles in paragraphs 32 to 37 (see [1976] 46 Comp Cas 104-106), as extracted above, the appeal was ultimately allowed on the basis of the findings of fact recorded, as may be noticed from paragraphs 46 to 48 (see [1976] 46 Comp Cas 109) of the judgment.

33. Sri Santosh Hegde, learned senior counsel for the respondents, placed reliance on another decision of the Supreme Court in Mrs. Bacha F. Guzdar v. CIT . In that case, according to the assessee, the dividend income received by her in respect of the shares held by her in the tea company was to the extent of 60 per cent. agricultural income in her hands and, therefore, pro tanto exempt from tax. While the Revenue contended that dividend income was not agricultural income and, therefore, the whole of the income was liable to tax. The Income-tax Appellate Tribunal held that the dividend income could not be treated as agricultural income in the hands of the shareholder and decided in favour of the Revenue. However, it agreed that its order gave rise to a question of law, and formulated the following question and referred it to the High Court (at page 3) : "Whether 60 per cent. of the dividend amounting to Rs. 2,750 received by the assessee from the two tea companies is agricultural income and as such exempt under section 4(3)(viii) of the Act."

34. The High Court upheld the order of the Tribunal, but granted leave to appeal to the Supreme Court. It was held by the Supreme Court that the words "revenue derived from land" occurring in the definition of the expression "agricultural income" as contained in section 2(1) of the Indian Income-tax Act, 1922, could not be interpreted beyond their legitimate limits. It was further held that the expression "agricultural income" as defined in the Act was obviously intended to refer to the revenue received by direct association with the land which was used for agricultural purposes and not by indirectly extending it to cases where that revenue or part thereof changed hands either by way of distribution of dividends or otherwise. In fact and truth, dividend would be derived from the investment made in the shares of the company and the foundation of it would rest on the contractual relations between the company and the shareholder. Dividend was not derived by a shareholder by his direct relationship with the land. Accordingly, it dismissed the appeal.

35. In that case, a contention was urged that an investor in the shares of a company would also buy the right to participate in any profits which the company may make. This contention was negatived and it was held that "there is nothing in the Indian law to warrant the assumption that a shareholder who buys shares, buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders". The Supreme Court also negatived the contention that the position of shareholders in a company was analogous to that of partners inter se. It held that such analogy was wholly inaccurate. The Supreme Court also further observed thus (at page 6) : "Partnership is merely an association

of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. Such is, however, not the case of a company which stands as a separate juristic entity distinct from the shareholders."

36. It is not possible to hold that this decision is of any help to consider the question involved in the case on hand. It is not the case of the petitioner that the first respondent is a partnership. The first respondent is undoubtedly a private company. In the case of a small domestic company confined to a few individual shareholders it would be open to them to agree to carry on the business and affairs of the company on the principles of partnership. It would also be open to the court to pierce the corporate veil and find out as to whether the apparent structure of the company is not the real structure and that in reality it is a partnership. Therefore, it is not possible to hold that the decision in Bacha F. Guzdar's case [1955] 25 Comp Cas 1 (SC) is of any assistance to decide the point under consideration. In Bird Precision Bellows Ltd., In re [1984] 1 Ch 419, Nourse J. held thus : "The classical definition of partnership which subsists between persons carrying on a business in common with a view of profit. It seems to me that that is exactly what Mr. Armstrong, Mr. Bird, Mr. Nin, Mr. Rowden and Pipe-Chem were doing. More particularly, and with reference to the typical and important elements previously referred to, I find the following facts in relation to the company and the roles which Mr. Armstrong and Mr. Nin were intended and expected to play, and did play, in its affairs. First, the company represented an association which was formed on the basis of a personal relationship involving mutual confidence. Mr. Bird accepted in his evidence in chief that there was trust between himself and Mr. Armstrong and Mr. Nin, although he said that it was no more than in any other business connection. That is quite enough. The personal relationship involving mutual confidence does not have to be one which extends beyond the confines of business, for example into social life. Secondly, there was an agreement or understanding that Mr. Armstrong and Mr. Nin should participate in the conduct of the business. In my judgment that element is found where there is an agreement or understanding that a shareholder shall participate in all major decisions relating to the company's affairs, for example by acting as a director, even if not in the day-to-day conduct of the business. Thirdly, there were restrictions on share transfers. Fourthly, both Mr. Armstrong and Mr. Nin did provide capital for the company in substantial amounts. In the circumstances, it seems to me to be clear that the company was a quasi-partnership within Lord Wilberforce's criteria or, indeed within any other criteria which might be material. Mr. Jacob sought to argue that there was a partnership only in relation to the company's premises, but there was nothing in that point. The proposition implicit in his submission that there can only be a quasi-partnership in a case where all the shareholders make similar contributions to the company is supportable neither on authority nor in principle. Further, to compare the roles of Mr. Armstrong and Mr. Nin with that of consultants to a

partnership is most unrealistic. Each of them was intended and expected to play a central and regular part in the affairs of the company, and that is exactly what they both did."

37. From the aforesaid decisions, we can deduce the following propositions :
38. It is open to the court to pierce the veil and determine the real structure of the company. If the apparent structure of the company is not the real structure and it is in reality a partnership, the principles of dissolution of the partnership may be applied in adjudicating the petition for winding up.
39. In order to deteremine whether in reality the company is a partnership, the following norms are to be satisfied :

(i) shareholdings should be more or less equal;
(ii) the company must have been formed or continued on the basis of a personal relationship involving mutual confidence;
(iii) an agreement or understanding that all or some of the shareholders shall participate in the conduct of the business;
(iv) restriction on the transfer of shares so as to ensure the continuation of the element of mutual confidence between the shareholders.

3. In the case of winding up of a company in the nature of quasi-partnership, it is only when complete deadlock in the company is created on account of lack of probity in the management of a company and there is no hope and possibility of smooth and efficient continuation of the company as a commercial concern, winding up may be ordered on the just and equitable ground.
4. Winding up may be refused if in the opinion of the court, some other remedy is available and the petitioner is acting unreasonably.
5. In the case of a small company which is in reality a partnership and the complaining petitioner is excluded from the management, it would be an act of oppression and would be prejudicial to the interest of the company. In such a case there would not be much difference between the interest of a company and the interest of a shareholder and, as such, the interest of a member who had ventured his capital in the business of a small private company might include the legitimate expectation that he would continue to be employed as director and therefore unfair prejudice would be caused to his interest as a member.
6. Keeping in view the aforesaid principles of law, I will now proceed to consider point No. 1.
7. Point No. 1. - The first respondent-company (hereinafter referred to as "the company") is a domestic company. At no point of time, the membership of the company exceeded four. The company was incorporated on March 17, 1975, with three members. Those members were :
8. Mr. Khanapure
9. Mr. Haji Ibrahim Issack

10. Mr. N. V. Rao (respondent No. 2)
11. Each member held one share. All the three members were the directors of the company. The company was incorporated on March 17, 1975, with the aforesaid three members. They were not related to each other. The company did not make any progress until the petitioner joined the company as a member and as a director. Mr. Khanapure and Haji Ibrahim Issack retired from the company on January 27, 1976. The petitioner became a member of the company and also a director of the company from January 27, 1976, as per exhibit P-34. One share held by M. S. Khanapure was transferred to the petitioner and one share held by Haji Ibrahim was transferred to respondent No. 2. Subsequently with a view to increase the share capital, 97 shares were allotted in the following manner :
12. 23 shares to the second respondent;
13. 24 shares to the petitioner;
14. 25 shares to Sri B. S. N. Rao; and
15. 25 shares to Sri B. K. P. Rao (respondent No. 4) as per the entries made in exhibit P-34. Thus as per exhibit P-34, the petitioner held 25 shares, respondents Nos. 2 and 4 each held 25 shares and Sri B. S. N. Rao held 25 shares. Sri B. S. N. Rao was also made a director of the company from July 10, 1976. However, we find from the annual return of the company prepared up to November 15, 1977, as per exhibit P-36 that 25 shares held by B. K. P. Rao were shown as transferred to Mrs. B. K. P. Rao (respondent No. 3). Thereafter, in the annual return for the subsequent years, Mrs. B. K. P. Rao is shown as holder of 25 shares. Sri B. S. N. Rao ceased to be a member and director of the company with effect from May 24, 1978. He transferred 12 shares out of 25 shares held by him to the second respondent and the remaining 13 shares to the petitioner on May 24, 1978. This is also evidenced by exhibit P-37, annual return of the company made up to September 30, 1978. It is proved and it is not disputed that exhibits P-34, 36 and 37 are signed by the petitioner and respondent No. 2. The petitioner and the second respondent became the whole-time directors of the company from February 1, 1976. The petitioner continued to be the wholetime director till November 12, 1987. It is also relevant to notice that from February 1, 1976, there were only two wholetime directors till November 12, 1987, viz., the petitioner and the second respondent. After the retirement of B. S. N. Rao on May 24, 1978, the affairs of the company were being managed, and the administration was being carried on, by the petitioner and the second respondent only.
16. The specific case of the petitioner is that though the company was incorporated on March 17, 1975, no progress whatsoever was made. It was only after the petitioner joined the company, that the seed money was raised from the Government of Karnataka on the ground that the petitioner and the second respondent were unemployed graduates and that they had started the new venture for seeking self-employment. The term loan which was sanctioned earlier by the Canara Bank, Ulsoor branch, Bangalore, for the first respondent-factory was got released on satisfying

the conditions; that the petitioner joined the company with a specific understanding that the petitioner and the second respondent would be equal partners in the company; that it was in pursuance of this understanding and with the mutual consent of the petitioner and the second respondent in order to have the services of a Tooling Engineer, Sri B. S. N. Rao, was taken as a director on the suggestion of the petitioner and the father-in-law of the second respondent, viz., Sri B. K. P. Rao, was inducted into the company with 25 shares each. It is also the further case of the petitioner that pursuant to the aforesaid understanding only, when Sri B. S. N. Rao retired, all his shares were required to be transferred to the petitioner but the same were transferred to the petitioner and the second respondent in the proportion of 13 : 12 respectively on the understanding that the shares standing in the name of respondent No. 3 would also be transferred to the petitioner in conformity with the agreement that the petitioner and the second respondent would be equal partners in the venture; that, therefore, in conformity with the said understanding, the shares standing in the name of the third respondent-mother-in-law of the second respondent were also required to be transferred to the petitioner and the second respondent in the proportion of 12 : 13, i.e., 12 shares, to the petitioner and 13 shares to the second respondent which the second respondent failed to secure.

17. On the contrary, it is the case of respondents Nos. 2 to 4 that there was no understanding between the petitioner and the second respondent that they would be equal partners in the venture; that the shares were allotted to Smt. B. K. Anupama Rao (respondent No. 3) and not to Sri B. K. P. Rao; that the first respondent is a private limited company; that the principles of partnership are not attracted because it did not come into existence either out of a partnership or it was started with an understanding that the company will be run on the basis of the principles of partnership. Therefore, it is now required to be seen whether the evidence on record supports the case of the petitioner.

18. The petitioner and the second respondent are not strangers. They are close relations. The second respondent is the cousin of the petitioner inasmuch as he is the son of the petitioner's mother's brother. Respondents Nos. 3 and 4 are the mother-in-law and the father-in-law of the second respondent. The company is a small company confined to close relations. Though initially two strangers, viz., Khanapure and Haji Ibrahim Issack, were associated with the company, it was only for a very short period, of about ten months from March 17, 1975, to January 27, 1976. During this period, except incorporating the company, nothing more appears to have been done. The sale deed relating to the land for locating the factory came to be registered on January 27, 1976. In pursuance thereof, a certificate was obtained on January 30, 1976. Land tax was paid on February 19, 1976. A joint affidavit of the petitioner and the second respondent as per exhibit P-2 was sworn to on February 11, 1976, for the purpose of securing the seed money from the Government of Karnataka.

In the affidavit it was stated that the petitioner and the second respondent were shareholders and directors of the first respondent-company; that they were graduates in engineering and were unemployed; that they wanted to start a new venture for seeking self-employment. On the basis of this, the petitioner and the second respondent obtained the seed money for the company. The term loan was drawn after the petitioner became a director of the company. The correspondence as evidenced by exhibits R-5 to R-11 established beyond doubt that all the requirements of the term loan sanctioned by the Canara Bank, Ulsoor branch, under the letter bearing No. CSI. 384 TPS, dated January 7, 1976, were complied with and the loan was obtained only after the petitioner became a member and director of the company. If there was no understanding between the petitioner and the second respondent that they would be equal partners in the venture and the petitioner were to remain only as a shareholder, there was no reason whatsoever for him to take all the interest and devote his full time for the company as he was not the whole-time director of the company at that time. It was only on September 30, 1978; resolutions were passed as per exhibit P-3 appointing the petitioner and the second respondent as whole-time directors of the company with effect from April 1, 1977, with a salary of Rs. 2,500 per month and several other perks.

19. In the evidence, the petitioner has specifically stated that there was 50 : 50 partnership understanding between the petitioner and the second respondent. The fact that 25 shares held by B. S. N. Rao were transferred to the petitioner and the second respondent in the proportion of 13 and 12, respectively, would also go to corroborate or confirm the case of the petitioner that there was an understanding between him and the second respondent that they would be equal partners in the venture. If there was no such understanding, there was no reason why the shares of B. S. N. Rao were transferred to the petitioner and the second respondent in the aforesaid proportion. In fact, as per the case of the petitioner, all the shares held by B. S. N. Rao were required to be transferred to him because B. S. N. Rao was inducted into the company at the instance of the petitioner. Further, in order to maintain equality of shares between the petitioner and the second respondent, all the shares held by B. S. N. Rao were required to be transferred to the petitioner. However, they were transferred in the aforesaid proportion on an understanding that the shares standing in the name of respondent No. 3 would also be transferred in the proportion so as to maintain equality of shares between the petitioner and the second respondent.

20. The case of the petitioner that 25 shares standing in the name of Smt. B. K. Anupama Rao (respondent No. 3), mother-in-law of the second respondent, were also required to be transferred in the proportion of 12 to the petitioner and 13 to the second respondent in order to maintain parity between the petitioner and the second respondent is also corroborated by the fact that there were negotiations in this regard between the petitioner, the second respondent and the fourth respondent in the presence

of Mr. Sadashiva Rao, partner of K. P. Rao and Co., the auditors of the company. The second respondent also admits in his evidence that there were such negotiations. In para 8 of his deposition, the second respondent has stated thus : "The decisions relating to the affairs of the company used to be taken jointly by me and the petitioner. In March, 1985, the company received a notice from the Central Excise for clubbing the turnovers of the first respondent-company and Electro Fab. There were discussions between me, the petitioner and Sri Sadashivarao regarding the transfer of shares held by respondent No. 3. This discussion took place at the end of 1984."

21. Again, in para 25 of his deposition, he had admitted that in that discussion he convinced the fourth respondent to sell the shares of his wife to him and the petitioner. Of course, the second respondent has further stated that the petitioner did not make any demand before 1985 that the shares held by the second respondent and the petitioner should be equal.

22. PW-2, Sadashiva Rao, has also stated that after the shares held by B. S. N. Rao were transferred in the proportion stated by him, the shares held by the petitioner were 38 and those held by the second and the third respondents were 62. He has further stated in his evidence thus : "I came to know about the discussion regarding equalization of shares between the petitioner on the one hand and the second respondent on the other in 1984. This matter came up for consideration in connection with the problem that had arisen regarding payment of excise duty by the sister concerns of the petitioner and the second respondent. ... There was a continuous dialogue between the petitioner and the second respondent through me. Ultimately Mr. B. K. P. Rao, the fourth respondent, gave a letter as per exhibit P-5 addressed to senior partner of K. P. Rao and Co., Mr. K. P. Rao asked me to hand over exhibit P-5 to the petitioner and to know his comments on it regarding valuation of shares. ... In the year 1985, we tried to bring about harmony between the petitioner and the second respondent. To my knowledge, there was no agreement or understanding arrived at between the petitioner and the second respondent regarding equalization of shares. I say this because there were only discussions and negotiations. As there was only a negotiation regarding transfer of shares held by the wife of Sri B. K. P. Rao, no value regarding transfer of the shares was determined."

23. Here it is relevant to notice that unless there was an understanding between the petitioner and the second respondent that they will be equal partners in the venture, there was no reason whatsoever for the discussion to take place regarding the transfer of shares standing in the name of Smt. B. K. Anupama Rao. If the petitioner had become a member of the company as any other person purchasing the shares without any special understanding, there was no reason for him to swear to an affidavit along with the second respondent to raise the seed money as unemployed graduates for starting a new venture for self-employment. There was also no reason for him to work without any remuneration at the initial stage.

The petitioner in this regard has specifically stated thus : "I have received no benefit from the membership of the company except receiving remuneration as whole-time director of the company. I have contributed for the development of the company financially and technically. My contribution financially was much more than that of the second respondent as I had advanced money to the company at the initial stage without taking interest."

24. In the cross-examination, it has been elicited by the respondents that the petitioner got from Industrial Accessories Corporation a sum of Rs. 60,000 in lump sum; that he had a ready cash of Rs. 1 lakh; that he had a short-term fixed deposit in the Canara Bank, Ulsoor branch, of a sum of Rs. 1 lakh; that he was working in the first respondent-company and looking after the project and was responsible for securing the sale deed pursuant to the agreement of sale.

25. It was because of the discussion as to transfer of shares standing in the name of Smt. B. K. Anupama Rao, her husband, respondent No. 4, addressed a letter, exhibit P-5, dated January 11, 1985, offering 12 shares to the petitioner and 13 shares to the second respondent at the rate of Rs. 7,000 per share and also claimed a sum of Rs. 24,000 for not transferring one-third of the shares held by B. S. N. Rao which were transferred to the petitioner and the second respondent in the proportion of 13 and 12, respectively. Exhibit P-5 starts with reference to the discussion which took place for transfer of shares standing in the name of Smt. B. K. Anupama Rao. The petitioner sent a reply as per exhibit P-6. In exhibit P-6, the petitioner has specifically stated that the petitioner and the second respondent secured the benefit of seed money capital of Rs. 75,000 from the Government of Karnataka and also refund of Rs. 65,000 approximately paid earlier towards sales tax and obtained massive loan from the Canara Bank, Ulsoor branch, in the year 1976, at a concessional rate of interest of 15 per cent. margin money. He also further stated that all these benefits were obtained by them under a Government scheme known as Unemployed Graduate Engineers seeking self-employment. He also further stated that his friend, B. S. N. Rao, was appointed to the board with 25 shares and in order to maintain the balance Mr. B. K. P. Rao was also given 25 shares, thus forming two blocks each having 50 per cent. shareholding in the company. He further stated that Mr. B. K. P. Rao transferred his 25 shares to his wife without first offering the same to the existing shareholders, viz., the petitioner and the second respondent. He further stated that B. S. N. Rao retired from the company in the year 1977. Instead of transferring his entire 25 shares to the petitioner for maintaining the necessary balance, only 13 shares were allotted to him by mistake. He also pointed out that the company was paying 16 per cent. interest for all loans from shareholders and others equally. He further stated in exhibit P-6 that the sum of Rs. 25,000 paid by Mrs. B. K. P. Rao towards 25 shares was also treated as loan and interest at the rate of 16 per cent. was being paid from the year 1977. Of course, subsequently Sri B. K. P. Rao withdrew

his offer by the letter dated February 27, 1985, marked as exhibit P-8.

26. After Sri B. S. N. Rao retired from the company on May 24, 1978, there were only three members in the company, viz., the petitioner, the second respondent and Smt. B. K. Anupama Rao (respondent No. 3). The said position continued till the date of filing of the petition and also till the last date of hearing of this petition. Out of these three members, the petitioner and the second respondent only continued as wholetime directors of the company till November 12, 1987. Smt. B. K. Anupama Rao did not attend the annual general meetings at any time. For the first time, she attended the extraordinary general meeting of the members of the company held on November 12, 1987. It is also relevant to notice that the petitioner and the second respondent took decisions jointly and carried on the affairs of the company.

27. In addition to this, there is also another circumstance which also supports the case of the petitioner that the company was run by the petitioner and the second respondent on an understanding that they would be equal partners in the venture. The petitioner and the second respondent started two partnership firms known as Ace Industries and Electro Fab. The wife of the petitioner and the wife of the second respondent were the partners in Ace Industries. The petitioner and the second respondent were the partners in Electro Fab. Each of the partners had 50 per cent. interest. The offices of both these firms were located in the premises of the first respondent-company. The business of these two firms was carried on by the petitioner and the second respondent. The business carried on by the two firms was intimately connected with the business of the company. If there was no understanding between the petitioner and the second respondent that the first respondent-company will be run on the basis of 50 : 50 partnership, the petitioner and the second respondent would not have started two partnerships in the premises of the first respondent with 50 per cent. share each. Of course, after the differences that arose in the company between the petitioner and the second respondent, these two partnerships also have been wound up.

28. No dividends have so far been declared. The investments in the capital equipment of the company was in the order of Rs. 12 to 13 lakhs in the year 1976. Out of this Rs. 1 to 2 lakhs were by way of contribution by the promoters and the seed money obtained from the Government of Karnataka. The rest of the money was raised by loan. The petitioner and the second respondents have together executed documents on behalf of the company in favour of the bank for raising loans. It may also be pointed out here that as the partners of Electro Fab were no other than the petitioner and the second respondent, there was an objection raised for clubbing the income of Electro Fab with the turnover of the company. Therefore, the petitioner and the second respondent decided to change the constitution of the board of directors and to bring in two more directors, B. K. P. Rao, father-in-law of the second respondent and Smt. Kamalini Rao, mother-in-law of the petitioner. In order to maintain parity of shares between

the petitioner and the second respondent, the petitioner suggested that 12 shares be allotted to his mother-in-law, Kamalini Rao. The second respondent initially agreed to allot 12 shares to Smt. Kamalini Rao but subsequently refused to allot 12 shares to Smt. Kamalini Rao.

29. Though there is denial on the part of the respondents that there was no such understanding between the petitioner and the second respondent that the first respondent-company will be run by the petitioner and the second respondent on equal partnership basis, the evidence on record referred to above probabilises the fact that it was because of such an understanding that the petitioner chose to join the first respondent-company and worked without any remuneration and put in his heart and soul and contributed physically and financially, for the development of the company. It may be pointed out here that by the end of March, 1984, as disclosed by the evidence on record, most of the liability regarding term-loan was discharged by the first respondent-company. The second respondent in his evidence has specifically stated that at present the company has no liability except the working capital liability and the term-loan liability not exceeding Rs. 50,000. Thus when the company came to stand on its own legs, the second respondent appears to have changed his mind and appears to have thought of taking full control over the company, if necessary, by ousting the petitioner from the management. It is because of this that differences arose between the petitioner and the second respondent which led to the ousting of the petitioner from the wholetime directorship of the company and reducing him to a minority shareholder. This aspect will be dealt with while considering point No. 2.

30. It was contended by Sri N. Santosh Hegde, learned senior counsel appearing for the respondent that no definite case was made out by the petitioner that there was an understanding between him and the second respondent that they would be equal partners in the venture. In para 8 of the petition, the petitioner has stated that he was co-opted as director of the company on January 27, 1976, and from then onwards, it was agreed and understood that the petitioner and the second respondent would be equal partners in the venture. Again, in para 13 of the petition, he averred that in accordance with the understanding between him and the second respondent, the shares held by Sri B. S. N. Rao ought to have been transferred to him to maintain parity in the shareholding of the company. But in fact only 13 shares were transferred to the petitioner and 12 to the second respondent. Again, in para 19 of the petition, he as averred that Sri K. P. Rao and Sadashivarao, partners of K. P. Rao and Co., chartered accountants who were also the auditors of the company, held several discussions with the parties and in the light of the discussions Sri B. K. P. Rao by his letter dated January 11, 1985, addressed to Sri K. P. Rao, offered to sell 12 shares held by his wife to the petitioner. Whereas in the evidence he has stated that in the year 1984, the company received a notice from the Superintendent of Central Excise, regarding the liability of the company to pay the excise duty and pursuant to such notice, himself and the

second respondent thought of reconstituting the company by bringing in the fourth respondent as a director of the company. In this regard it is also relevant to notice that the petitioner also has stated that he also suggested to the second respondent to bring in his mother-in-law as one of the directors of the company. It was further contended that in between 1976 and 1978, there was another understanding among four shareholders each one having 25 shares; that at no point of time there was parity of shares between the petitioner and the second respondent. Therefore, it was contended that the case of the petitioner that he joined the company with an understanding that he and the second respondent would be equal partners in the venture was far from the truth. The evidence on record, it was contended, did not establish any such case.

31. It is not possible to agree with the contentions of Sri Santhosh Hegde, learned senior counsel for the respondents. It is not the manner in which the evidence has to be appreciated. The total effect of the evidence adduced by the parties in the background of the pleadings of the parties has to be appreciated. The second respondent admits the discussion that took place regarding the transfer of shares standing in the name of the third respondent in the proportion of 12 and 13 to the petitioner and the second respondent respectively. He even admits that the decisions relating to the affairs of the company used to be taken jointly by him and the petitioner. He also further admits that during the discussions held in the latter part of 1984 to bring about equality of shareholding between the petitioner and himself in the company, he convinced the fourth respondent to sell the shares of his wife to himself and the petitioner. The discussion also related to the price of shares of the third respondent. There cannot be smoke without fire. The discussion could not have gone to such an extent if there was no understanding between the petitioner and the second respondent that they would be equal partners in the venture. They would not have even started the two partnership firms in the premises of the company with 50 per cent. shares each. The affairs of the company would not have been carried on by the petitioner and the second respondent together as wholetime directors from 1976 to 1987. The staff of the partnership firms was not different. It was common to the company and the partnerships.

32. It is true that the company was not started out of the partnership existing between the petitioner and the second respondent. In that event, much of the task of the petitioner to prove that he had joined the company on the understanding with respondent No. 2 that it would be run on the principles of partnership, would have been reduced. The fact that the company did not spring up out of the existing partnership between the petitioner and the second respondent and the petitioner joined the company only after it was incorporated did not in any way prevent the petitioner to plead and prove that in reality the first respondent is being run on the principle of partnership. It also did not come in the way of the court to determine the real nature of the company. In the case of

a small and domestic company not formed out of appeal to the public to purchase shares, it is always open to the court to pierce the veil and find out whether the structure of the company is what it appears to be or whether in reality it is based on the principles of partnership. As held in Ebrahimi's case [1972] 2 All ER 492; [1973] AC 360 (HL) an element of personal relationship involving mutual confidence will often be found where a pre-existing partnership is converted into a limited company. But it does not mean that even if the company is formed by different persons not being relations, subsequently they cannot agree or come to an understanding that the company would be run on the element of personal relationship involving mutual confidence. This is what has happened in the instant case. Though the company was started with three persons not related to each other, it did not make any mark. Within a short period of 10 months, out of the three directors, two directors retired. It was at that stage that the petitioner, who is closely related to the second respondent, joined the company as a member and director, with an understanding that the petitioner and the second respondent would be equal partners in the venture. Both of them participated in the conduct of the business of the company. Of course, the third respondent remained as a sleeping member. That did not in any way militate against the understanding of the petitioner and the second respondent to run the company on the principles of partnership. The third respondent is none other than the mother-in-law of the second respondent. The articles of association of the company also placed restriction upon the transfer of the members' interest in the company to ensure that the element of mutual confidence is not lost. The petitioner and the second respondent continued to be the directors of the company and shared the profits equally in the form of remuneration as no dividends were declared. In Hind Overseas' case [1976] 46 Comp Cas 91 (SC) the principles laid down in Ebrahimi's case [1972] 2 All ER 492; [1973] AC 360 (HL) were approved. On the application of the principles deduced from the various decisions considered in the earlier portion of this order, it is established in this case that the petitioner joined the company with an understanding between him and the second respondent that the company would be run by them on equal partnership basis. Accordingly, the business of the company and its affairs were carried on jointly by the petitioner and the second respondent on the basis that they were equal partners in the venture. Therefore, the principles of partnership are attracted to the case on hand. Accordingly point No. 1 is answered in the affirmative.

33. Point No. 2. - The evidence on record discloses that from the time the petitioner joined the company, i.e., from January 27, 1976, he and the second respondent jointly carried on the business and affairs of the company. All the decisions were taken jointly by the petitioner and the second respondent. During the course of the cross-examination, it has been elicited from the second respondent that joint decisions were taken by the petitioner and the second respondent on 33 subjects which included authorising the

petitioner to import machines, furnishing affidavits for seed money, authorising the petitioner and the second respondent to sign forms, guarantees, etc., for raising loans from the Canara Bank, filing Form No. 32, enhancement of credit with the Canara Bank, appointment of technical director, Mr. B. S. N. Rao, approval of accounts up to March 21, 1976, decisions as to commercial production, execution of lease deed, selling of a band saw, purchase of air-conditioners, shifting of registered office, receipt of jig boring machine, acquisition of a height master, sale of excess land of the company, placing of orders - Jackbson precision surface grinding machine from Denmark, furnishing of bank guarantee and approval of accounts for the years 1976 to 1986. No dividend was declared. The petitioner and the second respondent only continued as wholetime directors of the company drawing remuneration and perks from the beginning till November 12, 1987. Thus, the petitioner and the second respondent completely identified themselves with the company.

34. It has also been pointed out while considering point No. 1 that there was an understanding between the petitioner and the second respondent that the company would be run on the basis of 50 : 50 partnership. The petitioner was made a director of the company on the date he joined the company and was also made full time director. He continued to be the full time director till November 12, 1987, the date on which he was voted out as director by respondents Nos. 2 and 3.
35. The evidence also discloses that respondent Nos. 2 and 3 formed one group being the son-in-law and the mother-in-law and, therefore, the second respondent tried to take undue advantage of the fact that shares held by him and the third respondent together formed majority. The second respondent has admitted in his evidence that he was entertaining the idea when he issued the notice in October, 1987, calling for extraordinary general meeting of the members of the first respondent-company on November 12, 1987. The exchange of letters between the petitioner and the second respondent, marked as exhibits P-9 to P-16, indicated that the petitioner was not treated properly by the second respondent. It is not in dispute that the massive financial liability of the company was discharged before differences arose between the petitioner and the second respondent and seed money had also been paid back. The second respondent has also admitted in his evidence that at present the company has no liability except the working capital liability and the term-loan liability not exceeding Rs. 50,000.
36. This is a case, as already pointed out, though the first respondent is a company incorporated under the Act, but in reality it was being run on the understanding between the petitioner and the second respondent that they would be equal partners in the company. The third respondent is none other than the mother-in-law of the second respondent. She became the holder of 25 shares of the company pursuant to the transfer of shares made by respondent No. 4 in her favour. Respondent No. 4 is none other than the husband of the third respondent and the father-in-law of the

second respondent.

37. It was contended by Sri Sunderswamy, learned senior counsel for the petitioner that in the case of a small company continued on mutual interest and confidence and in substance a partnership, the court shall have to bear in mind wider equitable consideration which might include the legitimate expectation that the petitioner would continue to be employed as a director and that his non-continuation would be unfairly prejudicial to his interest as a member and thus it would be oppressive to him. On the contrary, it was contended by Shri Hegde, learned senior counsel for the respondents, that it is a normal rule in a company registered under the Act that a majority shareholder will have control over the company. The fact that minority shareholder is not continued as a director cannot at all be considered sufficient to hold that the affairs of the company are being conducted in a manner oppressive to the petitioner and prejudicial to the interest of the first respondent; that by non-continuation of the petitioner as director, his right as shareholder is not in any way affected nor the value of the shares of the petitioner is affected, therefore, the petitioner is not entitled to any relief. It was also contended on behalf of the petitioner that the exercise of power by the majority shareholders, namely, respondents Nos. 2 and 3, not to elect the petitioner as director in the extraordinary general meeting of the members of the first respondent-company held on November 12, 1987, suffered from lack of probity, malice and arbitrariness inasmuch as the voting power was exercised only with a view to exclude the petitioner from participating in the affairs of the company.

38. Learned counsel also placed reliance on a decision in Clemens v. Clemens Bros. Ltd. [1976] 2 All ER 268 (Ch D). In that case, the plaintiff held 45 per cent. and her aunt 55 per cent. of the issued share capital of the family company. The aunt was a director of the company but the plaintiff was not. There were four other directors. The total emoluments of the directors exceeded the company's net profits before taxation in each of the years 1971 to 1974. The directors proposed to increase the company's share capital from Pounds 2,000 to Pounds 3,650 by the creation of a further 1,650 ordinary shares all of which were to carry voting rights. The directors other than the aunt were to receive 200 shares each and the balance of 850 shares were to be placed in trust for long service employees of the company. The secretary wrote to the plaintiff on November 1, 1974, setting out the proposals and enclosing notice of an extraordinary general meeting to be held on November 27, 1974, to approve the setting up of a trust for the company's employees, to increase the company's capital and to provide for the proposed allotments. On November 22, 1974, the plaintiff's solicitor wrote a letter to the aunt pointing out that the scheme would reduce the plaintiff's shareholding to under 25 per cent. and stating that the plaintiff was opposed to it. The aunt replied that she was fully aware of the implications of the changes in the company's structure but intended to support the scheme. The plaintiff's solicitor attended the meeting on November 27, 1974, as her proxy and proposed

an adjournment. The aunt voted against the adjournment and three resolutions were then passed. The plaintiff brought an action against the company and the aunt seeking a declaration that the resolutions were oppressive of the plaintiff and an order setting them aside. The defendant contended that if two shareholders both honestly held differing opinions, the view of the majority should prevail and that shareholders in general meeting were entitled to consider their own interests and to vote in any way they honestly believed proper in the interest of the company. From these facts, it was held that the aunt was not entitled as of right to exercise her majority votes as an ordinary shareholder in any way she pleased; her right was subject to equitable considerations which might make it unjust to exercise it in a particular way. Although it could not disputed that she would like to see the other directors have shares in the company and a trust set up for long service employees, the inference was irresistible that the resolutions had been framed in order to put complete control of the company into the hands of the aunt and her fellow directors to deprive the plaintiff of her existing rights as a shareholder with more than 25 per cent. of the votes and to ensure that she would never get control of the company. It was further held that those considerations were sufficient in equity to prevent the aunt using her votes as she had and the resolutions were accordingly set aside.

39. In the instant case also, it may be relevant to notice that before November 12, 1987, the third respondent never participated in any of the general meetings of the members of the first respondent-company and never exercised her voting right. For the first time on November 12, 1987, she attended. The evidence on record discloses that respondents Nos. 2 and 3 together contrived to exclude the petitioner from participation in the affairs of the company by not electing him as a director. The second respondent, as already pointed out, admitted that he had thought of removing the petitioner when he called for the extraordinary general meeting. Therefore, this is a case which attracts the rule laid down in Clemens v. Clemens Bros. Ltd. [1976] 2 All ER 268 (Ch D).
40. In addition to this, it is already pointed out that the company was being run on the understanding that the petitioner and the second respondent would be equal partners. The very fact of entertaining an idea of removing the petitioner from participating in the affairs of the company by the second respondent and exclusion of the petitioner from the management of the affairs of the company by not continuing him as a director is an act which attracts the equitable considerations and also goes to prove that the ulterior motive of respondents Nos. 2 and 3 was to cause prejudice to the interest of the petitioner and deprive him from the legitimate expectation of continuing as a whole time director, and to reduce him to a mere shareholder.
41. In a company like that of the first respondent which was being run on mutual confidence and on equal participation in the management of the company, the act of discontinuation or exclusion of the petitioner from the

management of the company would be nothing but unfairly prejudicial to the interest of the petitioner because the legitimate expectation of the petitioner that he would continue to be employed as director is frustrated by the contrived act of respondents Nos. 2 and 3. As pointed out in Ebrahimi's case [1972] 2 All ER 492; [1973] AC 360 (HL), in a company like the first respondent shareholder's participation in the management of the company forms part of the interest of a member of the company as the company would be based on personal relationship involving mutual confidence. In Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holdings Ltd., , while considering the scope of 397 of the Act, it has been observed thus (at page 782 of 51 Comp Cas) : "The person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as a shareholder."

42. In the instant case also, the act and conduct of respondents Nos. 2 and 3 in ousting the petitioner from the management of the affairs of the company lacks in probity and is unfair to the petitioner, because participation of the petitioner in the management of the company having regard to the understanding between the petitioner and the second respondent that the company would be run on equal partnership basis formed part of the interest as a member of the company. The statement of law made in Ebrahimi's case [1972] 2 All ER 492; [1973] AC 360 (HL) that it is through the just and equitable clause that obligations common to partnership relations may come in, has also been referred to in the aforesaid decision. The other principles laid down in Ebrahimi's case [1972] 2 All ER 492; [1973] AC 360 (HL) have also been referred to in the aforesaid case.

43. In Ramashankar Prosad v. Sindri Iron Foundry (P.) Ltd., , it has been observed in para 54 (at p. 529) thus : "The respondents' group purported to obtain supremacy in the board and at general meetings by a trick, i.e., by the suppression of notices of the board meetings on January 22, 1963, and February 21, 1963, if in fact such meetings were ever held. They followed this by purporting to issue additional shares to third parties when there appeared no occasion for the same, by appointing new directors and taking complete control of the board and delegating all its powers to one of them (Kedarnath Bhagat) thereby completely ousting the petitioners. All this did not affect the petitioners merely in their capacity as directors but also as shareholders in that the latter lost all right to participate in the management of the company. There was oppression in that there was negation of the shareholders' rights to have the affairs of the company conducted in the way laid down in the Companies Act, in utter disregard of the functions of the board by committing all its powers to one member of the respondents' group. The overthrow of the petitioners may not have been caused by the show of arms as alleged in the petition but there can be little doubt that it was achieved by subterfuge in disregard of company

procedure. The conduct of the respondents on and after January 22, 1963, had no vestige of probity or rectitude."

44. It is also further observed that while it is true that the oppression was not of long duration having at best commenced only a few weeks before the matter was brought into court, but there can be no doubt that its effect was continuous and would have persisted but for the intervention of the court. It is further observed that it is not necessary that the petitioner who comes to court for redressal under section 397 should have submitted himself to oppression over a period before he can invoke the powers of the court. If the oppression is of short duration but is of such a lasting character that redress is impossible by calling board meetings or general meetings of the company, a case for intervention under section 397 is made out. This answers the contention of Sri Santosh Hegde, learned senior counsel for the respondents that the act of oppression should be continuous and should be a long drawn process and it should not be single or isolated act in order to enable the petitioner to seek a relief of the nature sought for by him. The effect of ousting of the petitioner from the management is of lasting character inasmuch as it excludes him from the management of the affairs of the company.

45. It is also one of the contentions of the second respondent that the petitioner was not taking interest in the affairs of the company and most of the time he was attending to the work of his company started recently known as Supangitha Engineers (P.) Ltd., Bangalore and thereby the work of the first respondent-company suffered. Therefore, he removed him from the management. In support of this contention, certain correspondence made by the petitioner relating to Supangitha Engineers (P.) Ltd., are produced as exhibits R-14 to R-16 and R-18 to R-23 ranging for the period from November, 1985, to October, 1986. These documents are produced to show that the petitioner was attending to the work relating to Supangitha Engineers (P.) Ltd., at the office of the first respondent-company. It may be relevant to notice that the Supangitha Engineers (P.) Ltd. was situated in Bommasandra Industrial Area, 20 kms. away from the first respondent-company. It was incorporated on March 30, 1985. It was a family company in which the petitioner and his wife were the directors. The petitioner has deposed that one Suresh Lal who was formerly working in the first respondent-company and later joined Supangitha Engineers (P.) Ltd. was his purchase agent, and the petitioner was in overall charge of that company as managing director. The board meetings were held in his house and he was visiting Supangitha Engineers (P.) Ltd. four times a week and took half an hour to reach Supangitha Engineers (P.) Ltd. and spent about two hours there. He has denied the suggestions that he neglected his duty towards the first respondent-company after he started Supangitha Engineers (P.) Ltd.; that the differences between him and the second respondent arose because of that factor that he started Supangitha Engineers (P.) Ltd.; that Supangitha Engineers (P.) Ltd. was competing with the first respondent-company. He has also further deposed that he

discussed the matter with the second respondent before he started Supangitha Engineers (P.) Ltd.; that the second respondent wanted to join Supangitha Engineers (P.) Ltd. along with their common friend, Sri B. T. Bhandari; that the petitioner agreed to the suggestion; that pursuant to it, Form No. 1A mentioning the names of three promoters, the petitioner, the second respondent and Sri B. T. Bhandari, was filed on February 20, 1985. The fact that exhibits R-14 to R-16 and R-18 to R-23 relating to Supangitha Engineers (P.) Ltd. were received by the petitioner at the address of the first respondent-company did not in any way go to prove that the first respondent neglected the duties as wholetime director of the first respondent-company. This fact also did not go to prove that the interests of the first respondent-company suffered in any manner. No doubt, as admitted by the petitioner, for some time, the registered office of Supangitha Engineers (P.) Ltd. was located in the premises of the first respondent-company before it was shifted to Bommasandra Industrial Area in the middle of 1987. He has also further deposed that he was not doing work for Supangitha Engineers (P.) Ltd. in the premises of the first respondent-company; that he had his office at his residence and his wife was his secretary as she knows typing; that all the correspondence and the applications were prepared by him and typed by her. However, the registered office of Supangitha Engineers (P.) Ltd. until it was shifted to Bommasandra in the middle of 1987 was in the factory premises of the first respondent-company. But, at no point of time any objection was raised by the second respondent. Therefore, it was indicative of the fact that the petitioner did not allow the interest of the first respondent-company to suffer because he had started Supangitha Engineers (P.) Ltd.

46. Even if the motive of respondents Nos. 2 and 3 was to safeguard the interest, the first respondent-company and, therefore, they contrived to remove the petitioner from the management of the company because the petitioner had started another company by name Supangitha Engineers (P.) Ltd., the effect of the action and conduct of respondents Nos. 2 and 3 was to oust him from the management of the company and thereby causing injury to him even as a shareholder of the company. In these matters, it is the result rather than motive which is the material thing. In H. R. Harmer Ltd., In re [1958] 3 All ER 689, 703; [1959] 29 Comp Cas 305 (HL), it is observed thus (at page 327 of 29 Comp Cas) : "Then counsel's third submission was that what was done by the father was not oppressive of the rights of the sons as members, but merely oppressive of their rights as directors. I cannot accept this. It appears to me that the sons as members, and not merely as directors, were oppressed by the singular conduct of the father. The oppression must, no doubt, be oppression of members as such, but it does not follow that the fact that the oppressed members are also directors is a disqualifying circumstance when the question of relief under section 210 arises. I think that there may well be oppression from the point of view of member-directors where a majority shareholder (that is to say, a shareholder with a preponderance

of voting power) proceeds, on the strength of his control to act contrary to the decisions of, or without the authority of the duly constituted board of directors of the company. Fourthly, counsel for the father said that the acts complained of might have been restrained by injunction in so ar as they were acts done without the authority of the board. As to this, I do not think that a wrongdoer in this field can well complain that the person wronged might have chosen another remedy. Then fifthly, counsel said that the acts complained of were not in their result oppressive, because it cannot be demonstrated that the company suffered any loss from any of them. I cannot agree. The acts complained of were, I should say for the most part, calculated to damage the company in one way or the other. Sixthly, counsel said that the acts complained of might have been lawfully done by calling a general meeting and passing the requisite resolutions, ordinary or special. As to this, I think that the sons were at least entitled to require that the proper procedure should be applied. Then seventhly, counsel said that this is not a case of discrimination between different shareholders or classes of shareholders. I agree, but see no reason for holding that section 210 is necessarily confined to cases of discrimination, though it is to be expected that cases calling for its application would most usually take that form. Finally, counsel submitted that the father got no pecuniary benefit out of what he did. That is not literally true, but even if it were, I do not think that it is essential to a case of oppression that the alleged oppressor is oppressing in order to obtain pecuniary benefit. If there is oppression, it remains oppression even though the oppression is due simply to the controlling shareholders' overweening desire for power and control and not with a view to his own pecuniary advantage. The result rather than the motive is the material thing."

47. As already pointed out, the resultant effect of the act and conduct of respondents Nos. 2 and 3 is that it has caused unfair prejudice not only to the interests of the petitioner as shareholder, but also to the interest of the first respondent-company.

48. Sri Santosh Hegde, learned senior counsel for the respondents, placed reliance on several decisions in support of his contention that this is not a case in which it could be said that the affairs of the first respondent-company were being conducted in a manner oppressive to the petitioner and prejudicial to the interests of the first respondent. I will now take up for consideration all those decisions. Reliance was placed on paras 14, 15 and 19 of the decision in Shanti Prasad Jain v. Kalinga Tubes Ltd., . The Supreme Court, regarding the scope of section 397 of the Act, observed in paragraph 19 thus (at 1543 AIR 1965 SC) : "These observations from the four cases referred to above apply to section 397 also which is almost in the same words as section 210 of the English Act, and the question in each case is whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable

cause for winding up the company, though that must be shown as preliminary to the application of section 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to section 397."

49. From the aforesaid observation made in Shanti Prasad Jain's case , it is clear that if the conduct of the majority shareholders is harsh and wrongful and 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 can be held that the affairs of the company are being conducted in a manner oppressive to some part of the members. In the instant case, it has already been pointed out that the company is a small domestic company which was being run on the basis of an agreement of equal partnership. Therefore, the petitioner was all through continued as a director and a wholetime director with salary and perks. Such a benefit was as a result of understanding of equal participation. Therefore, it formed part of the proprietary rights as a shareholder. As a consequence of non-continuation of the petitioner as a wholetime director by respondents Nos. 2 and 3 in the extraordinary annual general meeting of the company held on November 12, 1987, the proprietary rights of the petitioner as a shareholder were affected. The conduct of respondents Nos. 2 and 3 in ousting the petitioner from the management was not only harsh but it was wrongful. Therefore, the principles laid down in Shanti Prasad Jain's case , support the case of the petitioner.
50. Dr. V. Sebastian v. City Hospital P. Ltd. [1985] 57 Comp Cas 453 (Ker). In this case, it has been held that sections 397 and 398 of the Act, are intended primarily to protect the minority interests, as the majority will be able to protect itself by controlling the directors at general body meetings. It has also been further held that even the majority also can claim protection under section 397 and 398 of the Act, if they are prevented from exercising their right to demand poll. It has also been further held that the powers conferred are wide and section 404 of the Act also recognises the power of the court to amend the articles of association in proceedings under Chapter VI. However, on facts it is held that the allegations of oppression and mismanagement by the majority are not proved.

51. This decision is relied upon by learned counsel for the respondents in support of the plea that the affairs of the company should ordinarily be allowed to be carried on in accordance with the wishes of its members; that the members in the general meeting are the supreme governing body of the company; that courts must be reluctant to interfere with their decisions, because the interests of the company are ordinarily best known to the members of the company.
52. It is true that the affairs of the company should ordinarily be allowed to be carried on in accordance with the wishes of the majority of its members. But wishes of the majority of the members should be such that it does not interfere with or affect the proprietary rights of shareholders and does not undermine the understanding of the shareholders on the basis of which the company is run. Therefore, it is not possible to hold that this decision is of any assistance to the respondents.
53. Suresh Kumar Sanghi v. Supreme Motors Ltd. [1983] 54 Comp Cas 235 (Delhi). In this case, a petition under sections 397, 398, 402 and 403 was filed by one group of shareholders called the S group against another group called the A group. Both the groups had equal shares in the company. The S group contended that it had been completely excluded; that there was lack of probity on the part of the management; that there were a number of persistent contraventions of the provisions of the company law by the respondents; that the meeting held in March, 1980, wherein respondent No. 2 was reappointed as managing director was illegal. The court found that the instances of violation of the provisions of the Act referred to by the petitioners could not be complained about in the proceedings under section 397 or 398 of the Act; that the resolution passed at the meeting in March, 1980, continued the existing state of the management; that even if the meeting was illegal, it did not result in any oppressive act committed on the petitioner and it was not proved or shown that there had been any continuous acts of oppression by the majority on the minority shareholders; that the petitioner failed to prove that he was ousted from the management of the company; that the provisions of section 397 could not have been invoked because the petitioner and the members of his group were not minority shareholders.
54. It is not possible to agree with the statement of law made in the aforesaid decision, that the provisions of section 397 cannot be invoked if the petitioner group is not a minority shareholder. As already pointed out the provisions of section 397 or 398 of the Act can be invoked by the members of the company, if they satisfy the requirements laid down in section 399 of the Act. Ultimately, in that case, it was found that the only business of the company was dealership of Telco and this business was under notice of termination and the Telco did not like to have business dealings with the petitioner group, but were willing to have business dealings with the respondent group. Therefore, the respondent group was given the first option to purchase the shares of the petitioner group. Such a situation does not arise in the instant case. Therefore, it is not possible to hold

that this decision is of any application to the facts and circumstances of the case on hand.

55. V. J. Thomas Vettom v. Kuttanad Rubber Co. Ltd. [1984] 56 Comp Cas 284 (Ker). In this case it was held that non-declaration of dividend which did not affect the value of the shares could not be characterised as mismanagement or oppression on the minority shareholders; that the court must have strong grounds before it orders winding up. The fact that the complaining parties were themselves participants in the alleged activities, will be one of the factors to dissuade the court to exercise its powers under section 397 or 398 of the Act. The powers of the court under section 402 of the Act are wide, but courts should always exercise restraint in interfering with the affairs of the company; that the interest of the public good should always be kept in view; that stray cases of mismanagement or few cases of mismanagement without sufficient proof should not lead the court to entrust the powers of the management of the company to strangers appointed by the court. In the light of the facts and circumstances of the case on hand discussed earlier, it is not possible to apply the ratio of this case. Further, in this case, the petitioner has sought for winding up of the company in the event it is not otherwise possible to remedy the grievances.
56. Shantilal Manibhai Patel v. Laxmi Film Laboratory and Studios P. Ltd. [1984] 56 Comp Cas 110 (Guj). In this decision, after referring to Shanti Prasad Jain's case [1965] 35 Comp Cas 351 (SC) and Needle Industries (India) Ltd.'s case [1981] 51 Comp Cas 743 (SC) it has been held that the principles of dissolution of the partnership would be applicable only if the company is a domestic concern, that it must also be shown that an irresolvable deadlock in the administration of the company has resulted because of the groupism amongst the shareholders and the directors of the company; and that it has rendered it impossible for the company to transact; that the only alternative is to wind up the company. In the instant case, as already pointed out, the petitioner has sought for winding up alternatively only as a last sort. It is also not necessary to order for winding up if it is possible to provide an alternative solution to overcome the situation existing in the company. Regarding oppression, the decision in Needle Industries (India) Ltd.'s case [1981] 51 Comp Cas 743 (SC) has been followed and the observations made therein, that the person complaining of oppression must show that he has been constrained to submit to conduct which lacks in probity, conduct which is unfair to him and which has caused prejudice to him in exercise of his legal and proprietary right as a shareholder are reproduced. Therefore, it cannot be held that this decision supports the case of the respondents.
57. Nagavarapu Krishna Prasad v. Andhra Bank Ltd. [1983] 53 Comp Cas 73 (AP). In this case, a few shareholders filed a company petition under sections 433 and 439 of the Companies Act in the High Court for winding up of the company on various grounds. Two other shareholders filed a petition under sections 397 and 398 of the Act contending that in view

of the various acts of impropriety on the part of the board of directors of the Andhra Bank Ltd. and the conducting of the affairs in a manner oppressive to the interests of the members of company and mismanagement in the functioning of the company, the company should be regulated by constituting a new board of directors or in the alternative to direct payment of compensation to the dissenting shareholders. The company judge dismissed both the petitions. On appeal, it was held that the main object of the company was only to carry on the banking business and it was no longer entitled to carry on that business in view of the embargo placed by the Banking Companies Acquisition Act, 1980, the substratum of the company must be said to have been lost and hence the company should be wound up. It was also further held that in a petition under sections 397 and 398 alleging oppression and mismanagement there should be material evidence of acts of oppression with reference to the affairs of the company; that a mere apprehension that the minority shareholders could be oppressed in the conduct of the company, that was to be formed in the future, could not be a sufficient ground for invoking section 397 of the Act. Even the mere fact that the minority shareholders were being outvoted or there was an attempt to acquire control of the company's affairs by purchasing large blocks of shares would not constitute acts of oppression; that any resolution passed at a meeting was illegal because of non-compliance with the provisions of the Act would not also be sufficient to establish the oppression. In the instant case, the acts and conduct of respondents Nos. 2 and 3 did result in oppression of the petitioner as affected the right of the petitioner as a member of the company. Therefore, the respondents cannot derive any sustenance from this decision.

58. Raghunath Swarup Mathur v. Har Swarup Mathur [1970] 40 Comp Cas 282 (All). In that case, a petition under sections 397 and 398 of the Act was filed for removal of opposite part No. 2 from the office of the managing director and of the other contesting opposite parties from directorship of the company. The petitioners also further prayed for appointing petitioner No. 1 as managing director and other directors to be chosen by the court from amongst the petitioners or other shareholders. The petitioners also further prayed for a direction to opposite party No. 1 to refund a sum of Rs. 15,021 paid to him from April 1, 1961, to February 27, 1962, on the allegation that it was an excess payment of managerial remuneration paid to opposite parties Nos. 2 and 3 from April 1, 1961, up to the date of the petition. They also further prayed for directing opposite parties Nos. 1 to 3 to forbid them to hold any office in the company along with respondents Nos. 4, 5 and 6. A preliminary issue was raised in the following terms : "On the allegations made by both sides and the material on record is it a fit case for any order either under section 397 or section 398 of the Companies Act ?". It was held that neither an oppression of a minority nor circumstances justifying a winding up were established; that the charges of mismanagement in the past even if proved were not enough to establish an existing injury to the interest of the company or to public interest or

the likelihood of such injury in the future, therefore, no action would be taken under section 398 of the Act. It was also further held that whatever might have been the position in the past, the company was carrying on a profitable business and even if some bungling had taken place in the keeping of accounts in the past it would not justify a winding-up order where the company was a sound profit making concern. It was held that in a petition under section 397 of the Act, it must be proved that the company's affairs were being conducted in a manner prejudicial to the public interest or in a manner oppressive to any member or members; that the facts should justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up; that the winding up order should be refused where a more suitable or efficacious means of redress is open to a complainant. Thus, it is not possible to hold that this decision lays down any proposition which would go against the petitioner in proving his case that the conduct and actions of respondents Nos. 2 and 3 were oppressive.

59. V. M. Rao v. Rajeswari Ramakrishnan [1987] 61 Comp Cas 20 (Mad). In this case, it was held that for maintaining a petition under sections 397 and 398 of the Act (a) it must be established that the oppression complained of affected a person in his capacity or character as a member of the company as harsh and unfair treatment in any other capacity such as a director or a creditor was outside the purview of the section; (b) there must be continuous acts constituting oppression up to the date of the petition; (c) the events have to be considered not in isolation but as part of a continuous story; (d) that it must be shown as a preliminary to the application of section 397 that there were just and equitable grounds for winding up the company; (e) that the conduct complained of could be said to be oppression only if it can be said that it is burdensome, harsh and wrongful and the oppression involves at least an element of lack of probity and fair dealing to a member in matters of proprietary right as a shareholder. On the facts, it was held against the petitioner.
60. Regarding the proposition laid down in this decision that there must be a continuous act constituting oppression up to the date of the petition, it has already been pointed out that what is material is the result of the act. In a given case if the act or conduct of the majority shareholders affects the proprietary right of the minority shareholders, it may be found sufficient for granting relief in a petition under sections 397 and 398 of the Act.
61. Thus, I am of the view that the aforesaid decisions relied upon by learned counsel for the respondents are not in any way helpful to the respondents to support their contention that the facts and circumstances established in the case cannot be held to be sufficient to prove that the affairs of the first respondent-company are being conducted in a manner oppressive to the petitioner and prejudicial to the interests of the company.
62. It is also contended that the conduct of the petitioner in persuading Sri Ghatge to resign from the directorship was not bona fide. Therefore, he is

not entitled to the reliefs sought for in the petition. If we view this conduct of the petitioner in the background that there was an understanding between him and the second respondent to run the first respondent-company on an equal partnership basis, it would not be possible to hold that the petitioner was not justified in persuading Sri Ghatge not to accept the directorship of the first respondent-company. What the petitioner did was to protect his own interest as a shareholder of the company and also the interest of the company because an outsider not being a member of the company could not have taken as much interest as the petitioner in the affairs of the company and in safeguarding the interests of the company.

63. The evidence discloses that after the petitioner became a director of the company it had made steady progress. In fact, as admitted by the second respondent the liability of the company had been wiped out and the company had no liability except the working capital liability and the term loan liability not exceeding Rs. 50,000. This achievement of the first respondent-company must be said to be to the credit of both the petitioner and the second respondent. In such a situation if an outsider is brought as a director of the company by ousting the petitioner it would not only cause oppression to the petitioner but also cause prejudice to the interests of the first respondent-company. Accordingly, point No. 2 is answered in the affirmative.

64. Point No. 3 : Exhibit P-34(c) is the annual return of the first respondent-company made up to September 15, 1976. A portion of this document is marked as exhibit P-34(c). Exhibit P-34(c) contains a list of persons holding shares or stock in the company on the date of the annual general meeting held on September 15, 1976. According to exhibit P-34(c), Sri B. K. P. Rao, respondent No. 4, held 25 shares of the first respondent-company. Exhibit P-34 is signed by the petitioner and the second respondent. Exhibit P-36 is the annual return of the first respondent-company made up to November 16, 1977. This is also signed by the petitioner and the second respondent. Exhibit P-36 contains the list of persons holding shares or stock in the company as on November 16, 1977. According to exhibit P-36, 25 shares held by Sri B. K. P. Rao were transferred to his wife, Smt. B. K. Anupama Rao, respondent No. 3. The evidence also discloses that in the subsequent years, Smt. B. K. Anupama Rao has been shown as holding 25 shares of the first respondent-company. There was also a proposal to transfer 12 shares out of the 25 shares held by Smt. B. K. Anupama Rao to the petitioner and 13 to the second respondent. However, it did not fructify. This aspect has already been noticed in the previous portion of this order.

65. The contention of the petitioner is that the transfer of 25 shares held by Sri B. K. P. Rao to his wife, Smt. B. K. Anupama Rao, was opposed to articles 19 and 20 of the articles of association of the first respondent-company because the procedure prescribed therein was not followed, as such the transfer of those shares by respondent No. 4 in favour of respondent No. 3 was invalid. On the contrary, it was the case of the respondents that

Sri B. K. P. Rao did not hold the shares at any time. It was Smt. B. K. Anupama Rao, to whom the shares were allotted, who was holding the shares. Exhibit-1 is the minutes of the meeting of the board of directors of the first respondent-company covering the period from March 28, 1975, to September 14, 1978. As recorded in exhibit-1, on August 14, 1976, it was resolved to allot 25 shares to the third respondent and 25 shares to Sri B. S. N. Rao. The correctness of exhibit-1 has been disputed and it is marked only for the purpose of identification. If really 25 shares were allotted to Smt. B. K. Anupama Rao (respondent No. 3) on August 14, 1976, in exhibit P-34 which is signed by the petitioner and the second respondent, Sri B. K. P. Rao (respondent No. 4), the husband of respondent No. 3 could not have been shown as holding 25 shares of the first respondent-company. Similarly, in exhibit P-36 it could not have been shown that 25 shares held by respondent No. 4 were transferred to the third respondent. Exhibits P-34 and P-36 being the annual returns of the company for the years 1976 and 1977, filed before the Registrar of Companies shall have to be accepted as representing true facts. Therefore, it is not possible to accept the case of the respondents that Sri B. K. P. Rao was not allotted any shares and it was only Smt. B. K. Anupama Rao who was allotted 25 shares and there was no transfer of 25 shares held by Sri B. K. P. Rao to his wife, Smt. B. K. Anupama Rao. However, this conclusion cannot be held to be sufficient to answer point No. 3 in favour of the petitioner. The transfer of shares by Sri B. K. P. Rao to his wife, Smt. B. K. Anupama Rao, had taken place as long back as in the year 1977. The petitioner had also accepted this transfer and signed the annual returns of the first respondent-company made up to November 16, 1977, as per exhibit P-36. In the subsequent years Smt. B. K. Anupama Rao has been shown as holder of 25 shares. Therefore, the petitioner having acquiesced in the transfer of 25 shares by Sri B. K. P. Rao to his wife Smt. B. K. Anupama Rao for over ten years, he cannot now be permitted to turn back and challenge the validity of the transfer of 25 shares made by Sri B. K. P. Rao in favour of his wife Smt. B. K. Anupama Rao. The petitioner by his own conduct is estopped to challenge the same. Accordingly, point No. 3 is answered in the negative.

66. Point No. 4 : The evidence on record discloses that after the petitioner and the second respondent were appointed as wholetime directors with effect from February 1, 1976, they were continued and there was no election to elect a director at any time till November 12, 1987. The evidence also further discloses that the second respondent thought of ousting the petitioner only after the differences between them arose. The continuation of the petitioner and the second respondent as wholetime directors of the first respondent-company from February 1, 1976, for over a period of 11 years was also indicative of the fact that there was an understanding between the petitioner and the second respondent, that they would be equal participants in the company and it was because of such an understanding, no election whatsoever was held to elect a director of the company. The

petitioner and the second respondent were continued uninterruptedly as wholetime directors from February 1, 1976.

67. The background in which the extraordinary general meeting of the members of the first respondent-company was held on November 12, 1987, would go to show that it lacked bona fides and it was wholly intended to oust the petitioner from participating in the affairs of the company. The second respondent has admitted that when he demanded for calling the extraordinary general meeting of the members of the company on November 12, 1987, he had thought of removing the petitioner from the management. Thus, the extraordinary general meeting was called not to subserve the interest of the first respondent-company, but to cause pre-judice and harm to the petitioner and to deprive him of his right to participate in the affairs of the company with the second respondent. Long before October, 1987, the first respondent-company had discharged its liabilities. The only liability that was subsisting was that of working capital liability and term loan liability which did not exceed Rs. 50,000 as admitted by the second respondent. He has also admitted that he had entertained the idea that the petitioner should not be re-elected when he issued notice in October, 1987, calling for the extraordinary general meeting of the members of the company. The petitioner has stated in his evidence the reasons for removing him from the management. He has stated that :

(1) he stopped payment of interest on the share capital held by respondent No. 3 from 1985;
(2) massive financial liability of the company had been discharged;
(3) send money had been paid;
(4) the petitioner was a minority shareholder;
(5) respondent No. 2 wanted to have full control over the company; and (6) the petitioner had not received any benefit from the respondent-company except remuneration as director, even though, he contributed for the development of the company, financially and technically.

93. It may also be pointed out, as per the evidence on record, the second respondent had even discussed the matter with the third respondent about the ousting of the petitioner from the management of the company. While considering point No. 2, it has already been discussed as to how and in what manner the acts and conduct of the respondents Nos. 2 and 3 had caused injury to the petitioner and were oppressive to him. I do not think it necessary to repeat the same once again.

94. Respondent No. 3, for the first time, participated in the extraordinary general meeting held on November 12, 1987. The evidence also disclosed that the proceedings of the extraordinary general meeting were also not conducted in a fair and proper manner. It is true, in a case where the principles of partnership are not attracted, in other words, there is no difference between the apparent and real structure of the company, it is

normal for a majority shareholders to have control over the company. But in a case where the real structure of the company is different from the apparent structure and it is run on an understanding between the shareholders that they would be equal partners in the company and the company is a small and domestic company and it is formed without appealing to the public for purchasing the shares, it is not at all either normal or proper and fair to oust one of the directors of the company. Because in such a case, there will not be much difference between the interest of a shareholder and the company and participation in the affairs of the company becomes part of the proprietary rights of a shareholder. This was the situation obtaining in the first respondent-company. This aspect has been discussed under points Nos. 1 and 2. Therefore, the proceedings of the extraordinary general meeting of the members of the first respondent-company held on November 12, 1987, in so far as it resulted in ousting the petitioner from the wholetime directorship of the company and appointing one Dr. Ghatge as a director in place of the petitioner, affected the proprietary rights of the petitioner as a shareholder and, therefore, were illegal. The proceedings were also vitiated because of lack of bona fides on the part of respondents Nos. 2 and 3 as they contrived to oust the petitioner from the management of the company. Dr. Ghatge, after he came to know the affairs of the company from the petitioner, tendered his resignation as a director of the first respondent-company and the same was accepted. Thus, the proceedings of the extraordinary general meeting of the members of the first respondent-company held on November 12, 1987, and the annual general resolution passed at the said meeting were vitiated and were invalid. Accordingly, point No. 4 is answered in the affirmative.

95. Point No. 5. - In the light of the findings recorded on points Nos. 1, 2 and 4, the petitioner is entitled to continue as a wholetime director of first respondent-company with all the benefits he enjoyed and such powers as originally conferred upon him and is entitled to draw the remuneration and all the perquisites. Accordingly, point No. 5 is answered in the affirmative.
96. Point No. 6. - In the light of the findings recorded on points Nos. 1, 2, 4 and 5, it is necessary to declare and issue a direction that in the management of the affairs, business and funds of the first respondent-company, the petitioner shall have equal participation to the same extent as respondent No. 2. Accordingly, point No. 6 is answered in the affirmative.
97. Point No. 7. - This contention has been raised by the petitioner only after the differences arose between him and the second respondent. As the petitioner was a party to the payments made of consultancy fee to the fourth respondent and his son, it is not now open to him to contend to the contrary and claim that the same should be recovered from the fourth respondent with interest at the prevailing bank rate. Therefore, I am of the view that it is not necessary to enquire into and determine the amounts paid by the first respondent-company to the fourth respondent and his son as consultancy fee. Accordingly, point No. 7 is answered in

the negative.

98. Point No. 8. - In the light of the findings recorded on points Nos. 1, 2 and 4 to 6, it is not at all open to the second respondent to make any representation or to hold out to the public, employees of the company and the bankers that the petitioner is not entitled to represent the first respondent-company. However, it is not necessary to issue any permanent injunction to the second respondent to this effect. A declaration made pursuant to the findings recorded on points Nos. 1, 2 and 4 to 6 would be sufficient to safeguard the interest of the petitioner as equal partner in the company. Point No. 8 is answered accordingly.

99. Point No. 9. - As the present differences between the petitioner and the second respondent are due to the fact that there is no appropriate provision in the articles of association of the first respondent-company to the effect that the petitioner and the second respondent are equal participants, even though, in reality, they have been equal participants in the company, to avoid any such situation arising in future and to safeguard the interest of the petitioner and the second respondent and also of the first respondent-company and to ensure smooth working of the company, it is necessary to amend the articles of association of the first respondent-company to the effect that the petitioner and the second respondent are equal participants in the company. It has also been pointed out that the plenitude of power conferred by sections 398 and 402 read with section 404 of the Act, it is open to the court to amend, or direct amendment, of the articles of association of the company to reflect that the petitioner and second respondent are equal participants and equal partners in the company (See Dr. V. Sebastian v. City Hospital P. Ltd. [1985] 57 Comp Cas 453 (Ker) and also Bennet Coleman and Co. v. Union of India [1977] 47 Comp Cas 92 (Bom)). It follows that the shareholding of the petitioner and the second respondent either individually or along with the members of the group of each of them shall be equal. Point No. 9 is answered accordingly in the affirmative.

100. Point No. 10. - While dealing with point No. 3 it has been pointed out that 25 equity shares were allotted to Sri B. K. P. Rao who in turn transferred them to his wife, Smt. B. K. Anupama Rao. The grievance of the petitioner has been that the shares should not have been transferred to Smt. B. K. Anupama Rao. The same should have been transferred to the petitioner and the second respondent in the proportion which would make them equal shareholders of the first respondent-company. There were also negotiations for transfer of 12 shares out of 25 shares standing in the name of Smt. B. K. Anupama Rao to the petitioner and 13 to the second respondent. This is evident from the correspondence marked as exhibits P-5 to P-8. The proposal was ultimately withdrawn by respondent No. 4 as per exhibit P-8. It is because of the fact that 25 shares continued to be held by Smt. B. K. Anupama Rao, the disproportionality continued to exist, in the shares held by the petitioner and the second respondent. Smt. B. K. Anupama Rao, respondent No. 3, being the

mother-in-law of the second respondent is a member of the group of the second respondent. It was at the instance of the second respondent she attended the extraordinary general meeting of the members of the first respondent-company held on November 12, 1989, and exercised her vote against the petitioner with a view to oust the petitioner from the management of the first respondent-company and not with a view to subserve the interest of the first respondent-company.

101. No doubt exhibit P-5 dated January 11, 1985, was sent to Mr. K. P. Rao, chartered accountant for the first respondent-company, proposing to sell 12 shares out of 25 shares held by respondent No. 3 to the petitioner and the remaining 13 to the second respondent. This proposal though was sent to Mr. K. P. Rao, was in substance and in effect sent to the company itself because Mr. K. P. Rao was none other than the chartered accountant of the first respondent-company. Exhibit P-5 was sent by respondent No. 4 on behalf of his wife, respondent No. 3, in whose name the shares stood. As per article 19 of the articles of association of the first respondent-company the selling member shall have to give notice in writing to the company of his or her intention to sell the whole or part of his or her shares in the company. Exhibit P-5 was brought to the notice of the petitioner by Mr. K. P. Rao. Pursuant to exhibit P-5, the petitioner sent his reply, exhibit P-6, through Mr. K. P. Rao to respondent No. 4. In continuation of exhibit P-5 dated January 11, 1985, respondent No. 4 sent another letter dated February 11, 1985, exhibit P-7 to Mr. K. P. Rao along with exhibit P-7(a) giving the details as to how he arrived at the value of each share at Rs. 7,000. However, by the letter dated February 27, 1985, exhibit P-8, addressed to Mr. K. P. Rao, respondent No. 4 withdrew his offer to sell the shares and stated that the matter should be treated as closed. As per article 19 of the articles of association of the company, it was not at all open to respondents. Nos. 3 and 4 to withdraw the sale notice. After the receipt of the sale notice, the company was required to find a purchasing member within four calendar months and in the event of difference between the selling member and the purchasing member as to the value, the fair value of the share shall have to be certified by the auditor as an expert and not as an arbitrator. The further procedure to be followed in this regard, has been laid down in articles 22 to 25 if the articles of association. Therefore, the withdrawal of the sale notice was not at all permissible. When the notice was withdrawn four calendar months after service of sale notice had not expired.

102. In the light of the findings recorded on points Nos. 1, 2, 4, 5, 6, 8 and 9, it becomes necessary that either the shares held by Smt. B. K. Anupama Rao should be directed to be transferred to the petitioner and the second respondent in the proportion 12 : 13 so as to equalise to shareholdings of the petitioner and the second respondent or to allot 24 equity shares to the petitioner. In that event the shares held by the petitioner would be equal to the shares held by respondents Nos. 2 and 3 together. Respondent No. 3, as already pointed out, is a member of the group of the second

respondent. However, to allow respondent No. 3 to continue to hold 25 shares and to allot 24 fresh shares to the petitioner to make him equal shareholder would not be a correct and proper solution because though the third respondent is the mother-in-law of the petitioner one cannot assure that the mother-in-law will always suport her son-in-law. It may be possible that she may change sides. In fact the trouble is created because of her presence in the company as member. Therefore, in order to safeguard the interest of the petitioner and the second respondent and also to ensure healthy relationship between them, and further to ensure proper and smooth functioning of the first respondent-company, I am of the view that 25 shares held by respondent No. 3 shall be transferred to the petitioner and the second respondent in the proportion of 12 and 13 respectively.

103. The next question for consideration is as to the fair value of 25 shares held by respondent No. 3. According to article 21 of the articles of association "The fair value of the share shall be such a sum of money, as the auditor for the time being of the company shall certify in writing, which valued in his opinion is the fair value thereof, and so that in so certifying, the said auditor shall be deemed to be acting as an expert and not as an auditor". It is also permissible for the court to appoint any other person for the purpose of determination of the fair value of the shares held by respondent No. 3. As the parties were not able to arrive at an agreement with regard to the fair value of the shares when they negotiated through the chartered accountant of the company, I am of the view that it is just and necessary to appoint another person to value the shares held by the third respondent for the purpose of effecting transfer of the same to the petitioner and the second respondent in the proportion of 12 and 13 respectively. On the question as to who should be appointed to value the shares, it is necessary to hear the parties. Accordingly, point No. 10 is answered in the affirmative. However, the question as to who should be appointed to determine the fair value of the shares will be determined after hearing both sides in this regard.

104. Point No. 11. - It follows from the several findings recorded above that the grievances of the petitioner are redressed and there will not be any difficulty in the smooth working of the company. The petitioner and the second respondent are also close relations. The company has been getting on well and most of its liabilities have been discharged. Therefore, I do not consider it just and appropriate to direct winding up of the first respondent-company. Point No. 11 is accordingly answered in the negative. For the reasons stated above, this petition is allowed in part, as follows :

(i) The petitioner and the second respondent shall be equal partners in the first respondent-company.

(ii) The shareholding of the petitioner and the second respondent either individually or along with the members of the group of each of them shall be

equal.

(iii) The proceedings of the extraordinary general meeting of the members of the first respondent-company held on November 12, 1987, and the resolutions passed at that meeting defeating the move to elect and appoint the petitioner as wholetime director and appointing Dr. Ghatge as a director, are declared illegal, invalid and the same are quashed. The petitioner shall be deemed to have continued as a wholetime director of the first respondent-company with such powers as originally conferred upon him and is entitled to draw the remuneration. It is further declared that in the management of the affairs, business and funds of the first respondent-company, the petitioner shall have equal participation to the same extent as respondent No. 2. Any other person co-opted as a director wholetime director shall cease to be such and cease to function from today.

(iv) the articles of association of the first respondent-company shall be amended within six months from today in conformity with the directions and declarations contained in this order.

(v) The prayer of the petitioner to declare the transfer of 25 equity shares of respondent No. 4 to respondent No. 3 as invalid, is rejected. The prayer of the petitioner to enquire into and determine the amount paid by the first respondent-company to respondent No. 4 and his son as consultancy fee and to direct recovery of the same, is rejected.

(vi) The third respondent is directed to transfer 25 shares held by her to the petitioner and second respondent in the proportion of 12 and 13 respectively. The fair value of the shares shall be determined by a person to be appointed by the court. Call this petition on June 5, 1992, at 2.30 p.m. to hear the parties for appointment of a person to determine the fair value of the shares.

(vii) As it is held that the petitioner and the second respondent would be equal partners in the first respondent-company, it is just and appropriate to direct each party to bear his or her or its costs. It is ordered accordingly. JUDGMENT The judgment of the court was delivered by Shivashankar Bhatt, J.

105. The respondents in the company petition are the appellants before us. The respondent herein filed the company petition under sections 397 and 398 of the Companies Act, 1956 ("the Act" for short), the respondent before us is referred to hereinafter as "the petitioner" for the sake of convenience. The petitioner alleged, inter alia, that he held 38 equity shares of Rs. 1,000 each fully paid though he is entitled to hold 50 equity shares. The nominal capital of the company is Rs. 5,00,000 divided into 500 shares. The company was incorporated in the year 1975, when there were only three directors, out of whom the second respondent, N. V. Rao (for short referred to as "NVR" throughout) was one of the directors, the other two initial directors are not in the picture now.

106. The petitioner joined the company by becoming its shareholder in the year 1976. According to him, there was an understanding between himself

and NVR that they would jointly set up a small scale industry with equal participation. However, after mutual discussion, another person, B. S. N. Rao, was also taken as a director and shareholder on the suggestion of the petitioner. Since the petitioner's nominee was B. S. N. Rao, NVR nominated his father-in-law B. K. P. Rao, who was also allotted 25 shares. Thus, the petitioner, NVR, B. S. N. Rao B. K. P. Rao, were allotted 25 shares each. Subsequently, B. S. N. Rao left the company in the year 1978 and 12 shares belonging to him were transferred to NVR and the remaining 13 shares were transferred to the petitioner. The shares of B. K. P. Rao actually stood in the name of Mrs. B. K. P. Rao (third appellant). After the resignation of B. S. N. Rao, the company contained to have only two directors viz., the petitioner and NVR. The petitioner further alleged that though there were two outsiders other than the petitioner and NVR as members of the company, all the affairs of the company were being managed and looked after only by the petitioner and NVR and they executed all the documents on behalf of the company; it was only the petitioner and NVR who gave personal guarantees for repayment of the monies borrowed by the company. The business of the company prospered after the petitioner entered the company. In the year 1985, the shares held in the name of Mrs. B. K. P. Rao were offered for sale to the petitioner and NVR. According to the petitioner, 12 shares were offered of the petitioner and the other 13 were offered to NVR, in order to maintain parity in the shareholding between the petitioner and NVR. However, the transaction did not go through because B. K. P. Rao demanded Rs. 7,000 per share which, according to the petitioner was a very high rate. The petitioner states that the withdrawal of the offer by B. K. P. Rao was not in conformity with the provisions of the company's articles of association. There are a few other allegations in the company petition which we need not repeat here because the material facts will be referred to in the course of our judgment once again. Ultimately, some dispute arose between the petitioner and NVR and according to the petitioner NVR managed to oust the petitioner from the management of the company; NVR saw to it that the petitioner was not elected as a director at the meeting of the general body held on November 12, 1987. Hitherto the petitioner was also being paid remuneration similar to the remuneration that was being paid to NVR. This was also stopped. All facilities given to the petitioner were withdrawn. The petitioner, in the circumstances, stated that the intention of NVR was to bring about a material change in the management and control of the company by an alteration in its board of directors and that it is likely that the affairs of the company will be conducted in a manner prejudicial to the interest of the company and its members. The petitioner asserted that himself and NVR were equal partners in the company and the attempt made to oust the petitioner from the management was against the interest of the company and the petitioner. Further, the transfer of shares of Mr. B. K. P. Rao in favour of his wife was illegal and this illegal transfer resulted in NVR getting majority control; the company is a small

private company to which the principles of partnership law will apply and that as a result of lack of mutual confidence the company is liable to be wound up; but a winding-up order is likely to prejudice the company and the petitioner, as the company has built up a good clientele and goodwill. In the circumstances the petitioner sought a declaration that the transfer of 25 equity shares held by B. K. P. Rao in favour of his wife is invalid and illegal; the petitioner sought a direction that out of the said 25 shares, 12 shares be transferred to the petitioner. The petitioner also sought the nullification of the proceedings of the extraordinary general meeting of the members of the company held on November 12, 1987, with all its consequential results. An amendment of the articles of association to provide for the petitioner to be a director of the company for life was also sought. There are a few more reliefs sought in the company petition which need not be repeated here for the present.

107. All the respondents filed a common statement of objections. It was specifically asserted that there was at no point of time any understanding that the petitioner would be entitled to hold 50 shares. The respondents pointed out that the company was promoted by three persons who had no personal relationship at all and the petitioner became a shareholder much later. The petitioner acquiesced in the shareholdings held by Mrs. B. K. P. Rao all these years and there was no understanding of any sort to treat him as an equal partner with NVR. The infrastructure of the company had come into existence even before the petitioner joined the company. After the petitioner was made a director, the board resolved regarding the allocation of responsibilities amongst the three directors as follows : "Sri B. S. N. Rao : Estimation, design, materials management, production and quality control. Sri N. V. Rao : Marketing, appointment of personnel - their promotion, disciplinary proceedings against them and their removal, liason with banks, sanction of all revenue expenses, placement of orders of machinery. Sri U. M. Suresh Rao : Marketing, appointment of personnel - their promotions, disciplinary proceedings against them and their removal, liason with banks placing of orders for machinery."

108. It was further asserted that B. K. P. Rao was not allotted any shares and it was his wife who was allotted 25 shares on August 14, 1976, and, thereafter, she continued to hold the same. The various other averments in the company petition were elaborately traversed. The company petition was filed shortly after the impugned extraordinary general meeting of the members in November, 1987, itself. The learned company judge formulated the following points for consideration : "1. Whether this is a case to which the principles of partnership are applicable ?

109. Whether the petitioner proves that the affairs of the first respondent-company are being conducted in a manner oppressive to him and prejudicial to the interest of the first respondent ?

110. Whether the petitioner proves that the transfer of 25 equity shares held by Sri B. K. P. Rao (respondent No. 4) in favour of his wife, Smt. B. K. Anupama Rao (respondent No. 3) is invalid ?

111. Whether the proceedings of the extraordinary general meeting of the members of the first respondent-company held on November 12, 1987, and the resolutions passed at the said extraordinary general meeting of the first respondent-company are liable to be declared illegal and invalid and quashed ?
112. Whether the petitioner is entitled to continue as a wholetime director of the first respondent-company with all such powers as ordinarily conferred upon him and is entitled to draw remuneration ?
113. Whether it is necessary to declare and issue directions that in the management of the affairs, business and funds of the first respondent-company, the petitioner shall have equal participation to the same extent as respondent No. 2 ?
114. Whether it is necessary to enquire into and determine the amounts paid by the first respondent-company to the fourth respondent and his son in the guise of consultancy fee and direct recovery of the said sum from the fourth respondent with interest at the prevailing bank rate ?
115. Whether it is necessary to restrain the second respondent by permanent injection from making any representation or holding out to the public, employees, of the company, banker, etc., that the petitioner is not entitled to represent the first respondent-company ?
116. Whether the articles of association of the first respondent-company require to be amended ?
117. Whether it is just and necessary to direct that out of the 25 shares originally held by B. K. P. Rao (respondent No. 4) now standing in the name of his wife, Smt. B. K. Anupama Rao (respondent No. 3), 12 shares be transferred to the petitioner ?
118. Whether it is a case in which the first respondent-company has to be wound up under section 433(f) of the Act.
119. What order ?"
120. Points Nos. 1, 2, 4, 5, 8, 9 and 10 were answered in the affirmative. Under point No. 3, it was held that the petitioner was estopped from questioning the transfer of shares in the name of Mrs. B. K. P. Rao. Under point No. 6, it was held that the petitioner was entitled to have equal participation in the management of the company. Point No. 7 was answered in the negative. Under point No. 11, it was held that it was not a case to wind up the company. Finally, the court made the following order : "(i) the petitioner and the second respondent shall be the equal partners in the first respondent-company;

(ii) the shareholding of the petitioner and the second respondent either individually or along with the members of the group of each of them shall be equal;
(iii) the proceedings of the extraordinary general meeting of the members of the first respondent-company held on November 12, 1987, and the resolutions passed at that meeting defeating the move to elect and appoint the petitioner as wholetime director and appointing Dr. Ghatge as a director,

are declared illegal, invalid and the same are quashed. The petitioner shall be deemed to have continued as a wholetime director of the first respondent-company with such powers as originally conferred upon him and is entitled to draw the remuneration. It is further declared that in the management of the affairs business and funds of the first respondent-company, the petitioner shall have equal participation to the same extent as respondent No. 2. Any other person co-opted as a director or wholetime director shall cease to be such and cease to function from today;

(iv) the articles of association of the first respondent-company shall be amended within six months from today in conformity with the directions and declarations contained in this order;

(v) the prayer of the petitioner to declare the transfer of 25 equity shares of respondent No. 4 to respondent No. 3 is invalid, is rejected. The prayer of the petitioner to enquire into and determine the amount paid by the first respondent-company to respondent No. 4 and his son as consultancy fee and to direct recovery of the same, is rejected;

(vi) the third respondent is directed to transfer 25 shares held by her to the petitioner and the second respondent in the proportion of 12 and 13 respectively. The fair value of the shares shall be determined by a person to be appointed by the court. Call this petition on June 5, 1992, at 2.30 p.m. to hear the parties for appointment of a person to determine the fair value of the shares;

(vii) as it is held that the petitioner and the second respondent would be equal partners in the first respondent-company, it is just and appropriate to direct each party to bear his or her or its costs."

110. Having regard to the rival contentions we have to consider the following broad question : Whether the features of the company and the circumstances of the case justify the order made by the learned company judge; if not what order should be made ?

111. It is advantageous to state the relevant events chronologically. The company was incorporated on March 17, 1975. There were only three shareholders : 1. Khanapure, 2. Adam Hajee Ebrahim and 3. NVR. Each shareholder subscribed to one share. On January 11, 1976, an account was opened in Canara Bank in the name of the company. Thereafter, on January 27, 1976, Khanapure resigned from directorship. Similarly, Hajee Ebrahim also resigned from directorship and their shares were transferred, one to NVR and another to the petitioner. Thus, NVR came to hold two shares in the company while the petitioner held only one share. These shares were transferred at the board meeting held on January 30, 1976. On February 1, 1976, the petitioner was appointed as a wholetime director. Canara Bank sanctioned some loan to the company on February 20, 1976. In April, 1976 a shed was taken on rent to house the factory and it is stated that the factory commenced production in September, 1976. In the meanwhile on July 10, 1976, one B. S. N. Rao was inducted as a director of the company as could be seen from exhibit P-4 (annual return

of the company up to September 15, 1976). The said document also discloses that NVR, the petitioner, B. S. N. Rao and B. K. P. Rao held 25 shares each. It also discloses that Khanapure ceased to be the director on January 27, 1976, and Hajee Ebrahim ceased to be director on January 30, 1976, NVR is shown to be the director since March 17, 1976, while the petitioner is shown as a director appointed on January 27, 1976, while B. S. N. Rao was appointed as director on July 10, 1976.

112. However, in all further documents it is shown that 25 shares were allotted to and held by Mrs. B. K. P. Rao. The material on record also discloses that though NVR was on ordinary director as on February 1, 1976, he became a wholetime director on August 1, 1976. The petitioner and NVR filed an affidavit dated February 11, 1976, before the Government (exhibit P-2) stating that they are the shareholders and directors of the company and they are educated and remained unemployed and that they have started this new venture for seeking self-employment. This affidavit was filed to obtain loan from the Government under a scheme framed by the State Government to facilitate unemployed engineers to start their own ventures. Exhibit P-46 is a notice of the first annual general meeting of the shareholders to be held on September 15, 1976, to reappoint NVR, the petitioner and B. S. N. Rao as directors. The business included, to sanction a sum of Rs. 2,000 per month with effect from February 1, 1976, to the petitioner as a wholetime director, by way of remuneration. A similar remuneration was also to be sanctioned to NVR with effect from August 15, 1976, and to B. S. N. Rao from August 1, 1976. There is no dispute that the meeting was held and the resolution was passed as stated in exhibit P-46. The annual return dated December 15, 1976, also shows that 25 shares were held by Mrs. B. K. P. Rao and this report was also signed by the petitioner.

113. On May 24, 1978, B. S. N. Rao resigned. His 12 shares were transferred to NVR and 13 shares were transferred to the petitioner. Thus, as on the said date, the shareholding in the company was (1) NVR-37, (2) Petitioner-38, and (3) Mrs. B. K. P. Rao-25. This shareholding pattern continued without any change thereafter. The balance-sheet as on March 31, 1983 (exhibit P-5), shows that the company owed Rs. 3 lakhs to the Canara Bank and Rs. 75,000 to the Karnataka State Industrial Development Corporation. The company also expected a sales tax refund of Rs. 65,000. In January, 1985, B. K. P. Rao offered to sell the shares held by his wife. The offer was to sell 13 shares to NVR and 12 to the petitioner at the rate of Rs. 7,000 per share. The offer was made to the auditors of the company but the transaction was not completed because the petitioner did not agree to the value of the shares. On November 12, 1987, an extraordinary general meeting of the company was held. The notice of the meeting stated that the directors had not been re-elected for a long time and, therefore, it was necessary to elect the directors. The proposal was to elect the petitioner and NVR as the directors. However, at the meeting, though NVR proposed the name of the petitioner to be elected

as a director, he voted him out by joining hands with Mrs. B. K. P. Rao. Thus, it was held that the petitioner ceased to be the director. On November 16, 1987, the present company petition was filed.

114. The shares in the company were held by the various shareholders at different times in the following manner :

115. On March 17, 1975 - NVR - 1 share, Khanapure - 1 share, Ebrahim - 1 share.

116. On January 30, 1976 - NVR - 2 shares, the petitioner - 1 share.

117. On August 14, 1976 - NVR - 25 shares, the petitioner - 25 shares, B. S. N. Rao - 25 shares and Mrs. B. K. P. Rao - 25 shares.

118. On May 24, 1978, onwards - NVR - 37 shares, the petitioner - 38 shares and Mrs. B. K. P. Rao - 25 shares.

119. The specific case of the petitioner has been that the company was in reality a quasi-partnership with the petitioner and NVR having equal rights. The learned company judge has accepted this and, therefore, to bring out the real understanding of the parties into a reality, the order directs the equalisation of the shares between the two by the sale of the shares held by Mrs. B. K. P. Rao to the petitioner proportionately.

120. Admittedly, the company was incorporated in March, 1975, at a time when the petitioner was not at all in the picture. The company was formed by three persons amongst whom there was no personal relationship; probably they were friends at the most. Thereafter, when the petitioner joined the company the shareholding was only three out of which the petitioner had only one share while NVR held two shares. Subsequently two more shareholders joined and there was a fresh allotment of shares resulting in each shareholder holding 25 shares (out of a total of 100 shares issued by the company). After the resignation of B. S. N. Rao, the shareholding again changed with NVR having 37, the petitioner 38 and Mrs. B. K. P. Rao 25 shares. Therefore, on the face of it it cannot be said that at any point of time the petitioner and NVR held shares in equal proportion without any other shareholder possessing some shares in the company. It is stated that NVR and the petitioner are relatives and they knew each other since their childhood and it is this relationship that persuaded the petitioner to agree to become a shareholder in the company and that the understanding was that NVR and the petitioner only should manage and run the company with equal rights and responsibilities.

121. The learned company judge was persuaded to accept this case of the petitioner mainly because in the year 1985, B. K. P. Rao offered to sell the shares of his wife to the petitioner and NVR in such a manner that the total shareholding will be equally held by these two persons. Further, exhibit P-2, the affidavit, filed before the Government to obtain the loan was relied upon to infer that even in the year 1976, the understanding was to run the company together by the two persons in the manner of a partnership between the two.

122. We have already referred to the history of this company, since the question is whether the petitioner has made out a case of a specific understanding

between himself and NVR that the company should be run by them as a quasi-partnership. The petitioner examined himself as PW-1. He states that NVR is his first cousin being the son of his mother's brother. In other words, NVR is the son of the maternal uncle of the petitioner. The manufacturing operation of the company commenced in March, 1976, after PW-1 joined the company. NVR invited him to join the company. The understanding was that it should be on the basis of 50 : 50 partnership. The petitioner was the first wholetime director of the company. NVR joined as a wholetime director subsequently. B. S. N. Rao also joined as a wholetime technical director later. In view of the deposit belonging to the petitioner in the bank, the bank sanctioned the loan to the company. The affidavit filed before the Government was on the basis that two of them (NVR and the petitioner) where to be equal partners. B. K. P. Rao is the father-in-law of NVR. B. K. P. Rao was the director in Binny and Co. Ltd. Since he cannot be the director of this company his shares were transferred to his wife. Actually, interest was being paid to B. K. P. Rao in consideration of his investment in the shares. In the year 1978, B. S. N. Rao resigned and his shares were transferred to the petitioner and N. V. R. PW-1 said : "At that time Mrs. B. K. P. Rao was also required to make similar transfer in favour of myself and the second respondent in order to maintain parity of shareholding between me and the second respondent. This understanding was reached in the presence of our company's auditors. The company's auditors are K. P. Rao and Co. One Mr. Sadashiva Rao of K. P. Rao and Co., was attending to the respondent-company's matters." Therefore, it is clear that, according to the petitioner, the understanding to maintain parity of shareholding between the petitioner and NVR was reached in the presence of the auditors for which purpose Mrs. B. K. P. Rao's shares were to be transferred to these two persons. The petitioner has examined the auditor, Sadashivarao, as PW-2. He nowhere corroborates this statement of the petitioner. On the other hand, PW-2 stated thus : ". . . . . In the year 1985 we tried to bring about harmony between the petitioner and the second respondent. To my knowledge there was no agreement or understanding arrived at between the petitioner and the second respondent regarding equalisation of shares. I say this because there were only discussions and negotiations. As there were only negotiations regarding transfer of shares held by the wife of Sri B. K. P. Rao, no value regarding transfer of the shares was determined. I do not know what was the reason for Sri B. K. P. Rao to withdraw the offer made by him for transfer of the shares held by his wife."

123. PW-2 is the witness who came to be examined on behalf of the petitioner. As will be presently seen the offer of B. K. P. Rao to o sell the shares held by his wife was made through the same auditor. PW-1 also points out that the alleged understanding was arrived at in the presence of Sadashivarao. There is absolutely nothing suggested against the deposition of PW-2. There can be no doubt that PW-2 is an independent witness in whom both parties had confidence. In these circumstances, when PW-2 does not

support the case of the petitioner on this basic point which is the real contentious issue, the only course left is to reject the statement of PW-1. It will be purely speculative for the court to accept the case of the plaintiff that there was an understanding reached in the presence of the company's auditors, as stated by PW-1. This is one of the important factors which cannot be ignored by us while appreciating the case put forth by the petitioner. The finding of the learned company judge on this aspect is based on mere suspicion. Because there has been some negotiation regarding the sale of the shares held by Mrs. B. K. P. Rao, the learned company judge infers that there must have been some understanding as stated by PW-1. A contested issue cannot be just decided only on basis of the fact that there was some negotiation which ultimately did not fructify. This basic question is seriously contested by the respondents in the company petition. The history of the shareholding of the company read with the statement of the auditor, PW-2, in our opinion negatives the case put forth by the petitioner in this regard. We may refer to the offer made by B. K. P. Rao at this stage. Exhibit P-5 is the letter dated January 11, 1985, written by B. K. P. Rao. There is no dispute that this was addressed to the auditors K. P. Rao and Co. This states that his wife was prepared to sell 12 shares of the company to the petitioner at the price of Rs. 7,000 per share and that the price was calculated on the basis of the balance-sheet, etc. There is also a reference to the shares earlier held by B. S. N. Rao and the failure to offer proportionate shares of B. S. N. Rao to Mrs. B. K. P. Rao. This offer was not made to the company nor to any of the shareholder directly. This letter was obviously handed over to the petitioner by the auditor, who responded to the auditor by writing exhibit P-6. The petitioner sought clarification as to how the value of the share was arrived at. He termed the price of Rs. 7,000 per share, as astronomical. In this letter the petitioner further states that when B. S. N. Rao retired in the year 1977, instead of transferring his entire 25 shares to the petitioner for maintaining the necessary balance, only 15 shares were allotted to him by mistake. Therefore, he requested the auditor to go into the matter to ensure that no injustice is done to him. It is also stated here that the company had been paying 16 per cent. interest for all loans from shareholders and others equally and that the shares held by Mrs. B. K. P. Rao has been treated as a loan for the purpose of paying the interest. The petitioner values the share, and states that the value of each share will be Rs. 896.88 (though the face value of the share is Rs. 1,000). Exhibit P-7 is a letter written by B. K. P. Rao to the auditor explaining as to how he arrived at the value at Rs. 7,000 per share. The learned company judge has observed that B. K. P. Rao could not have withdrawn the offer and should have pursued the matter of selling the shares and the offer once made cannot be withdrawn at all as per the articles of association of the company. Before going to this aspect, we have to express our opinion as to the effect of this offer of B. K. P. Rao. PW-2 who represents the auditors has specifically stated that there was no understanding was at all to sell

the shares of Mrs. B. K. P. Rao to the petitioner and NVR to maintain any parity between them. These letters, in fact in no way convey such an idea. The offer was made in the year 1985 even though B. S. N. Rao had already resigned and sold his shares in the year 1978. If there was an understanding to maintain parity of shareholding between the two, the petitioner would have insisted upon the sale of the Said B. S. N. Rao's share to him in such a manner that his shareholding would be equal to the shareholding of NVR and Mrs. B. K. P. Rao. For over 6.5 years, the petitioner never raised this question of parity of shareholdings. For whatever reason, B. K. P. Rao thought of selling his wife's share in the year 1985 provided an appropriate value would be paid for it. Obviously, the company had prospered by that time and NVR and the petitioner were anxious to gain control of the company or at least posses larger shareholding. The learned company judge also is not right in holding that B. K. P. Rao could not have withdrawn the offer of sale.

124. Exhibit P-1 is the memorandum of association and the articles of association of the company. Articles 19, 20, 21, 22 and 23 of the articles provide for the transfer of shares by sale. They read thus : "19. In order to ascertain whether any member is willing to purchase a share at the fair value, the person whether a member of the company or not proposing the transfer the same (hereinafter called the 'selling member') shall give notice in writing (hereinafter described as a 'sale notice') to the company of his intention to sell the whole or part of his holding of shares in the company and in the latter case he shall specify the numbers of shares he intends to sell. Every part of the notice shall specify denoting numbers of shares which the selling members desires to sell, and shall constituted the company as the agent of the selling member for the sale of such shares to any member of the company at the fair value without assuming any liability therefor. No sale notice shall be withdrawn except with the sanction of the board of directors.

125. If the company shall within four calendar months after service of a sale notice find a member willing to purchase any share comprised therein (hereinafter described as the 'purchasing member') and give notice thereof to the selling member, the selling member shall be bound upon payment of the fair price to transfer that share to such purchasing member, who shall be bound to complete the purchase within seven days from the service of such last mentioned notice. The board of directors shall with a view to find a purchasing member, offer any shares comprised in a sale notice to the existing members of the company (other than the selling members) as nearly as may be in proportion to their holding of shares in the company, and shall limit the time within which such offer if not accepted will be deemed to have been declined; and the board of directors shall make such other arrangements as regards the finding of a purchasing member for any shares not accepted by a member to whom they shall have been offered as aforesaid within such time as they may think just and reasonable.

126. The fair value of the share shall be such a sum of money, as the auditor

for the time being of the company shall certify in writing which value in his opinion is the fair value thereof, and so that in so certifying, the said auditor shall be deemed to be acting as an expert and not as an arbitrator.

127. In the event of the selling member failing to carry out the sale of any shares which he shall have become bound to transfer as aforesaid, the board of directors may execute a transfer on his behalf and may give a good receipt for the purchase of such shares and may register the purchasing member as the holder thereof and issue him a certificate for the same and thereupon the purchasing member shall become indefeasibly entitled thereof. The selling member shall in such case be bound to execute the necessary transfer deed and deliver it together with the relative certificates for the said shares, and on due compliance thereof, the selling member shall be entitled to receive the said purchase price without any interest, and if such certificate shall comprise any shares which he has become bound to transfer as aforesaid, the company shall split the certificates so as to make out two certificates in the name of the purchasing member for the number of shares he has purchased and the other in favour of the selling member for the balance number of shares he would still hold.

128. If the board of directors do not within the period of four calendar months after service of a sale notice, find a purchasing member of all or any of the shares comprised therein and give notice in the manner aforesaid, or if, through no fault of the selling member, the purchase of any shares in respect of which such last mentioned notice shall be given shall not be completed within twenty-one days from the service of such notice, the selling member shall at any time within six calendar months thereafter, be at liberty to sell and transfer the shares in his sale notice (or such of them as shall not have been sold to the purchasing members) to any person at any price."

129. The intending seller has to issue notice to the company in writing; the contents of the notice are specified in the article; further, the company shall have to be constituted as the agent of the seller for the purpose of the sale of the shares of a fair value; it is such a notice that shall not be withdrawn except with the sanction of the board. It is not possible to equate the letter written to the company's by B. K. P. Rao, as a notice in writing issued to the company; further, B. K. P. Rao did not constitute the company as his wife's agent to sell her shares. The learned company judge has overlooked the requirements of the article, when he held that. B. K. P. Rao could not have withdrawn his offer to sell his wife's shares. Article 19 is in the nature of a condition imposing a pre-exemption clause, and, therefore, it has to be strictly construed. A meticulous compliance with it is necessary to bind the intending seller. Because negotiations took place regarding the shares held by Mrs. Rao, the learned company judge found it as probabilising the petitioner's case that there was an understanding to put the petitioner on par with NVR. But nowhere had NVR in his deposition stated that negotiations pertained to the maintenance of parity. The discussion held because of notice received from the Central Excise

Department in March, 1985. The letter of B. K. P. Rao and the petitioner's letters to the auditor K. P. Rao, show that B. K. P. Rao offered to sell shares at the rate of Rs. 7,000 per share, while the petitioner valued the shares below par. The discussion as to equalisation of shares in the year 1984 was in connection with the problem that had arisen regarding payment of excise duty by the sister concerns of the petitioner and NVR, according to PW-2. This statement cannot be a basis to hold that there way any discussion to confine the shares of the company only between the two in equal proportion. In fact, the further deposition of PW-2 shows that the petitioner proposed to induct one more director at that time. A continuous dialogue, need not necessarily be due to a prior understanding to equalise the shares between the two after confining the shareholding to them. The affidavit exhibit P-2, nowhere refers to equality of shareholding. The statement in exhibit P-2 nowhere leads to the inference or probabilises the fact that the intention was to have the company as a quasi-partnership. Exhibit P-2 read thus : "AFFIDAVIT We, (i) N. V. Rao, son of Sri P. V. Rao, aged about 31 years, reading at 861, HAL II Stage, Indiranagar, Bangalore, and (ii) U. M. Suresh Rao, son of Sri A. B. Mudannaiah, aged about 33 years, residing at 49, Aryanagar, Vysya Bank Staff Colony, VIII Block, Jayanagar, Bangalore-41, do hereby solemnly affirm and state as follows :

(i) Sri S. V. Rao, No. 1 amongst us, passed B.Sc. (Mechanical Engineering) in the year 1966, and had been employed for the period up to January 31, 1976, and is unemployed from February 1, 1976, till date.
(ii) Sri U. M. Suresh Rao, No. 2 amongst us, passed B.E., (Mechanical Engineering) in the year 1965, and had been employed for the period up to October 15, 1975, and is unemployed from October 15, 1975, till date. We both the shareholders and directors of Sinchron Machine Tools Pvt. Ltd., a private limited company, educated and remaining unemployed. We have started this new venture for seeking self-employment. Place : Bangalore Date : February 11, 1976.

(1) (Sd.) N. V. Rao.
(2) (Sd.) U. M. Suresh Rao."

122. The purpose of exhibit P-2 was to take advantage of the Government scheme. The resolution passed at the meeting held on September 15, 1976, resolved to provide for remuneration for all the three directors at Rs. 2,000 per month and the petitioner's remuneration was payable from February 1, 1976, itself (vide exhibit P-46), RW-1 also stated that all the three wholetime directors were paid uniformly. The remuneration was modified by enhancing it with effect from April 1, 1977, to the petitioner and NVR, as could be seen from exhibit P-3; this resolution was passed on September 30, 1978, after B. S. N. Rao had ceased to be a full time director

and there were only two full time directors. Therefore, it cannot be said that the petitioner rendered free service at the initial stage. The fact that B. S. N. Rao was also getting remuneration similar to other two directors, demolishes the petitioner's case that the and NVR are to own the company in equal shares. Though PW-1 asserted that his contribution financially was more, there is nothing to substantiate it. The petitioner stated that instead of transferring the entire 25 shares of B. S. N. Rao to him, only 13 shares were transferred to him, by mistake. But there is nothing on record to substantiate this theory of mistake. The shares of B. S. N. Rao were transferred to the petitioner and NVR in May, 1978; nowhere, thereafter the petitioner took any action to have this mistake rectified. B. K. P. Rao offered to sell the shares only in 1985. At least for 6 years, the petitioner was satisfied with his minority status, the in the matter of shareholding. For the first time, in exhibit P-6, in the year 1985, the petitioner puts forth the theory of parity in shareholding. The fact that the petitioner and NVR started two more firms in partnership, indicates the cordiality in their relationship during those days. But that fact, by itself cannot be a basis to conclude that even the company was to be held by them as partners. Obviously to take advantage of the company's business, subsidiary/ancillary business thereto were being carried on as partners. If actually, there was an understanding to have parity in shareholdings, there was no reason for NVR to refuse to allot 12 shares to the mother-in-law of the petitioner. The finding recorded by the learned company judge is based on mere suspicion and the circumstances referred to cannot lead to the only inference that the petitioner and NVR are to be equal partners.

123. The total effect of the evidence in the background of the proved circumstances cannot justify the conclusion arrived at by the learned judge; on the other hand, the conduct of the petitioner since February, 1976, till the beginning of 1985 (the date when the petitioner wrote exhibit P-6) in being satisfied with a less percentage of shares lead to a different conclusion.

124. The dispute between the petitioner and NVR arose, not because of the alleged breach of the understanding as to the shareholding. PW-1 stated that in the year 1984, he proposed a reorganisation of the company by selling uneconomical machines and inducting new machines and NVR agreed to it; 11 workers who were working on such machines were retrenched. But, NVR then, did not agree to sell those machines but started using them, by appointing new workmen resulting in the retrenched workmen approaching the Labour Court. At para 8 of his deposition, PW-1 said : "Due to failure of talks regarding transfer of shares in my name, the relationship between me and the second respondent further deteriorated and we were not on talking terms since the middle of 1985. Till the time the second respondent refused to agree to sell uneconomical machines, the relationship between me and the second respondent was cordial."

125. Further, he said that in the latter half of 1984 only, NVR started entertaining he idea that he was holding larger shares and "started conducting in a different manner". At para 25 he cone again said that, "from 1984 on-

wards difference developed between us". According to PW-1 : "The talks regarding sale of uneconomical machines took place between me and the second respondent in the year 1984. Therefore, I say that my relationship with second respondent was cordial till the second respondent refused to sell the uneconomical machines, in spite of the non-transfer of shares."

126. Quite strangely, the petitioner did not mention anything about the alleged misunderstanding, in his letter, exhibit D-23, dated November 4, 1987, written to NVR. The understanding as to the shareholding was quite relevant to the subject-matter of co-opting two more directors referred in this letter. However, it is clear that by that time the dispute between them had come into the open, with NVR accusing the petitioner about non-signing the cheques and not attending to the company's affairs, etc. The allocation of work amongst the directors has been referred to already. PW-1 also admitted that "B. S. N. Rao was entitled to perform the functions relating to estimation, design, materials management, production, quality control as recorded at item (a) on page 27, of exhibit P-1." According to NVR, it was he who suggested the inclusion of B. S. N. Rao who was qualified and had wide experience on the shop-floor, though the petitioner, in the petition averred that at the suggestion of the petitioner, after mutual discussion B. S. N. Rao was inducted. However, the fact remains that there is nothing on record to show that B. S. N. Rao was related to or was a close fried of the petitioner, and his induction as a director was to maintain any balance of power between the petitioner and NVR.

127. As to the functioning of the company, again, evidence discloses that the infrastructure was already there, by the time the petitioner joined the company. Exhibit P-5 dated February 20, 1976, is the letter written to the bank by the company, which refers to the sanction letter of the bank dated January 7, 1976, sanctioning the loan and seeks permission to withdraw the funds. Exhibit P-6 dated March 2, 1976, is another letter addressed to the bank stating that Khanapure and Hajee Ebrahim have withdrawn from the company and that the petitioner was appointed a director and in the circumstances requests the bank to take a personal guarantee from the existing directors to operate the accounts; the company had to take delivery of one HMT lathe by March 10. This letter also shows that construction of the factory had already been started and was likely to be completed by the end of April, 1976, and that sanction from KEB for electrical supply was expected. The title deeds of the company's property were scrutinised and sent to the bank along with the letter, exhibit R-7, dated March 9, 1976; the company, admittedly, owned land, as stated in this letter; the cost of this land was stated to be Rs. 60,000 as per exhibit R-7(a). A machine worth Rs. 50,450 had already been purchased. Exhibit R-8 dated March 26, 1976, also refers to the loan sanction letter dated January 7, 1976, and that the company owned land, but, its conversion for industrial purpose was being delayed by the B.D.A.

128. PW-1 at para 20, stated that even before he became a director of the company, the terms loan had been sanctioned to the company by the

Canara Bank and the loan was to the turn of Rs. 6 lakhs. We may note here, that the affidavit, exhibit P-2, filed before the State Government was actually for seed money. Earlier, at para 18, the petitioner, as PW-1, stated; "I was invited to join the company with a view to activate the company as otherwise the advance paid by them for machinery and the amount invested for the land was about to be forfeited."

129. The company's business was to manufacture jigs and fixtures, Admittedly the petitioner had no experience in the manufacture of these articles. Between 1970-73, PW-1 was in the service of Bradly and Co., Bombay, which was not manufacturing jigs and fixtures. Between 1973-75, he was working with the Industrial Accessories Corporation, which was also not manufacturing jigs and fixtures; he retired from this firm in the middle of 1975, because he had a misunderstanding with the other partners. PW-2 also states that, the dispute between the petitioner and his earlier partners were settled by the auditors, K. P. Rao and Co.

130. Regarding the allotment of shares to B. K. P. Rao, we find, that, the petitioner has tried to be evasive as to his knowledge, though, from the beginning, the petitioner was a party to the allotment of the shares, which, actually, stand in the name of Mrs. Rao. In exhibit P-16 dated August 11, 1987, addressed to NVR by the petitioner, the petitioner wrote : "Subsequently, when Mr. B. K. P. Rao offered to sell his 'share' to me at an exorbitant price of Rs. 7,000, I was shocked to learn and was wonderstruck as to when Mr. B. K. P. Rao had become a shareholder of the company, as I known there is no resolution allotting him any shares."

131. This is a clear admission that shares were, in fact, allotted to Mrs. Rao. But, the petitioner tried to put forward a new theory, before the court that, without his knowledge, shares allotted to B. K. P. Rao were transferred to Mrs. Rao. In para 12 of the company petition, the petitioner asserted that B. K. P. Rao transferred his shares to his wife, without following the procedure prescribed for the transfer of shares. In the evidence, he relies, for this, on exhibit P-34, which PW-2, states, was prepared on the basis of the information supplied by one of the directors. PW-1 admits that he was a party to the allotment of shares after he became a director. No resolution allotting shares to B. K. P. Rao is forthcoming. In this regard, it was elicited from PW-1 : "Subsequently, when Mr. B. K. P. Rao offered to sell his 'shares' to me, at an exorbitant price of Rs. 7,000 I was shocked to learn and was wonderstruck as to when Mr. B. K. P. Rao had become a shareholder of the company, as I know there is no resolution allotting him any shares : (This portion in exhibit P-16 is marked as P-16(a)). Q : I put it to you that B. K. P. Rao was not allotted any share at any time. A : I deny and state that B. K. P. Rao was a shareholder. Q : If that be so, which statement is correct, whether the one contained in exhibit P-16(a) or the one now stated before court. A : Exhibit P-16(A) has to be read along with the contents of the letter. (On going through the letter the witness states that 'what I have stated before the court is correct'.).

132. He admitted that he signed all the annual returns, which show that

Mrs. Rao was the shareholder. However, he stated : "On going through exhibit P-1, I state that it does not contain any statement regarding the shares held by respondent No. 4. I did not protest when respondent No. 4 allegedly transferred shares to respondent No. 3. I had not given any complaint to the Registrar of Companies in this regard. I was aware of the contents of article 20 of the articles of association of the company."

133. In the circumstances, it has to be concluded that the case pleaded by the petitioner, on this aspect is merely fanciful and lacks in candour.

134. We may also note here, that, when the petitioner was ousted from the company, he seems to have taken away with him some of the documents belonging to the company, which he had no right to possess. In his cross-examination made on November 23, 1988, PW-1 admits thus : "I have secured exhibits P-38, P-38A, P-39, P-40, P-41, P-42, P-43, P-44, P-45 and P-49 from the files of the first respondent-company. I do not know whether these documents formed part of one bigger file. I came into possession of these documents after the notice for extraordinary general meeting was served in October, 1987, I took out these documents from the files of the company and kept them with me. I did not inform the second respondent that I had removed the aforesaid documents from the files of the first respondent-company. I did not think it necessary to do so."

135. In the light of these facts and circumstances, we are constrained to differ from the finding given by the learned company judge, and we hold that there was no specific undertaking that the petitioner was to have equal control or rights in the company, with NVR.

136. One of the incidental arguments was that B. K. P. Rao should have been examined by NVR, as he belonged to his group and adverse inference has to be drawn against the contesting respondents. B. K. P. Rao or Mrs. Rao, could have spoken to only one aspect of the case, pertaining to the allotment of shares to Mrs. Rao and the offer of sale made by B. K. P. Rao. This aspect as pleaded by the petitioner is quite vague and PW-1 contradicted himself in this regard, as already noted by us. The main issues pertains to the alleged understanding between the petitioner and NVR regarding the shareholding at the time when the petitioner joined the company; B. K. P. Rao could not have spoken to this understanding. In other respects, this aspect of the case rests mainly on the proved circumstances, and the documents on record. In spite of our great respect for our learned brother, we are not able to agree with him. The alleged under-standing as to the shareholding and control of the company, though, is a specific fact, a finding on this fact necessarily involves appreciation of the proved circumstances, also. This apart, inherent contradictions in the deposition of PW-1 and his case as pleaded, substantially affect his case. The learned company judge has nowhere given a definite finding, solely on the basis of the creditworthiness of a particular witness. In Smt. Rajbir Kaur v. S. Chokosiri and Co., , the Supreme Court said, at page 1855 : "But in cases where there is no question of credibility or reliability of any witness or the question is one of a proper inference to be drawn from

proved facts, the appellant court is - and should be - generally in as good a position to evaluate the evidence as the trial judge is."

137. The Supreme Court pointed out that there is a distinction between what is "perception" and what is "evaluation". At page 1856, again, Venkatachaliah J. observed : "The area in which the question lies in the present case is the area of the perceptive functions of the trial judge where the possibility of errors of inference does not play a significant role. The question whether the statement of the witnesses in regard to what was amenable to perception by sensory experience as to what they saw and heard is acceptable or not is the area in which the well known limitation on the powers of the appellate court to reappreciate the evidence falls. The appellate court if it seeks to reverse those findings of fact, must give cogent reasons to demonstrate how the trial court fell into an obvious error."
138. A few more facts also may be referred to here : In exhibit P-6, the petitioner said, non-transfer of the shares of BSNR to him was "by mistake", while, as PW-1, he said : "At the time when the shares of B. S. N. Rao were transferred to me and the second respondent in the proportion of 13 : 12 respectively, I did not ask for transfer of all the shares to me because it was also agreed that the shares held by the third respondent should also be transferred to me and the second respondent in the proportion of 12 : 13 respectively to maintain the parity of shares. It was because of this the shares of B. S. N. Rao were not offered to all the shareholders of the company as required by the articles of association of the company. The fourth respondent was dodging the matter of transfer of shares held in the name of his wife - third respondent."
139. This again shows that the petitioner changed his case, by the time he entered the witness box, on this aspect of the dispute. He also stated, - "I, as a director of the company, had been a party to the decision as to allotment of shares. There are documents in this regard, such as annual returns filed with the Registrar of companies."
140. As to his relationship with NVR, prior to his joining the company and his financial contribution, PW-1 said : "Before I became a director of the company it had no landed property of its own. The witness volunteers that though officially, I became a director of the company on January 27, 1976, but before that I was working in the company and looking after the project and was responsible for securing the sake deed pursuant to the agreement of the sale and probably I had also contributed financially towards the sale consideration, I don't have any record to show that I had finalised the sale and contributed the amount towards the sale consideration. The first reallocation of shares of the first respondent-company after I became a director, took place probably in the month of February, 1976. The second reallocation in 1977 and third one in the year 1978. The third reallocation of shares took place consequent to resignation of Sri B. S. N. Rao from the directorship of the first respondent-company."
141. On the question of parity, RW-1 said : "The petitioner did not make any demand before 1985 that the shares held by me and the petitioner shall

be equal."

142. Further, he again said : "There was no understanding between me and the petitioner for holding equal number of shares in the company."
143. The present case involves inferences to be drawn from the proved circumstances and the materials on record. The conduct of the parties at a time there was no dispute at all amongst the parties has a strong bearing while appreciating the respective cases. The petitioner has been able to show, at the most, that in or about the year 1985, there were talks to bring about parity of shareholding between himself and NVR; this may be due to the desire of the petitioner to gain more shares in the company, also.
144. It is unnecessary to refer to the several other business concerns started separately by NVR or the petitioner. In this regard, both have been successful; admittedly, NVR has his own business concern and so is the case with the petitioner.
145. Under point No. 3, the learned company judge has found that, the petitioner is estopped from challenging the transfer of 25 shares by B. K. P. Rao in favour of his wife, Mrs. Rao. We agree with this finding, in case, originally, shares were allotted in the name of B. K. P. Rao. For over 10 years, the petitioner did not question the alleged transfer. But this finding is contradicted by the finding under point No. 10 and, thereafter, the learned judge proceeded to direct transfer of those 25 shares, by transfer of 12 shares to the petitioner and 13 shares to NVR. We have already held that there was no binding offer, earlier under exhibit P-5, etc., to sell these shares, as provided for, under the articles of association. If so, the said offer made in the year 1985 cannot now be enforced.
146. However, these findings are not sufficient to non-suit the petitioner. The petitioner became a shareholder in February, 1976, he was also appointed a wholetime director. The company did not declare any dividend. The return for the investment, as far as B. K. P. Rao and his wife are concerned, was either by way of alleged interest paid or consultation fee paid to B. K. P. Rao or his son. Other shareholders were appointed directors and were being paid monthly remunerations; in addition, substantial perquisites were being provided to them. There can be no doubt that the petitioner has contributed his services for the prosperity of this company. Even though it is not possible to hold that there was an understanding between NVR and the petitioner to run the company as quasi-partners with equal shares, the circumstances justify the inference that the petitioner was to be a full time director throughout with appropriate remuneration an perquisites. In this regard, it seems to us, that, he is to have parity of status with NVR. On this aspect an elaborate discussion is not necessary, because, the proved circumstances cannot lead to any other inference.
147. If the petitioner is entitled to an equal status, with proper remunerations and perquisites, in view of the understanding, the further question arises, as to what order should be made in this petition filed by the petitioner.
148. NVR called the extraordinary general body meeting which was held on November 12, 1987. He contrived the agenda, in the notice, proposing to

elect the directors afresh. At the meeting, he proposed the petitioner's name for election as a director. However, at the poll, he joined hands with Mrs. Rao to defeat the proposal and then set up the case that the petitioner ceased to be a director. The petitioner being in the minority, had to face the defeat. The dispute and mutual recriminations are such that, the petitioner has no chance of becoming a director again. The conduct of NVR, in ousting the petitioner certainly lacked probity. A material change has taken place in the management of the company, as well as in the control of the company, not only by ousting the petitioner from the board, but also, by induction of a stranger (one Kothari) to the company, as a director. We are of the opinion, that this state of affairs is sufficient to hold that the company's affairs are being conducted in a manner oppressive to the petitioner. He is deprived of a proper return on his investment; he is ousted from participating in the management and the opportunity to continue to be employed usefully, in a company for whose prosperity he contributed his services, is denied to him. This is a small private company with only three shareholders. However, there is no dispute that winding up of the company would prejudice the petitioner, as he, himself stated in the company petition.

149. In these circumstances, no doubt, the court could make an order which it thinks fit; but at the same time such an order will have to be just and equitable; the order should enable the smooth functioning of the company.

150. Before considering the nature of the order to be made, we have to consider a few precedents for our guidance.

151. Hind Overseas P. Ltd. v. Raghunathprasad Jhunjhunwalla was concerned with a winding up petition filed by one of the shareholders under section 433(f) of the Act. The main question was whether the principles applicable in the case of dissolution of partnership could be invoked in the case of that company. The petitioners held 1,875 shares, while the contesting respondents held 3,125 shares. The business was started in the name of the company formed for the said purpose; the initial idea of constituting a partnership was abandoned, while forming the company, an erstwhile employee was also taken as a subscriber and a director, who subsequently resigned. The dispute arose between the petitioners' group (of RPJ) and another group (of VDJ). VDJ was alleged to have tried to oust RPJ from the management. In the circumstances, alleging complete lack of confidence and mutual trust and resultant deadlock in the management of the company, the group of RPJ filed the petition for winding up. The petitioners asserted that the company was in substance a partnership and circumstances justifying the dissolution of the firm existed. The point involved, was stated by the Supreme Court, at page 569 of AIR 1976 SC (at page 96 of 46 Comp Cas) : "The only point which appears to have been canvassed before the learned company judge and later before the appellant court was that the company was formed as a result of mutual trust and confidence and the company was in substance a partnership and, therefore, the principles of partnership would be attracted. The same ar-

guments are pressed into service by the respondents before us. If it were a partnership, says Mr. Sen on behalf of the respondents, on the facts and circumstances disclosed in the petition, dissolution would have been ordered by the court under section 44(g) of the Partnership Act. A case for winding up has been, therefore, prima facie, made out by the respondents on these allegations."

152. The Supreme Court referred to Yenidje Tobacco Co. Ltd.'s case [1916] 2 Ch 426 (CA) and Ebrahimi's case [1973] AC 360 (HL) and thereafter referred to features found in those cases, to point out that in these circumstances winding up orders were made. The Supreme Court also held that the principles enunciated in those two cases are sound principles "depending upon the nature, composition and character of the company. The principles, good as they are, their application in a given case or in all cases, generally creates problems and difficulties". Since it was a case of deadlock in the affairs of the company, winding up was ordered in Yenidje's case [1916] 2 Ch 426 (CA) though that was not stated to be the sole basis for the conclusion to wind up the company (vide paras 23 to 25). Further, it was pointed out by the Supreme Court that, the House of Lords did not approve of the undue emphasis put on the contractual rights arising from the articles over the equitable principles, derived from partnership law, in another decision (Cuthbert Cooper and Sons Ltd.'s case [1937] Ch 392; [1938] 8 Comp Cas 131 (Ch D). The Supreme Court pointed out that the Indian law was developing on its own lines and the language used by the Indian statute should be examined in each case to arrive at the true meaning of the law. In this regard, the Supreme Court observed, at page 574 of AIR 1976 SC (at page 104 of 24 Comp Cas) : "We will have to adjust and adapt, limit or extend the principles derived from English decisions, entitled as they are to great respect, suiting the conditions of our society and the country in general, always however, with one primary consideration in view that the general interests of the shareholders may not be readily sacrificed at the alter of squabbles to directors of powerful groups for power to manage the company. 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 management, the principles of dissolution of partnerships cannot be liberally invoked. Besides, it is only when the 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 of winding up on the just and equitable ground. In a given case of winding up on the just and equitable ground. In a given case the principles of dissolution of partnerships 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. On the allegations and submissions in the present case, we are not prepared to extend these principles to the present company.

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

153. The Supreme Court proceeded to consider whether the winding-up petition should have been admitted or not, in the context of section 433(f) of the Act, under the "just and equitable" clause and held at page 575 of AIR 1976 SC (at page 106 of 46 Comp Cas) : "Section 433(f) under which this application has been made has to be read with section 443(2) of the Act. Under the later provision where the petition is presented on the ground that it is just and equitable that the company should be wound up, the court may refuse to make an order of winding up if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy. Again, under sections 397 and 398 of the Act, there are preventive provisions in the Act as a safeguard against oppression in management. These provisions also indicate that relief 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."

154. The features of the company were examined to conclude that the company was not in substance a partnership and that "it is not a proper principle to encourage hasty petitions of this nature without first attempting to sort out the dispute and controversy between the members in the domestic forum in conformity with the articles of association." The company therein was different and was not a small company. At , the Supreme Court held (at page 108 of 46 Comp Cas) : "The cases of small companies stand on a different footing from a company like the present with nineteen shareholders, although apparently arrayed in two groups it is not, prima facie, established on the allegations that the company cannot run smoothly in the best interests of the general shareholders, including the RPJ group, after exit of the quondam directors."

155. It was found that at no point of time the parties contemplated a partnership in substance and there was only a mere discussion about the advantages and disadvantages of partnership vis-a-vis a private limited company, but ultimately the company was formed. In these circumstances, the Supreme Court held that winding-up order was not the proper remedy. The Supreme Court was not dealing with the case under section 397, at all. In fact, the discussion shows that resort to section 397 was held to be more proper and appropriate than resort to section 433(f) in a case of dispute amongst two groups of shareholders, if the company was not a partnership in substance. The further observations at para 43 (of the AIR Report, p. 576), indicate that the court may contemplate the exit of a group of shareholders in the interest of the company, in case such a

course would enable the company to run smoothly.

156. This decision, by necessary implication supports the principle that in the case of a petition under section 397, the court may make an appropriate order providing for the exit of one of the groups to enable the (small), company to run smoothly, if such an order is just and equitable in the circumstance of the case.

157. Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. , involved several facts. One of the observations of the Supreme Court is regarding the court's powers under section 397. The charge of oppression was not made out. But the court said at page 1360 (at page 845 of 51 Comp Cas) : "Such technicalities cannot be permitted to defeat the exercise of the equitable jurisdiction conferred by section 397 of the Companies Act."

158. Further, it was observed (at page 845 of 51 Comp Cas) : "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."

159. In Shanti Prasad Jain v. Kalinga Tubes Ltd. , it was held at page 1543 (at page 365 of 35 Comp Cas) : "In Harmer's case [1958] 3 all ER 689; [1959] 29 Comp Cas 305 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 had 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 shareholder 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 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 shareholders

per se that brings section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs, and oppression involving at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder'. These observations from the four cases, referred to above apply to section 397 also which is almost in the same words as section 210 of the English Act, and the question in each case is whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of section 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to section 397."

160. On the facts it was found that the allotment of shares to seven persons there, was not an unfair act and there was no reason to suppose that the same rate of profit would not have continued, with the expansions envisaged by the increase in share capital.

161. We may note here that, learned counsel on both sides, did not explain to us the scope and incidence of the proprietary rights of a shareholder. It cannot be limited to a right to participate in the available assets of the company which would be left over winding up, as suggested by Mr. Udaya Holla. A shareholder is entitled to participate in the profits of the company and this should be considered as part of his proprietary right as a shareholder.

162. In Mrs. Bacha F. Guzdar v. CIT , the Supreme Court held, at page 77 (at page 6 of 25 Comp Cas) : "The true position of a shareholder that on buying shares an investor becomes entitled to participate in the profits of a company in which he holds the shares if and when the company declared, subject to the articles of association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in 'the assets of the company which would be left over after winding up' but not in the assets as a whole

as Lord Anderson puts it."

163. Therefore, if there was an understanding that persons investing in the shares of the company would be appropriately remunerated by way of salary and perquisites with a right to participate in the management of the company, in lieu of or in addition to, the dividends, the interest created by such an understanding has to be held as a component of the proprietary right of the said shareholder while applying equitable considerations.

164. In Raghunath Swarup Mathur v. Har Swarup Mathur [1970] 40 Comp Cas 282 it was held by the Allahabad High Court, that under sections 397 and 398, interference in internal management of companies should take place only on good and compelling grounds; powers under sections 397 and 398 are essentially preventive. At page 292, it was held : "The scope of remedial action under either of the two sections could be said to have become more extended as a result. Nevertheless, the powers vested in the court continue to be discretionary and are designed for removal of an existing and not post oppressive or prejudicial course of conduct of the affairs of the company. They are, in my opinion, primarily intended for preventive purposes. The object of the exercise of these powers is either to prevent a winding up or to remove the continuation of harm or reasonable probability of injury to the interests of the company or to the wider public interests. Past acts and transactions may either afford evidence of what may be reasonably apprehended in future or may have to be undone only to prevent or remove what had wrongfully originated in the past but continues to exist and provides a sustainable cause of action at the time when the petition is filed. Purely punitive action as distinct from preventive remedial action, does not fall directly within the purview of these provisions although certain forms of punitive action, such as those mentioned in Schedule XI, which is applied by section 406 of the Act to proceedings under sections 397 and 398 of the Act, may indirectly result from them. Although the amplitude of the remedial powers of the court, under section 397 and 398, should not be curtailed in such way as to hamper the jurisdiction to suppress the mischiefs aimed at, yet, the court has to be careful and astute enough to prevent a misuse of the provisions of sections 397 and 398 by a party, lest a remedy proposed and adopted to overcome an alleged mischief becomes a source of greater oppression and harm than the one sought to be removed or prevented."

165. V. M. Rao v. V. L. Dutt [1987] 61 Comp Cas 20, a decision of the Madras High Court, was relied on by learned counsel for the respondents. It was held there, that even if there was a family arrangement to have the management of one company with the sons and of another company with the daughters, the said arrangement cannot be enforced. The court found that, actually there was no such family arrangement; however, at page 67, it was held : "Since the family arrangement pleaded is not true, and even if true it is not valid, as we have held in this case, there is no restriction on the election of directors. The exercise of the inherent right of the shareholders, in such circumstances, to elect their directors cannot be

contended as constituting oppression. The majority shareholders are not bound to accept the views of the minority shareholders. If it is a lawful exercise of power by the majority, the minority shareholder is bound by the same. Further, as held by the Supreme Court, oppression involves at least an element of lack of probity or fair dealing 'to a member in matters of his proprietary right as a shareholder and not any harsh or unfair treatment in any other capacity.' The contention of the petitioner relates to his position only as a director and not that his proprietary right as a shareholder is in any way affected. Therefore, the petitioner cannot maintain the petition under section 397 on this ground."

166. In the instant case, the petitioner is aggrieved by his non-election as a director and, therefore, the above principle would apply to non-suit him, was Mr. Holla's contention. We do not think so. The facts of the present case are entirely different. Election as a director is part of the understanding to enable participation in the management and draw remuneration in lieu of the dividends. There is a further observation in the Madras case that the principle of the special relationship between the parties forming the substratum of the company could be invoked only in a case where originally the business was a partnership concern which was later on converted into a private limited company or where, if the veil of corporate character of the company was lifted, if could be found that, in reality, it was a partnership. With utmost respect to the learned judges, we are of the view that the principle involved should not be limited to such a narrow set of facts. There may be instances where a small private limited company may break up in effect by the withdrawal of all shareholders except one (in the sense, all other shareholders may offer to sell the shares to one person) and to continue the company effectively, the remaining shareholder may enter into a special relationship with another and persuade him to join the company as a shareholder and a director; the process is analogous to the winding up of the old company, the assets of which are taken over by a new small private limited company. In such a situation, there is no reason why the principle of the "special relationship" should not be attracted. The decision of the Supreme Court in Hind Overseas' case [1976] 46 Comp Cas 91; AIR 1976 SC 568 distinguishing Ebrahimi's case [1973] AC 360 (HL) is not based on this factor alone.

167. In Bhaskar Stoneware Pipes Private Ltd. v. Rajinder Nath Bhaskar [1988] 63 Comp Cas 184, a Bench of the Delhi High Court, applied the quasi-partnership theory to a company formed by four groups of family members. The main question was whether the petition under sections 397 and 398 could be admitted at all. The court examined the history of the company to conclude that all along proportionate parity in shareholding was maintained among the group of shareholders and this was sought to be disturbed. The breach of the implied understanding as to this parity with a view to consolidate the power in one group, was held to be indicative of oppression and mismanagement and the attempts to this end revealed a lack of probity and fair dealing, etc. The Bench pointed out, at page 201

: "The crux of the question seems to be not whether any group has been expelled or whether this was done lawfully or otherwise but whether there has been breach of basic mutual understanding. It is difficult, therefore, to say that a prima facie case has not been made out for the applicability of Ebrahimi's case [1972] All ER 492 (HL) principle here."

168. In Suresh Kumar Sanghi v. Supreme Motors Ltd. [1983] 54 Comp Cas 235, a learned judge of the Delhi High Court, having held that a case of oppression was not made out, proceeded to make an order providing for one group of shareholders to purchase the shares of the other because, the two groups of shareholders lacked complete confidence and trust in each other and the two groups cannot run the company together. At page 250, the learned judge held : "It is evident that the two groups of shareholders lack complete confidence and trust in each other. The two groups cannot run the company together. In an effort to destroy each other they will not only destroy themselves but also the company. The only course which is open to me under these circumstances is to direct the sale of the shares by one group to the other."

169. In Chander Krishan Gupta v. Pannalal Girdhari Lal P. Ltd. [1984] 55 Comp Cas 702 (Delhi), the same learned judge (B. N. Kirpal J.) found that the dismissal of the petition under section 397 would not solve the problem and, therefore, as a permanent solution, sale of the shares of one group to the other was held to be the most appropriate and ordered accordingly.

170. Ramashankar Prosad v. Sindri Iron Foundry (P.) Ltd., , is a decision of a Division Bench of the Calcutta High Court, arising out of a petition under sections 397 and 398 of the Act. The company was incorporated in the year 1957; the petitioners joined the company in the year 1962; they were also in the board of directors; in the year 1963, the petition was filed on the ground of oppression, mismanagement, etc. Oppression found was of a recent origin, but its effect continued and would have persisted but for the intervention of the court; that was held to be sufficient to invoke the court's power under section 402. It was pointed out (by G. K. Mitter J.) that the act or acts complained of as oppressive must at least be shown to have been designed to injure the petitioners in their rights as shareholders or show that the company was not being conducted efficiently in the interest of the members as a whole; this is quite different from showing that there was a mere subordination of the wishes of the minority to the powers of a voting majority. The court's approach was indicated at page 531 : "It must be admitted that a strong case was not made of out in the petition and what view the court would have taken if a point of demurrer had been argued it is difficult to say. But once all the evidence is before the court and the case of oppression clearly emerges from the facts disclosed, it would not be proper to measure the rights of the parties only in terms of the assertion made in the petition. In Firm Srinivas Ram Kumar v. Mahabir Prasad, , the court observed that 'there would be nothing improper in giving the plaintiff a decree upon the case

which the defendant himself makes.' Again in Kedar Lal v. Hari Lal, , it was observed by Bose J. (paragraph 51) 'I would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded. In any event, it is always open to a court to give a plaintiff such general or other relief as it deems just to the same extent as if it had been asked for, provided that occasions no prejudice to the other side, beyond what can be compensated for in costs.' In this case the respondents ought not to be heard to complain that the case of oppression had not been fully made out in the petition if it transpires as a result of the hearing that the petitioners were oppressed so as to bring the case under section 397 of the Companies Act. The cause of justice will not suffer by the court arriving at a conclusion on a consideration of all the evidence before it even if the original plaint was lacking in particulars."

171. As to the relief, it was held at page 532 : "In my opinion, the company cannot function properly if these two warring groups continue to hold the shares. As a matter of fact, at the early stages of the hearing of the appeal, a suggestion was made that one of the two groups should buy up the other's holding but nothing tangible came out of the attempts made by counsel on that behalf. In my opinion, the special auditor should be directed to find out the fair value of the shares at the date of the petition as was directed by Lord Denning in Scottish Co-operative Wholesale Society Ltd's case [1959] AC 324; [1959] 29 Comp Cas 1. We also order the oppressor, i.e., the respondents to the petition to buy the shares of the petitioners. In case the respondents are unable or unwilling to buy the shares, the petitioners should have an option to buy the respondents' shares at the same price. The price is to be arrived at on the basis of the break-up value of the shares."

172. Two principles applicable to the appeal before us, are found in this decision. Mr. Udaya Holla contended that, the petitioner came to the court with a definite plea that the company is a quasi-partnership in which the understanding was to have equality of shareholding between the petitioner and NVR; if this plea is not established, the court should dismiss the petition. We have found that, the alleged understanding pleaded by the petitioner is not applicable; however, we have inferred that, in all probability there was an understanding to enable the petitioner to participate in the management, drawing appropriate remuneration with perquisites and that this understanding has been nullified by the unfair conduct of NVR with the aid of the voting power he commanded. If so, the court can grant appropriate relief to the petitioner, on the basis of the observations of the Calcutta High Court, quoted by us (observations excerpted from page 531 of the report). Similarly, while granting the relief, the court may direct the sale of shares by one to the other. The several decisions referred to by us show that the court has a vast discretion in moulding the relief, even in a case, where, technically, the petitioner fails to make out a case

of oppression or mismanagement. The power of the court, is essentially an equitable power, to be exercised in the interest of the shareholders and the company. If the company can continue to function smoothly, only by the exit of one group of shareholders, the court may order accordingly. The approach is to examine whether there has been fair dealing amongst the rival groups and whether the conduct of one in out-voting the other is a device to gain control of the company, for the sake of the power (as against a simple case of defeating the alleged oppressed group in the ordinary democratic process, in the interest of the company); in the case of a small private limited company having a very limited number of shareholders as in the instant case an understanding as to the management of the company and remuneration payable in lieu of or in addition to the participation in the profits of the company, could be taken note of by the court, in the exercise of its jurisdiction under sections 397, 398 and 402 of the Act and grant an appropriate relief.

173. In connection with the power of the court to direct winding up of the company, the English law is summarised by Pennington in his Company Law (5th edition) at page 861 : "If it becomes impossible to manage a company's affairs because the voting power at board and general meetings is divided between two dissenting groups, the court will resolve the deadlock by making a winding up order. The most obvious kind of deadlock is where the company has two directors who are its only shareholders and who hold an equal number of voting shares; if they disagree on major questions in respect of the management of the company, their disagreement cannot be resolved at a board meeting or by a general meeting, and management decisions will cease to be made. In this situation the court will make a winding up order, even though there is a provision in the company's articles that one director shall have a casting vote at board meetings, or that disputes shall be settled by arbitration. Nevertheless, the petitioner must show that there is no likelihood of the deadlock being resolved in fact, and for this purpose he should set out in his petition or in his supporting affidavit the relevant provisions of the company's articles (if any) and details of the attempts he has made to resolve the deadlock. There may also be a deadlock even though the voting power is not equally divided between the dissenting groups. Thus, where three shareholders with equal shareholding, and two of them were the company's directors, one of the directors-shareholders was held entitled to a winding up order when the other persistently refused to attend board meetings and make up a quorum to transact business; the reason for the other director's absence was his fear that the petitioner would insist on a general meeting being called at which, by the terms of the articles, the petitioner could require the other shareholders to purchase his shares, or if they were unwilling to purchase them, to join the petitioner in passing a resolution to wind up the company voluntarily; the result of the other director's absence from board meetings, however, was that the company's business could not be carried on at all, and for this reason the court made a winding up order."

174. This would show that the ultimate order made which is under appeal before us, has not solved the problem. The order if given effect to, would result in only two shareholders (the petitioner and NVR) with equal shareholding; they have developed such an animosity between them, that it will be impractical and impossible for them to carry on any business together. Deadlock in the affairs of the company is inevitable, if only these two are left to manage the affairs of the company, with equal shareholding. Various affidavits and statements filed by the parties before this court conclusively establish that trust and confidence between them no more exist; a company which is quite sound economically is bound to be wound up within a short time, if the order under appeal is enforced. By treating the petitioner and NVR as equal partners, the order paved the way for an immediate winding up order, under the doctrine of quasi-partnership. In the circumstances, we do not think that we could sustain this order.
175. A few English decisions cited before us require to be referred.
176. Bellador Silk Ltd., In re [1965] 1 Comp LJ 30 is a decision of the Chancery Division, where a winding-up petition filed by a director was found to be motivated to pressurise the company to repay a loan to the group of companies owned by the petitioner's group; hence it was rejected. This was cited to support the contention that if the real motive of the petitioner is to gain some benefit for himself, the discretionary power should not be exercised by the court. This principle has no application to the facts of this case and, therefore, we do not propose to refer to other decisions regulating the discretionary jurisdiction and its non-availability to a petitioner whose conduct is blameworthy.
177. Scottish Co-operative Wholesale Society Ltd. v. Meyer [1958] 3 All ER 66; [1959] 29 Comp Cas 1 (HL) is a leading case, frequently referred to. A subsidiary company of the appellant-company was formed to facilitate the appellate's manufacturing business; in this subsidiary company, the appellant had majority shares, as against the shares, held by the respondents. The latter had, in fact, provided the formulae, knowledge and experience of the business. Dispute arose in connection with the desire of the appellant to have more shares by purchasing them from the respondents. The appellants got it recorded that the subsidiary company had served its purpose and should be liquidated. The respondents approached the court alleging oppression. It was held that the affairs of the company were conducted in a manner oppressive to the respondents. Earlier, the respondents had offered to sell their shares at a negotiated price, while the appellants wanted to purchase them at par. The appellant was referred to as the society in the judgment. As to the meaning of oppression, Viscount Simmonds, observed at page 71 (at pate 8 of 29 Comp Cas) : ". . . .. it appears to me incontrovertible that the society has behaved to the minority shareholders of the company in a manner which can justly be described as oppressive. It had the majority power and it exercised its authority in manner 'burdensome', harsh and wrongful' - I take the dictionary meaning of the word. But, it is said, let it be assumed that the society acted in

an oppressive manner; yet it did not conduct the affairs of the company in an oppressive manner. My Lords, it may be that the acts of the society of which complaint is made could not be regarded as conduct of the affairs of the company if the society and the company were bodies wholly independent of each other, competitors in the rayon market, and using against each other such methods of trade warfare as custom permitted. But this is to pursue a false analogy. It is not possible to separate the transactions of the society from those of the company. Every step taken by the latter was determined by the policy of the former. I will give an example of this. I observed that, in the course of the argument before the House, it was suggested that the company had only itself to blame if, through its neglect to get a contract with the society, it failed in a crisis to obtain from the Falkland Mill the supply of cloth that it needed. The short, answer is that it was the policy of the society that the affairs of the company should be so conducted, and the minority shareholders were content that it should be so. They relied - how unwisely the event proved - on the good faith of the society, and in any case they were impotent to impose their own views. It is just because the society could not only use the ordinary and legitimate weapons of commercial warfare but could also control from within the operations of the company that it is illegitimate to regard the conduct of the company's affairs as a matter for which it had no responsibility. After much consideration of this question, I do not think that my own views could be stated better than in the late Lord President Cooper's words on the first hearing of this case. He said ([1954] SC 381, 391) : 'In my view, the section warrants the court in looking at the business realities of a situation and does not confine them to a narrow legalistic view. The truth is that, whenever a subsidiary is formed as in this case with an independent minority of shareholders, the parent company must, if it is engaged in the same class of business, accept as a result of having formed such a subsidiary an obligation so to conduct what are in a sense its own affairs as to deal fairly with its subsidiary.' "

178. The House of Lords affirmed the order directing the society (appellant) to purchase the shares of the minority. In this regard, it was observed as page 72 (at page 9 of 29 Comp Cas) : "Some criticism was made of the relief given by the order of the court. It was said that relief could be given which had as its object and presumably its effect the 'bringing to end of the matters complained of' and that an order on the society to purchase the respondents' shares in the company did not satisfy that condition. This argument is without substance. The matter complained of was the oppression of the minority shareholders by the society. They will no longer be oppressed and will cease to complain if the society purchase their shares."

179. Lord Denning pointed out that, in such a situation, the most useful order is to order the oppressor to buy the shares of the oppressed at a fair price. At page 89, Lord Dinning observed (at page 33 of 29 Comp Cas) : "The object of the remedy is to bring 'to an end the matters complained of' that

is, the oppression, and this can be done even though the business of the company has been brought to a standstill. If a remedy is available when the oppression is so moderate that it only inflicts wounds on the company, whilst leaving it active, so, also, it should be available when the oppression is so great as to put the company out of action altogether. Even though the oppressor by his oppression brings down the whole edifice - destroying the value of his own shares with those of every one else - the injured shareholders have, I think, a remedy under section 210. One of the most useful orders mentioned in the section - which will enable the court to do justice to the injured shareholders - is to order the oppressor to buy their shares at a fair price; and a fair price would be, I think, the value which the shares would have had at the date of the petition, if there had been no oppression. Once the oppressor has bought the shares, the company can survive. It can continue to operate. This is a matter for him. It is, no doubt, true that an order of this kind gives to the oppressed shareholders what is, in effect, money compensation for the injury done to them, but I see no objection to this. The section gives a large discretion to the court, and it is well exercised in making an oppressor make compensation to those who have suffered at his hands. True it is that in this, as in other respects, your Lordships are giving a liberal interpretation to section 210. But it is a new section designed to suppress an acknowledged mischief."

180. We may remind ourselves, here, that the elements comprised in sections 397 and 402 of the Act (Companies Act, 1956), are found in section 210 of the English Companies Act.

181. H. R. Harmer Ltd., In re [1958] 3 All ER 689; [1959] 29 Comp Cas 305 is a decision of the Court of Appeal. The father, who had earlier gifted a few shares to his sons, had to face the complaint of oppression under section 210 of the English Companies Act. The father had the voting control (along with his wife); he assumed powers which he did not possess and exercised them against the wishes of his sons who had major beneficial interest, but a minority of votes. At page 698, the nature of the oppression to be established under section 210 was stated thus (at page 319 of 29 Comp Cas) : "This indicates that the oppression complained of must be complained of by a member of the company and must be oppression of some part of the members (including himself) in their or his capacity as members or a member of the company as such. Secondly, it is to be noted 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. Thirdly, the phrase 'the affairs of the company are being conducted' suggests, prima facie, a continuing process and is wide enough to cover oppression by anyone who is taking part in the conduct of the affairs of the company, whether de facto or de jure. Fourthly, the section gives no guidance as to the meaning of the word 'oppressive', although it does, as already mentioned, indicate that the victim or victims of the oppressive conduct must be a member or members

of the company as such. Prima facie, therefore, the word 'oppressive' must be given its ordinary sense and the question must be whether in that sense the conduct complained of is oppressive to a member or members as such. Inasmuch as in the present case it is not in dispute that the facts would justify a winding up order under the 'just and equitable' rule and it is recognised that such an order would unfairly prejudice the complaining members, this would appear to be, in effect, the only question in issue."

182. As to the 'just and equitable' jurisdiction, the court quoted Lord Cooper's observations at page 699, part of which reads (at page 321 of 29 Comp Cas) : "Where the 'just and equitable' jurisdiction has been applied in cases of this type, the circumstances have always, I think, been such as to warrant the inference that there has been, at least, an unfair abuse of powers and 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 members' acquires a certain colour from its collocation in section 165 with such stronger expressions as 'intent to defraud', 'fraud', 'misfeasance' or 'other mis-conduct', and the essence of the matter seems to be 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 shareholder who entrusts his money to a company is entitled to rely. This, broadly speaking, was the class of case which the draftsman of section 210 evidently had in mind, and the question is whether the petitioner have brought themselves within the scope of the section."
183. The discussion, at page 702 (at page 324 of 29 Comp Cas), shows that though the majority is entitled to use their voting power in what they believe to be in the interests of the company, the power should be used "in the only legitimate way."
184. Clemens v. Clemens Bros. Ltd. [1976] 2 All ER 268 is a decision of the Chancery Division. The plaintiff's aunt had the majority of votes with her, which she used, inter alia, to reduce the plaintiff's shareholding. Section 210 was invoked against the aunt, with success. After discussing the law on the point, it was held at page 282 : "I think that one thing which emerges from the cases to which I have referred is that in such a case as the present Miss Clemens is not entitled to exercise her majority vote in whatever way she pleases. The difficulty is in finding a principle, and obviously expressions such as 'bona fide for the benefit of the company as a whole', 'fraud on a minority' and 'oppressive' do not assist in formulating a principle." "I have come to the conclusion that it would be unwise to try to produce a principle, since the circumstances of each case are infinitely varied. It would not, I think, assist to say more than that in my judgment Miss Clemens is not entitled as of right to exercise her votes as an ordinary shareholder in any way she pleases."
185. Consequently, the impugned resolutions of the board or directors were set aside.

186. This decision illustrates the principle that, exercise of voting power by the majority is not immune from judicial review, if the resultant action of the company could be considered oppressive to the minority shareholders, falling under section 397 or 398 of the Act.

187. Ebrahimi v. Westbourne Galleries Ltd., [1972] 2 All ER 492 (HL) is a case of a quasi-partnership and referred to by the Supreme Court in Hind Overseas Pvt. Ltd.'s case . However, we consider it relevant to quote the following passage, from page 499 (at page 96 of 64 Comp Cas) : "The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere judicial entity, with a personality in law of its own; that there is room in company law for recognition of the fact that behind it or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act, 1948, and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable to court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way."

188. Bird Precision Bellows Ltd.'s case [1984] 3 All ER 444 is the decision rendered by Nourse J. of the Chancery Division. It was also a case of quasi-partnership. The main question before the trial judge was the mode of valuing the shares to be sold by the minority shareholders. This decision was affirmed by the Court of Appeal, and the appellate decision is reported in [1985] 3 All ER 523. It was held that the price to be paid by the purchaser for the petitioner's shares was to to fixed on the basis of the market value of the petitioner's shares pro rata according to the value of the company's shares as a whole, but without any discount to reflect the fact that the petitioner's shares constituted a minority shareholding. At page 529, while considering the discretion of the court, it was observed : "It seems to me that the whole framework of the section, and of such of the authorities as we have seen, which seem to me to support this, is to confer on the court a very wide discretion to do what is considered fair and equitable in all the circumstances of the case, in order to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company; and I find myself quite unable to accept that that discretion in some way stops short when it comes to the terms of the order for purchase in the manner in which

the price is to be assessed."

189. On the facts, we find here that the company was formed by three unrelated persons and two of them left the company; the petitioner and NVR purchased one share each of the outgoing shareholders resulting in NVR holding two shares and the petitioner one. Subsequently, another shareholder, BNR, joined them, who was also made a full-time director; the issued share capital was increased for reallocation of shares. After BNR left, Mrs. Rao became a shareholder (even assuming that initially it was her husband to whom shares were allotted after BNR left). NVR and the petitioners are relatives. The petitioner worked for the company as a director for several years. No dividend was declared by the company; instead, shareholders were remunerated by other means. The company is a small company with three shareholders. Even though the company did not commence as a quasi-partnership, in all probability, the petitioner joined the company with an understanding with NVR that the petitioner will be entitled to participate in the management and would be properly remunerated. The petitioner was ousted from the management by the unfair device manipulated by NVR. Both the petitioner and NVR have their own other business and on this count it cannot be said anyone of them ignored the interest of this company. The dispute and misunderstanding between the petitioner and NVR has reached the peak from which it is unlikely they would revert back to their original relationship of friendship and trust. If the affairs of the company are left to be controlled only by these two, deadlock in its affairs is bound to result; the company is otherwise sound and healthy. The remedy found by the learned company judge, instead of solving the problem, would further contribute, to the process of destroying this company.

190. Therefore, we make the following order :

(i) The two chartered accountants already appointed by the learned company judge to value the shares of the company shall proceed to value the shares of the company as on November 14, 1987.

(ii) The second appellant, N. V. Rao, shall purchase the shares of the petitioner, Suresh Rao, as per the above valuation within eight weeks from the date of the finalisation of the market value of the shares.

(iii) In addition to the market value, N. V. Rao also shall pay an interest at the rate of 12 per cent. per annum on the market value of the shares to the petitioner, Suresh Rao, till the date of payment of the value of his shares.

(iv) If the second appellant, N. V. Rao, is not willing to purchase the shares as above, the petitioner, Suresh Rao, shall purchase the shares of the second appellant, N. V. Rao, as well as that of the third appellant, Anupama Rao, at the same rate as above. However, in case the petitioner, Suresh Rao, is to purchase the shares, appellant Nos. 2 and 3 shall not be entitled to any interest thereon (because appellants Nos. 2 and 3 are so far in enjoyment of the company). For the purpose of this order, reference to the parties

would also include their respective nominees.

(v) In case the petitioner, Suresh Rao, purchases the shares of appellants Nos. 2 and 3, the company and its affairs shall be handed over to him and liberty is given to Suresh Rao to move the company court for appropriate orders regarding the binding nature of the liabilities, if any, created subsequent to November 14, 1987, and the consequences of any alienation of the assets of the company.

(vi) While valuing the shares of the company the chartered accounts shall bear in mind the principle of valuation adopted in bird Precision Bellows Ltd., In re [1984] 3 All ER 444.

(vii) N. V. Rao shall furnish all the requisite information for the valuation of the shares, to the two chartered accountants by September 28, 1992, with copies to Suresh Rao.

(viii) If any practical difficulty arises in implementing this order, parties may move the company court by an appropriate application, for clarification/directions.

191. The appeal is allowed accordingly.