REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5416-5419 OF 2008

CHATTERJEE PETROCHEM (I) PVT. LTD. … APPELLANT

Vs.

HALDIA PETROCHEMICALS LTD.& Ors. … RESPONDENTS

WITH

CIVIL APPEAL NOS.5420, 5437-5440 OF 2008

J U D G M E N T

ALTAMAS KABIR,J.

1. M/s. Haldia Petrochemicals Ltd., hereinafter referred to as "H.P.L.", was incorporated in 1985 for establishing a green field petrochemical

complex in Haldia in the State of West Bengal to be established by the West Bengal Industrial Development Corporation, hereinafter referred to as "WBIDC", and the R.P. Goenka Group. However, the Goenka Group left the Company in 1990 and Tata Chemicals and Tata Tea were inducted into the project between 1990 and 1993. Not much headway was made towards implementing the project till June, 1994 when Dr. Purnendu Chatterjee, hereinafter referred to as "PC", a Non-Resident Indian industrialist and financier, expressed an interest in the project. Accordingly, a Memorandum of Understanding was entered into between WBIDC and the Chatterjee Petrochem (Mauritius) Company, hereinafter referred to as "CP(M)C" and the Tatas on 3rd May, 1994. According to the said Memorandum, the initial cost of the project was estimated at Rs.3600 crores which was to be funded with a debt of Rs.2400 crores and equity of Rs.1200 crores. Initially, equity capital of Rs.700 crores was to

be contributed by WBIDC, CP(M)C and the Tatas in the ratio of 3:3:1 respectively. It was also provided that the Board of the Company would consist of four nominees each of WBIDC, CP(M)C and two from the Tata group. This was followed by a Joint Venture Agreement, hereinafter referred to as "JVA", between the three parties on 20th August, 1994, incorporating the terms which had been agreed upon by the parties. It was decided that both WBIDC and CP(M)C would invest Rs.300 crores each and the Tatas would invest Rs.100 crores, while Rs.500 crores was to be obtained from the public, including Non-Resident Indians and Financial Institutions, towards equity, keeping the debt equity ratio at 2:1. Certain other terms and conditions agreed between the parties were also included in the Agreement, of which one of the specific terms was that in case of disinvestment by WBIDC, the disinvested shares would be offered to CP(M)C. One of the other terms agreed to by the

parties is that they would be entitled to seek specific performance of the terms and conditions of the agreement in accordance with the provisions of the Specific Relief Act, 1963, and the agreement would remain in force as long as the parties held the prescribed percentage of shares.

2. After the said agreement was executed, four other letters dated 30th September, 1994, 6th October, 1994 and 5th January, 1995, were exchanged between the parties, whereby it was agreed that between 24 months of commencement of commercial production or within 60 months of the date of the JVA, whichever was later, at least 60% of the shareholding of the WBIDC would be offered to CP(M)C at Rs.14/- per share. It was provided that the role of the Government in the Company would be limited to its promotion and guidance through the initial phases of the project and that the nominee of CP(M)C would be the Managing Director. In March, 1995, the Articles of Association of the

Company were altered to bring it in line with the terms of the JVA. An addendum to the JVA was executed on 30th September, 1996/4th October, 1996, by which the project cost was revised to Rs.5170 crores and the equity participation was revised to Rs.432.857 crores to be provided by WBIDC and by CP(M)C, while Tatas were to provide Rs.144.286 crores. The remaining equity participation of Rs.969 crores was to be from the public.

3. The project started in 1997 and commercial production commenced in August, 2001. Thereafter, further agreements were entered into between the parties and the first of such agreements was entered into on 12th January, 2002, whereby CP(M)C, the Government of West Bengal, WBIDC and HPL, *inter alia*, agreed on a certain course of action in regard to HPL's need of financial and managerial restructuring. The object and exercise of such restructuring was that CP(M)C would acquire a controlling interest of 51% shares in the equity of

the Company and would have complete control over the day-to-day affairs of the Company, including the right to appoint key executives. WBIDC also agreed to vote along with CP(M)C on all issues in the shareholders meeting and its nominee would also vote along with the nominee Directors of the CP(M)C. It was specifically agreed that all other rights and obligations of CP(M)C in terms of the earlier agreement would continue till CP(M)C acquired majority shares in the Company.

4. The aforesaid agreement was followed by another agreement dated 8th March, 2002, wherein it was recorded that in terms of the agreement dated 12th January, 2002, 155,099,998 equity shares of WBIDC had been transferred and delivered to CP(I)PL, on 8th March, 2002. It was also mentioned that the said shares were pledged with WBIDC and, accordingly, the shares had been duly lodged along with the share certificates with WBIDC and the pledge had been acknowledged. Certain other

agreements in regard to the shareholding pattern and the management of the Company were entered into, wherein after allotment of shares to Winstar, which had been brought in to infuse Rs.127.4 crores towards equity, the collective shareholding of the Appellants was shown to be 58.62% with a rider that 155 million shares transferred by WBIDC to CP(M)C was subject to registration and lenders' approval. We may have recourse to refer to some of the said agreements at a later stage.

5. One other agreement which is relevant to the facts of this case was entered into between PC and the Government of West Bengal, represented by the Respondent No.8, Shri Sabyasachi Sen, on 14th January, 2005, wherein it was indicated that the Government of West Bengal would sell its entire shareholding in HPL to CP(M)C, and that the price of the shares would be determined by an independent valuer selected by the Government of West Bengal from amongst a panel of firms to be prepared by

CP(M)C. It was further declared that the recommendation of the valuer would be binding both on the Government of West Bengal and CP(M)C.

6. In the months of January and February, 2005, HPL had approved the issuance and allotment of equity shares worth Rs.150 crores at par to Indian Oil Corporation (IOC). Objecting to the proposed allotment of shares to IOC and also on the ground that WBIDC and the Government of West Bengal had failed to fulfil their commitment to transfer their balance 36% shares to the Appellants, the Appellants filed Company Petition No.58 of 2009 before the Company Law Board under Sections 397, 398, 399, 402, 403 and 406 of the Companies Act, 1956, inter alia, for the following reliefs :-

> "a) An order be passed directing the company to take immediate steps for modifying and/or altering and/or amending the Articles of Association of the Company to incorporate therein the complete agreement by and between the joint venture partners and special rights of the petitioner in relation

to the Company, as provided in the Agreements dated 20th August, 1994, 12th January, 2002, 8th March 2002 and 30th July, 2004.

b) Appropriate orders be passed directing the entire shareholding of the respondent No.2 in the Company to be transferred in favour of the petitioner at the agreed price of Rs.14/- per share in respect of such number of shares of HPL registered in the name of Respondent No.2 constituting 60% of the holding of the respondent No.2 in the Company and on such valuation in respect of the balance shares held by Respondent No.2 as this Hon'ble Board may think fit and proper;

c) Declaration that the resolution passed at the EGM of the Company held on January 14, 2005, is illegal, inoperative, null and void and not binding on the Company or any person connected therewith;

d) Permanent injunction restraining the respondents whether by themselves or by their servants or agents or assigns or otherwise howsoever from giving any effect or further effect to the resolution passed on the EGM held by the Company on January 14, 2005 in any manner whatsoever;

e) Permanent injunction restraining the Company from receiving any money or encashing any cheque that may have been issued by the Respondent No.6 to

the Company in pursuance of the Memorandum of Association and the resolution passed by the EGM of the Company held on January 14, 2005;

f) Permanent injunction restraining the Company and its Board of Directors from taking any major decision or policy decision relating to the management and affairs of the Company before the majority shareholding and management control in the Company is effectively established as per the Agreements dated 12th January, 2002, and 30th July, 2004, including the due recognition of the nominee of petitioner No.2 as Director of the Company pursuant to the letter of Petitioner No.2 dated 1st August, 2005;

g) Permanent injunction restraining the Company and its present board from dealing with or disposing of or alienating or encumbering any asset or property of the Company except strictly in the course of the business of the Company;

h) Permanent injunction restraining the Company and its Board of Directors from taking any decision in relation to the management and administration of the Company except with the previous approval of the petitioner;

i) Permanent injunction restraining the respondents and each of them from in any manner acting in derogation of the petitioner's rights as majority shareholders in the company and the

petitioner's right to control the management of the Company, including without limitation by way of sale of shares of the Company held by any of them to any third party except the petitioners;

j) ……

k) ……

l) Direct the reconstitution of the Board of the Company to reflect the majority control and the special rights accorded under the Agreements between the shareholders to the petitioners;

m) ……

n) ……."

Subsequently, on coming to learn that the shares in question had already been allotted to IOC, the Appellants filed an application for amendment of the petition to challenge the allotment in favour of IOC and seeking cancellation thereof.

7. Before the Company Law Board, hereinafter referred to as "the CLB", not only was it reiterated by the Chatterjee Group that PC had to

rejuvenate the Company and to implement the project, for which he was recognized as a "promoter" in the Memorandum of Understanding entered into on 3rd May, 1994, but that there was a clear understanding that the Chatterjee Group would have management interest in the Company. Before the CLB it was further contended that the Company was really a quasi-partnership with each of the three groups having financial stakes and management participation. The Chatterjee Group further claimed that the Memorandum of Understanding not only provided for the Appellants to hold 3/7th of the shares of the Company, but also 2/5th of the Directorship therein. WBIDC was also to have a 3/7th share in the Company so that the Company remain as a private company.

8. The Chatterjee Group also reiterated that in the JVA dated 20th August, 1994, the Chatterjee Group had been given a right of pre-emption to acquire the shares of WBIDC if it chose to

disinvest its shares. Before the CLB it was also emphasized that at the time of entering into a Memorandum of Understanding on 3rd May, 1994, it had been clearly understood between the parties that the Company would remain in the private sector. Repeating what has been indicated hereinbefore, learned counsel for the Chatterjee Group submitted before the CLB that in addition to the JVA, 4 letters had been exchanged between the Chatterjee Group and the WBIDC/GoWB providing for the Chatterjee Group to acquire at least 60% of the shares held by WBIDC at Rs.14/- per share upon the happening of certain events within a particular timeframe. Before the CLB the Chatterjee Group also contended that it was understood by the parties that the role of the Government would gradually be confined to promotion and guidance during the initial stages of the project, after which the control of the management would be in the private sector and the nominee of the Chatterjee Group

would be the Managing Director of the Company.

9. In support of its contention of mismanagement and oppression by the Company towards the Chatterjee Group, it was alleged that the decision to allot 150 million shares to IOC by WBIDC/GoWB had been taken behind its back with the sole intention of preventing the Chatterjee Group from acquiring the control of the Company's affairs, as was promised and understood at the initial stage when PC agreed to participate in the equity holdings of the Company. One of the major acts of oppression complained of by the Chatterjee Group before the CLB was that despite having received payment in respect of 155 million shares and having transferred the same to the Chatterjee Group, it did not complete the transfer by registering the transfer with the Company and altering its Register of Members accordingly, which effectively deprived the Chatterjee Group of having the promised majority shareholding in the Company. Before the

CLB it was further contended that had the said shares been registered in the name of the Chatterjee Group, the total shareholding of the Chatterjee Group would have been 51% which would have given them control of the affairs of the Company. Hence, a prayer had been made before the CLB for a direction upon WBIDC/GoWB to complete the transfer of the 155 million shares in favour of the Chatterjee Group.

10. On behalf of the Chatterjee Group it had also been contended before the CLB that it had agreed to induct IOC as a portfolio investor in the Company at the instance of GoWB. However, subsequently, by its letter dated 20th September, 2004, the Chatterjee Group had indicated that in view of the proposed public offer, there was no further necessity of inducting any portfolio investor, but the investment of Rs.150 crores by IOC could be considered. A resolution was adopted by the Company on 2nd November, 2004, to allot shares to IOC,

although the Chatterjee Group was against such allotment. In order to maintain the private character of the Company, the Chatterjee Group called upon WBIDC to sell 60% of its shareholding to the CP(M)C at the agreed price of Rs.14/- per share as recorded in the letter dated 30th September, 1994. It was further submitted before the CLB that upon such demand being made, discussions were held and it was mentioned that the GoWB and WBIDC would give in writing that the entire shareholding of WBIDC in the Company would be sold to the Chatterjee Group. It was, therefore, submitted that pursuant to such discussions and representations that an Agreement was reached on 14th January, 2005, between one Dr. Sabyasachi Sen and PC in the presence of Mr. Tarun Das, wherein they agreed to vote in support of the Resolution to allot 150 million HPL equity shares to IOC at par. The grievance of the Chatterjee Group before the CLB was that inspite of several letters written on

behalf of the Chatterjee Group, no steps were taken by the Company to give effect to the Resolution dated 14th January, 2005.

11. Another major grievance of the Chatterjee Group before the CLB was that sometime before 15th July, 2005, doubts regarding IOC's investment in HPL were substantiated when the letter dated 10th November, 2004, written by the WBIDC to IOC was discovered. It was contended before the CLB that by deliberately suppressing the discussions between WBIDC and IOC which would give IOC control over the management of HPL, WBIDC/GoWB wrongly obtained the consent of the Chatterjee Group to the Resolution of the Extra-Ordinary General Meeting held on 14th January, 2005, to allot shares at par to the Respondent No.6 IOC. The Chatterjee Group also complained that neither GoWB nor WBIDC had ever intended to honour the agreement dated 14th January, 2005, and from the letter dated 10th November, 2004, it was clear that GoWB and WBIDC did not intend to

sell the HPL shares held by the WBIDC to the Chatterjee Group.

12. It was also contended before the CLB by the Chatterjee Group that since HPL was not in immediate need of funds, the allotment of shares to IOC was not warranted despite the fact that the Chatterjee Group was ready and willing to complete the share purchase deal at the agreed price of Rs.14/- per share. By virtue of the superior bargaining power of the WBIDC and GoWB, the Chatterjee Group could not enforce their special rights on account of their continuing minority status in the Company, nor could it acquire control of the management thereof.

13. It was also contended that even the Articles of Association had not been modified or altered to reflect the rights which the Chatterjee Group enjoyed and the clandestine arrangement arrived at between the GoWB, WBIDC and IOC undermined the very

basis on which the request made by GoWB and WBIDC had been accepted by the Chatterjee Group. Accordingly, the said arrangement was required to be brought to an end for resolving the oppressive acts of the GoWB and the WBIDC.

14. On the basis of the aforesaid allegations, the Chatterjee Group contended before the CLB that the affairs of the Company were being conducted in a manner which was prejudicial to the public interest and oppressive to them. It was further contended that winding-up of the Company would unfairly prejudice the parties but that otherwise the facts would justify the making of a winding-up order on just and equitable grounds.

15. The aforesaid stand taken by the Chatterjee Group was opposed on behalf of the Company on the ground that inspite of having made several promises to infuse equity into the Company, it had failed to do so and in view of severe fund crunch faced by

the Company on account of such failure, the Company had no other alternative, but to transfer the shares in question to a party which was willing to do so. In fact, it was the joint contention of GoWB and WBIDC that since the Chatterjee Group had failed to abide by its commitments to infuse equity into the Company and as the affairs of the Company were at a point of collapse, with creditors, particularly the Indian Oil Corporation supplying Naphtha, which was the essential ingredient in the manufacturing process of the Company, demanding their outstanding dues even under the threat of taking appropriate action under the provisions of the Companies Act, 1956, the Company had no option but to transfer the 150 million shares to IOC as per the decision taken earlier.

16. In addition to the above, it was also submitted that the Chatterjee Group had agreed to the decision to induct the IOC in the Company as a portfolio investor.

17. The Company Petition was disposed of by the CLB by upholding the decision of the Company to allot 150 million shares to IOC, which would be at liberty to deal with the same in any manner it thought fit. Similarly, the transfer of 155 million shares by WBIDC to the Chatterjee Group at Rs.10/- per share was confirmed. A further direction was given to GoWB and WBIDC to transfer the 520 million shares held by them in HPL to the Chatterjee Group. The Chatterjee Group was also directed to purchase the 271 million preference shares held by GoWB and WBIDC at par. The CP(I)PL was directed to pay a sum of Rs.125 crores to WBIDC towards balance consideration for the 155 million shares on or before 28th February, 2007. It was further directed that on payment of the said amount, the shares in question would be deemed to have been dematerialized and transferred in the name of CP(I)PL, without any further deed or act or refusal from anyone or production of any instruction to

transfer. Significantly, the Chatterjee Group was also given liberty as soon as they paid the consideration for the 155 million shares, to take control of the day-to-day management of the Company as they would then be holding 51% of the equity shares, with the stipulation that no major decisions would be taken without the approval of the Court. The CLB also came to a definite finding that the 150 million shares allotted to IOC had not been so transferred suddenly or surreptitiously or with any ulterior motive and the allegation of a secret agreement between GoWB and IOC, though of very little significance, has been magnified by the Chatterjee Group in the Company Petition.

18. The Government of West Bengal, through its Joint Secretary in the Department of Commerce and Industry, filed an appeal before the Calcutta High Court against the said order of the CLB dated 31st January, 2007 under Section 10F of the Companies Act, 1956, and the same was numbered as A.P.O.No.45

of 2007. Among the various grounds taken in the Appeal, a question was raised as to whether the CLB could have assumed jurisdiction on the Company Petition filed by Chatterjee Petrochem (Mauritius) Ltd. Co., Winstar India Investment Company Ltd., India Trade (Mauritius) Ltd. and Chatterjee Petrochem (India) Pvt. Ltd., to enforce rights under private contracts. Another ground taken was that the CLB had erred in applying the doctrine of *legitimate expectation* in a Petition under Section 397 read with Sections 398 and 402 of the Companies Act, 1956, and in treating the Company to be a quasi-partnership. As a corollary to the said question, the Government of West Bengal also questioned the jurisdiction of the CLB to convert the Company Petition into a Suit for Specific Performance of Contract. It was also contended that the issues raised in the Company Petition were with regard to the disputes of a contractual nature between shareholders and the non-performance of

such contracts between the shareholders could not be treated to be the "Affairs of the Company". The *locus standi* of the Chatterjee Petrochem (India) Pvt. Ltd. to maintain a petition under Section 398 of the Companies Act was also questioned since on the date of filing of the Petition before the CLB, the said Company was not even a member of the Joint Venture Company. It was also reiterated that no case for mismanagement or oppression had been made out and the application under Section 398 of the above Act was liable to be dismissed.

19. Upon hearing the parties, the learned Single Judge held that CP(I)PL had no *locus standi* to maintain a petition under Section 397 of the Companies Act and that CLB could not have assumed jurisdiction on the Company Petition, in which CP(I)PL was a petitioner, since CP(I)PL was not a member of HPL. The learned Single Judge held that such a petition for the purpose of enforcing rights under private contracts would not be maintainable

and that the agreement entered into between CP(I)PL and WBIDC for transfer of shares, being a private contract between two shareholders, the same could not be the subject matter of a petition under Section 397 of the Companies Act, 1956. The learned Single Judge also observed that such agreements could not be treated to be "affairs of the Company" and that, in any event, such a ground had not also been pleaded in the Company Petition. The learned Judge held that the order of the CLB, which was based entirely on the question of transfer of the 155 million shares by WBIDC to CP(I)PL, stood vitiated by such jurisdictional error.

20. The learned Single Judge also held that the CLB was not justified in applying the concept of quasi-partnership, which had been urged on behalf of the Chatterjee Group, to HPL. According to the learned Single Judge, the question as to why a Limited Company should be considered to be a quasi-

partnership, would have to be decided on the facts of each case. While, on the one hand, it would be easy to apply the said concept to a closely-held Family Company or a Private Limited Company, as in cases where a partnership is converted into a Company, such an assumption could not be arrived at merely on the ground that the promoters of the Company described themselves as partners.

21. The learned Single Judge further held that from the entire pleadings in the Company Petition no case whatsoever had been made out that in conducting the affairs of HPL, the GoWB and WBIDC had oppressed the Petitioners in any way so as to attract the provisions of Section 397 of the Companies Act. The learned Single Judge also held that the CLB was not right in applying the doctrine of legitimate expectation to the agreement entered into between WBIDC and CP(I)PL on 8th March, 2002, thereby converting the Company Petition into a suit for specific performance of contract. The learned

Judge observed that by granting relief in the name of the doctrine of legitimate expectation, the CLB has actually enforced specific performance of the contract and agreements, which was beyond its jurisdiction.

22. Lastly, on the question of the induction of IOC and the allotment of 155 million shares to the said Company, the learned Single Judge held that the induction of IOC was on the basis of the Debt Restructuring Package and the Refinancing Scheme, which were to the advantage of HPL, and had been decided from time to time at the Board meetings of the Directors, which had been presided over by PC. On the basis of his aforesaid findings, the learned Single Judge, relying on the decision of this Court in Shanti Prasad Jain Vs. Kalinga Tubes Ltd. [(1965) 2 SCR 720], held that an order granting relief under Section 397 could be made only after affirming and recording an opinion on each of the three conditions mentioned in Section 397(2)(a) and

(b) of the Companies Act, 1956. The learned Single Judge held that in the instant case, no such opinion had either been formed or recorded by the CLB relating to the said three conditions. The learned Single Judge also rejected the submissions made on behalf of the Petitioners that an opinion with regard to the said two conditions would automatically follow from the opinion formed by the CLB on oppression, or such opinion could be gathered from the order of the Board itself. The learned Single Judge, accordingly, held that the order passed by the CLB was contrary to the provisions of Section 402(e) of the above Act, since no relief under the said Section could be granted without a finding having been arrived at that a case of oppression had been made out within the meaning of Section 397 of the aforesaid Act.

23. Appearing for the Chatterjee Group, Mr. Fali S. Nariman, learned Senior Advocate, did not seriously oppose the contention that the prayers in the

Company Petition were really for specific performance of the various agreements entered into by the parties, but that the same were on account of the acts of oppression and mismanagement on the part of GoWB, HPL and WBIDC with regard to the non-registration of the 155 million shares which had already been transferred by WBIDC in favour of the Chatterjee Group. Mr. Nariman urged that although the said shares had been transferred in favour of the Chatterjee Group and although the price in respect thereof had been duly received by HPL, the Company had not registered the said 155 million shares with the Company in the name of CP(I)PL and the transfer of the said shares was also not reflected in its Register of Members. Mr. Nariman contended that by not registering the 155 million shares in the name of the Chatterjee Group, which deprived the Chatterjee Group of being the majority shareholder, and, at the same time, allotting 150 million shares to IOC, the acts of the Company

reduced the Chatterjee Group from a majority shareholder to a minority shareholder, which amounted to oppressive treatment by the Company.

24. Mr. Nariman submitted that at the time of entry of the Chatterjee Group through the CP(M)C in 1994, the total issued share capital of HPL was 1010 million shares of Rs.10/- each and the shareholding pattern was as under :-

CP(M)C	-	433 million shares
WBIDC	-	433 million shares
Tatas	-	144 million shares

25. However, on 28th September, 2001, at the Board Meeting of HPL, a Resolution was taken to offer a Rights Issue to the existing shareholders so that a further sum of Rs.223 crores could be infused in HPL in the ratio of 107:107:36. Although, the other shareholders subscribed to the Rights Issue, the Chatterjee Group did not on the ground that such equity could be infused once the financial

restructuring of HPL had been completed. Accordingly, on 8th March, 2002, the shareholding pattern as per the Register of Members in the share capital of 1153 million shares was :

CP(M)C - 433 million shares = 37.56%

WBIDC - 540 million shares = 46.83%

Tatas - 180 million shares = 15.61%

26. Mr. Nariman submitted that in the Agreement dated 30th July, 2004, which was supplemental to the Agreement dated 12th January, 2002, executed by the GoWB, WBIDC, CP(M)C and HPL, it was specifically mentioned that GoWB had caused WBIDC to transfer to CP(I)PL, an affiliate of CP(M)C, shares worth Rs.155 crores and that CP(I)PL had become the beneficial owner thereof. However, the registration of the said shares in the books of HPL was kept pending till approval was obtained from the Lenders, being the Banks and Financial Institutions. Mr. Nariman submitted that as a

result, despite the transfer by WBIDC of 155 million shares in favour of CP(I)PL, WBIDC continued to be shown as owner thereof in the Share Register of the Company. Mr. Nariman submitted that once clearance had been obtained from the Lenders, WBIDC could no longer refuse to register the said 155 million shares in the name of CP(I)PL, which was an integral part of the Chatterjee Group.

27. Mr. Nariman submitted that the number of shares transferred by WBIDC to CP(I)PL comprised 13.44% of the total number of shares amounting to 1153 shares, which meant that along with the 36.56% of the shares held by the Chatterjee Group, the total worked out to 51% and gave the Chatterjee Group the management control of HPL and reduced the shareholding of WBIDC from 46.83% to 36.9%.

28. Mr. Nariman submitted that on the same day on which the Supplemental Agreement had been signed, a Share Subscription Agreement was executed by HPL,

CP(M)C, WBIDC and WINSTAR which, *inter alia*, referred to the agreement entered into by GoWB, WBIDC, CP(M)C and HPL on 12th January, 2002 and that WBIDC, CP(M)C and CP(I)PL had entered into an Agreement on 8th March, 2002, relating to the transfer of shares in the Company at Rs.10/- per share and pursuant to that agreement, CP(M)C came to be in management control of the Company.

29. Mr. Nariman urged that by signing the Share Subscription Agreement dated 30th July, 2004, WBIDC and HPL had acknowledged the fact that pursuant to the Agreements of 12th January, 2002 and 8th March, 2002, 155,099,998 shares had gone out of the holding of WBIDC and were held by CP(I)PL, a part of the Chatterjee Group. However, in the Company Petition filed before the CLB, WBIDC and GoWB denied the same and ascertained that the 155 million shares continued to be part of the holding of the WBIDC and a further stand was taken that at no point of time had the Chatterjee Group held the

majority shares in HPL. In addition to the above, by transferring 150 million shares to IOC, the WBIDC/GoWB had reduced the Chatterjee Group from a majority to a minority, which clearly amounted to oppressive treatment by the Company.

30. Mr. Nariman contended that on account of the various defaults committed by the Chatterjee Group in failing to infuse equity into HPL, in breach of the Agreement dated 12th January, 2002, WBIDC and the GoWB were absolved of the application to register the 155 million shares in favour of CP(I)PL. It was pointed out that under the aforesaid Agreement, CP(M)C had agreed to infuse Rs.107 crores into HPL, of which Rs.53.5 crores was to be paid within 5 working days of signing of the Agreement, which was executed on 25th January, 2002. Taking into account the aforesaid sum, CP(M)C was required to arrange for a minimum amount of Rs.500 cores, either as equity or equity-like instruments and/or advance from outside sources, including

strategic partners. The CP(M)C also agreed to organize Letters of Comfort to be issued within 30 days of signing of the Agreement for the purpose of overall debt restructuring of HPL which was concluded by 31st March, 2002. There was a further stipulation that the balance of Rs.53.5 crores, out of the sum of Rs.107 crores, was to be inducted by CP(M)C within 5 days of the acceptance of the Letters of Comfort.

31. Mr. Nariman further contended that the assurance given in Clause 5 of the Agreement, which assured CP(M)C 51% of the total paid-up equity of HPL, was not conditional to the infusion of equity worth Rs.500 crores by the Chatterjee Group. Such assurance was subject to compliance with the requirements of providing Letters of Comfort and acceptance thereof by the GoWB and upon payment of Rs.53.5 crores as stipulated. Mr. Nariman urged that since the said conditions had been fulfilled by the Chatterjee Group, it was incumbent upon GoWB

and WBIDC to transfer the 155 million shares to CP(M)C which was the beneficial owner thereof. It was submitted that the failure of WBIDC to effect such registration and at the same time, registering 150 million shares in favour of IOC, thereby reducing the Chatterjee Group to a minority shareholder, was a positive act of oppression on the part of the majority shareholder, which was sufficient to attract the provisions of Sections 397 and 398 read with Section 402 of the Companies Act, 1956. Mr. Nariman urged that even if the allotment of 150 million shares to IOC was not taken into consideration, the continuous refusal on the part of the Company to register the 155 million shares in the name of CP(I)PL, not only amounted to breach of the agreement dated 12th January, 2002, by which WBIDC and GoWB had agreed to ensure that the Chatterjee Group would remain in majority, but that the same also attracted the provisions of Section 397 of the Companies Act. Mr. Nariman submitted

that the said promise contained in the Agreement dated 12th January, 2002, formed the very basis on which PC had brought equity worth Rs.257 crores into HPL, but for which the Company would not have been able to restructure its debts. Learned counsel submitted that for WBIDC and GoWB to contend that the induction of the Chatterjee Group on an understanding that it would always have a majority control over the Company's management, was simply an agreement between two shareholders and not an affair of the Company, was not acceptable. Mr. Nariman urged that the refusal of the WBIDC to register the 155 million shares transferred to the CP(I)PL affected the shareholding pattern of the Company and was, therefore, directly an affair of the Company, which fact had been duly recognized by the CLB. Mr. Nariman submitted that it is on account of the various assurances given by WBIDC and the GoWB that the Chatterjee Group had become the owner of the 155 million shares, that it had

been the consistent stand of the Chatterjee Group that they were the majority shareholders of the Company.

32. Relying on the decision of this Court in Needle Industries (India) Ltd. & Ors. Vs. Needle Industries Newey (India) Holding Ltd. & Ors. [(1981) 3 SCC 333], Mr. Nariman submitted that in determining a question of oppression under Section 397 of the Companies Act, the Company Law Board was entitled to take into account facts which had come into existence after the company petition had been filed. Learned counsel gave several instances where despite having given assurances that the shares in question would stand transferred in favour of CP(I)PL, the GoWB and WBIDC had failed to complete the transfer on one ground or the other, despite stating that the GoWB stood committed to the transfer of the shares to the Chatterjee Group as per the Agreements dated 12th January, 2002, 8th March, 2002 and 30th July, 2004.

33. Mr. Nariman submitted that the clandestine manner in which WBIDC had transferred 150 million shares in favour of IOC was in complete breach of the agreement between WBIDC and PC that the Chatterjee Group would remain the majority shareholder and would also have the control and management over the company's affairs. Mr. Nariman submitted that had it been brought to the knowledge of the Chatterjee Group that such a secret agreement to transfer 150 million shares to IOC was being negotiated, it would have never voted at the Extraordinary General Meeting of the Company on 14th January, 2005, in support of the allotment of the said shares to IOC.

34. Although, Mr. Nariman had made certain submissions with regard to the Agreement of 8th March, 2002, read with the requirements of the Depositories Act, 1996, SEBI (Depositories and Participants) Regulations, 1996 and the bye-laws

and business rules/operating instructions issued by the depositories, we shall, if need be, refer to the same at a later stage of the proceedings.

35. Mr. Nariman submitted that the concept of oppression for the purposes of Sections 397, 398 and 402 of the Companies Act had been considered by this Court in various cases. Learned counsel pointed out that in the Needle Industries case (supra), this Court had observed that the behaviour and conduct complained of must be held to be harsh and wrongful and in arriving at such a finding, the Court has to look at the business realities of the situation and not confine itself to a narrow legalistic view and allow technical pleas to defeat the beneficial provisions of the Section. Mr. Nariman submitted that when the Company was in substance, though not in law, a partnership, there had to be utmost good faith between the members. Mr. Nariman submitted that this Court had gone even further to indicate that even if no oppression was

made out in a Petition under Section 397 of the Companies Act, the Court is not powerless to do substantial justice between the parties.

36. Learned counsel submitted that Company law had developed seamlessly from the law of partnership which is based on mutual trust and confidence, as was observed by the House of Lords in O'Neill Vs. Phillips [(1999)2 All ER 961], and in such a situation, the highest standards of honour had to be maintained. It was also submitted that the aforesaid decision of the House of Lords which was based on the earlier decision in Blisset Vs. Daniel [68 E.R. 1022], was subsequently reiterated by the House of Lords in Ebrahimi Vs. Westbourne Galleries [(1972) 2 All ER 492] and also by this Court in the Needle Industries case (supra). Mr. Nariman urged that in Dale & Carrington Invt. P. Ltd. Vs. P.K. Prathapan [(2005) 1 SCC 217], this Court had held that if a Member who holds the majority of shares in a Company is reduced to the position of a

minority shareholder by an act of the Company or by its Board of Directors, the said act must ordinarily be considered to be an act of oppression to such Member.

37. Reference was also made to the decision of this Court in Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao & Ors. [(1955) 2 SCR 1066], wherein, Venkatarama Ayyar, J., as His Lordship then was, while referring to an equitable and just principle, held that when the said doctrine specifying the ground of winding-up by the Court is not to be construed as *ejusdem generis* then whether mismanagement of Directors is a ground for passing of a winding up order under the Indian Companies Act, 1913, becomes a question to be decided on the facts of each case. Mr. Nariman pointed out that in the aforesaid judgment, the learned Judge had referred to the decision in Loch Vs. John Blackwood Ld. [(1924) AC 783], in which an order for winding-up of the Company was ordered on

the ground of mismanagement by the Directors and the law was stated as follows :-

> "It is undoubtedly true that at the foundation of applications for winding up, on the 'just and equitable' rule, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs. But this lack of confidence must be grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company's business. ……"

38. Mr. Nariman submitted that following the aforesaid principle, this Court had in M.S.D.C. Radharamanan Vs. M.S.D. Chandrasekara Raja & Anr. [(2008) 6 SCC 750], observed that once the Company Law Board gave a finding that acts of oppression have been established, an order in terms of Sections 397 and 402 on the doctrine of winding-up of the company on just and equitable grounds, becomes automatic. Accordingly, the interference

by the learned Single Judge with the order of the CLB was wholly unwarranted.

39. Appearing for Winstar India Investment Company Ltd., Mr. Sudipto Sarkar, learned Senior Advocate, while adopting the submissions made by Mr. Nariman, emphasized Mr. Nariman's submissions on quasi partnership. In the said context, he submitted that in dealing with a petition under Section 397/398 of the Companies Act the Court has to consider business realities, instead of confining itself to a narrow legalistic view. Learned counsel argued that in the Needle Industries case (supra), this Court, *inter alia*, observed that technical pleas should not be allowed to defeat the beneficent provisions of Section 397/398 of the Companies Act. Mr. Sarkar submitted that the said principle had been subsequently followed by this Court in (i) Sangramsinh P. Gaekwad & Ors. Vs. Shantadevi P. Gaekwad (Dead) through LRs. & Ors. [(2005) 11 SCC 314]; (ii) Kamal Kumar Dutta & Anr.

Vs. Ruby General Hospital Ltd. & Ors. [(2006) 7 SCC 613]; (iii) M.S.D.C. Radharamanan's case (supra). Mr. Sarkar submitted that in Sangramsinh P. Gaekwad's case (supra) this Court had observed that the jurisdiction of the Court to grant appropriate relief under Section 397 of the Companies Act is of wide amplitude and while exercising its discretion, the Court was not bound by the terms contained in Section 402 of the said Act, if in a particular fact situation a further relief or reliefs was warranted. Furthermore, in a given case, even if the Court came to a conclusion that no case of oppression had been made out, it could still grant such relief so as to do substantial justice to the parties.

40. Mr. Sarkar submitted that a Joint Venture Agreement, in fact, contemplates a partnership, as was indicated by this Court in New Horizons Ltd. & Anr. Vs. Union of India & Ors. [(1995) 1 SCC 478], where the expression "Joint Venture" was examined.

It was noted that the said expression connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. Mr. Sarkar submitted that the terms and conditions of the Joint Venture Agreement in the instant case satisfies all the requisites of a partnership, which made it evident that the Joint Venture Company was nothing but a quasi-partnership as per the tests laid down by the House of Lords in Ebrahimi Vs. Westbourne Galleries Ltd & Ors. [(1972) 2 All ER 492], followed in Needle Industries case (supra). Mr. Sarkar submitted that in Ebrahimi's case, Lord Wilberforce writing the main judgment indicated that the reliefs prayed for were for a direction upon the Respondent No.2 and his son to purchase the appellant's share in the company. In the alternative, an order for winding

up of the company was sought. The learned Judge found that some of the allegations made remained unproved and that the complaint made did not amount to such a course of oppressive conduct as to justify an order under Section 210 of the Companies Act, 1948, in furtherance of the first relief.

41. Mr. Sarkar then proceeded to the question of legitimate expectation and contended that in Company Law there was sufficient room for recognition of the fact that there could be individuals with rights, expectations and obligations which may submerge in the corporate structure. In this regard, Mr. Sarkar submitted that the said doctrine of an enforceable expectation was considered in Re Saul D Harrison & Sons plc [1995] 1 BCLC 14, approved in O'Neill's case (supra). Several other decisions in this regard were cited by Mr. Sarkar which do not require elaboration.

42. Mr. Sarkar submitted that when joining the Company in 2004, Winstar had a legitimate expectation arising from the Subscription Agreement dated 30th July, 2004, which indicated that the Chatterjee Group was in management and control of the affairs of HPL and that the Company would also have its private auditors and had it not been for the recitals in the Subscription Agreement, Winstar may not have invested funds in HPL at all. Mr. Sarkar submitted that the conclusion was inescapable that even if no case of oppression had been made out in the Company Petition filed by the Chatterjee Group, relief under Section 397/398 could still be granted under Sections 397 and 398, if it was just and equitable to do so. Referring and placing reliance on a decision of this Court in V.S. Krishnan & Ors. Vs. Westfort Hi-Tech Hospital Ltd. & Ors. [(2008) 3 SCC 363], Mr. Sarkar urged that once the conduct of the management was found to be oppressive under Sections 397 and 398 of the

Companies Act, the discretionary power given to the CLB under Section 402 of the Companies Act to put an end to such oppression was very wide. Mr. Sarkar urged that the expression "legitimate expectation" had found its place in Indian Jurisprudence and has been considered by this Court in Needle Industries case (supra), which was followed in V.S. Krishnan's case (supra) and several other cases. The Agreement of WBIDC to transfer its entire shareholding to the Chatterjee Group gave rise to an expectation that such an expectation would be fulfilled. Mr. Sarkar contended that since WBIDC did not fulfil its reciprocal promise to sell its entire shareholding in HPL to CP(M)C, it was not open to either WBIDC or GoWB to contend that the direction given by the CLB upholding the allotment of 150 million shares to IOC and directing WBIDC/GoWB to transfer its entire shareholding to the Chatterjee Group was

contrary to law or without jurisdiction or erroneous.

43. Mr. Sarkar submitted that having transferred 155 million shares in favour of the CP(I)PL it was not open to the GoWB and WBIDC to refuse to register the same, despite having received the entire price for the same. Mr. Sarkar also reiterated that it is such a promise which had been incorporated in the agreements dated 12th January, 2002 and 8th March, 2002 as also 30th July, 2004, that had weighed with Winstar to invest Rs.147 crores in the Company. Accordingly, even if it was held that no case of oppression had been made out against the Company, it would still be open to the learned Company Judge to grant suitable relief to iron out the differences that might appear from time to time in the running of the affairs of a Company.

44. While considering the submissions made on behalf of the Chatterjee Group, we might as well refer to the arguments advanced by Dr. Abhishek Manu Singhvi, learned Senior Advocate, appearing for the India Trade (Mauritius) Ltd. (ITML), which is part of the Chatterjee Group and was the co-Petitioner No.3 in Company Petition No.58 of 2005 filed by the Chatterjee Group before the Company Law Board. ITML is also the Appellant in Civil Appeal No.5437-5440 of 2008. Incidentally, Dr. Singhvi also appeared for Dr. Purnendu Chatterjee, who was made Respondent No.20 therein.

45. Dr. Singhvi contended that ITML had infused a sum of Rs.107 crores into HPL, which amount, along with Rs.143 crores separately infused in HPL by the Chatterjee Group of Companies, was vitally necessary for the financial health of HPL and its revival and prosperity. Dr. Singhvi submitted that such investments had been made, without any written agreement or commitment, on the clear understanding

and expectation that it would be a partnership and a commercial enterprise where the Chatterjee Group would have a controlling interest and HPL would, therefore, be a non-government company. Dr. Singhvi submitted that the subsequent conduct of GoWB, IOC, Lenders, Chairman and Managing Director of HPL had resulted in grave irreversible damage to ITML, involving breach of fiduciary and corporate obligations which was clearly oppressive and was sufficient ground for interference by the CLB in the proceedings initiated by the Appellants under Sections 397 and 398 read with Section 402 of the Companies Act, 1956.

46. Dr. Singhvi submitted that despite the attempts of GoWB and WBIDC to make an issue of the non-infusion of Rs.107 crores by the Chatterjee Group, at no point of time had the Chatterjee Group refused to invest the amount in HPL, though on certain conditions. Referring to Dr. Chatterjee's letter dated 4th December, 2001, Dr. Singhvi pointed

out that in the said letter it had been clearly indicated that CP(M)C was prepared to bring equity into the company in the context of a comprehensive restructuring of HPL's balance sheet and management control in line with the original promise made to the Chatterjee Group for management control of HPL. A suggestion was also made to avail of the corporate debt structuring available under established Reserve Bank of India procedure. Dr. Singhvi submitted that the entire sum of Rs.107 crores which CP(M)C had agreed to invest had, in fact, been infused by the Chatterjee Group, though not by subscribing to the Rights Issue, but by arranging loans for the entire amount. Dr. Singhvi contended that the entire loan amount which had been arranged by the Chatterjee Group was also repaid by it without any liability to the Company. Even the interest accrued on the loan of Rs.107 crores from 12th June, 2002, till the date of repayment, was discharged by the Chatterjee Group

in full, which was duly acknowledged by HPL. Dr. Singhvi submitted that subsequently a further sum of Rs.53.5 crores was made available to HPL through HSBC on the understanding that the interest accrued on the loan, starting from the date of disbursement of the loan until its conversion, would be borne by CP(M)C.

47. Dr. Singhvi urged that Dr. Chatterjee had been invited and had come into the project as an equal co-owner, unlike the other private investors who were neither promised nor given equal partnership. As per the Agreement between GoWB and WBIDC, the character of HPL was always intended to remain a private non-Government Company by projecting a shareholding ratio of 3:1:1 where four out of the seven parts would be held by Dr. Chatterjee and the Tatas.

48. Reiterating all that had been said on behalf of the Chatterjee Group by Mr. Nariman and Mr. Sudipto

Sarkar, Dr. Singhvi submitted that the induction of IOC into the Company was contrary to the wishes of the Chatterjee Group since by not registering the 155 million shares in favour of the Chatterjee Group and on the other hand allotting 150 million shares to IOC, an imbalance was created which led to HPL becoming a Section 619-B Company under the Companies Act, 1956, thereby losing its private character. Dr. Singhvi submitted that it had been understood by GoWB, WBIDC and the Chatterjee Group, that IOC would be brought in not as a strategic partner but as a portfolio investor, but ultimately negotiations were commenced by GoWB and WBIDC to bring in IOC as a strategic partner with management control, although such a proposal had earlier been categorically turned down by GoWB on 2nd July, 2002.

49. Dr. Singhvi submitted that the observations contained in the impugned judgment of the High Court that Dr. Chatterjee was not in a position to complete the deal and was trying to delay matters

by asking for transfer of the said 155 million shares to the Chatterjee Group and the IOC's unconditional withdrawal from HPL, as a condition precedent for completion of the deal, was without any foundation, since from the records it would be clear that on 22nd July, 2005, GoWB had indicated that it wanted to conclude the transaction by 25th July, 2005. As a matter of fact, by his letter of 25th July, 2005, Dr. Chatterjee had indicated his willingness to conclude the transaction and provided a letter from the Deutsche Bank, also dated 25th July, 2005, indicating the availability of funds to the tune of 266 million US dollars to conclude the transaction.

50. Dr. Singhvi submitted that it was GoWB and WBIDC which had fraudulently omitted to disclose the secret arrangement for the induction of IOC into HPL as a strategic partner in the Explanatory Statement to the notice for the Extraordinary General Meeting issued on 21st December, 2004. Dr.

Singhvi urged that there was no need to induct IOC for effectuating the debt restructuring process, since HPL had also taken steps for IPO of 300 million shares which would have fetched at least Rs.540 crores based on the indicated price of Rs.18/- per share. Dr. Singhvi submitted that Dr. Chatterjee objected to the allotment of shares to the IOC as that would immediately convert the Company into a Section 619-B Company since 155 million shares transferred by WBIDC in favour of the Chatterjee Group was yet to be registered.

51. Dr. Singhvi submitted that the allegation made against Dr. Chatterjee that he had moved in a calculated manner to obtain majority control of the Company and to oppose the allotment of 150 million shares to IOC, was without any foundation, since 155 million shares had already been transferred to the Chatterjee Group and the same was a concluded contract. Furthermore, when GoWB made a commitment to sell to the CP(M)C all the HPL shares held by

WBIDC, there was no reason for Dr. Chatterjee to oppose the induction of IOC as a portfolio investor. All that Dr. Chatterjee wanted was that GoWB and WBIDC should effect registration of the 155 million shares already transferred and for which the price had already been paid. Dr. Singhvi submitted that the observation made by the learned Single Judge was wholly misconceived since the GoWB and WBIDC had in the Agreements dated 12th January, 2002 and 8th March, 2002, already acknowledged that on account of the transfer of the said 155 million shares, the Chatterjee Group was in management and control of HPL. The further finding of the learned Single Judge that IOC had threatened civil and criminal action against HPL and its Directors for its unpaid dues for supply of Naphtha, was also not justified, since Dr. Chatterjee had strongly supported the refinancing package which had been approved by the Board of HPL. Dr. Singhvi submitted that Dr. Chatterjee and the Chatterjee

Group had always wanted to act in the interest of the Company upon the assurance given by GoWB and WBIDC that HPL would always remain a private company and that the Chatterjee Group would always have control over the management thereof.

52. Dr. Singhvi then submitted that HPL had played an active role by supporting GoWB and WBIDC in the ongoing litigation, contrary to the understanding in terms of the Agreement dated 12th January, 2002 and the Share Subscription Agreement dated 30th July, 2004, which contemplated that the Chatterjee Group was to be in management of the Company. By allowing the transfer of 150 million shares to IOC and by not registering the 155 million shares transferred to the Chatterjee Group by WBDIC, the Company had created a situation in which the Chatterjee Group, which was admitted to be in control of the Company, was reduced to a minority. Dr. Singhvi pointed out that the direct consequence of the aforesaid acts of GoWB and WBIDC resulted in

decline of profit before tax in 2007-08 and 2008-09, thereby adversely affecting the interest of the Company and the shareholders.

53. Dr. Singhvi submitted that the part played by Mr. Tarun Das, the Chairman of HPL, was also partisan and was contrary to the interest of the Chatterjee Group which, it had been agreed, was to be in management and control of the Company and its affairs. Reiterating the submissions made by Mr. Nariman, Dr. Singhvi submitted that the secret and clandestine move to convert HPL into a 619-B Company by the arrangement entered into between WBIDC and IOC went against the very grain of the agreements entered into between the Chatterjee Group and WBIDC/GoWB in that regard.

54. Dr. Singhvi submitted that in the entire exercise, Mr. Tarun Das, the Respondent No.7, who was also the Chairman of the Company, had precipitated the allotment of 150 million shares to

IOC, although, the Re-financing Package approved by IDBI on 27th May, 2005, and by the Board of HPL on 28th May, 2005, did not contemplate allotment of shares to IOC. Mr. Tarun Das had on his personal initiatives obtained and circulated an opinion from a senior counsel relating to the issue of shares to IOC and even the same had not been circulated to the Members of the Board in full, and they were deliberately kept in the dark in respect of certain portions of the opinion. Dr. Singhvi pointed out that under Section 289 of the Act the full opinion was required to be circulated to the Members of the Board and in the absence thereof, the opinion could not be relied upon. Dr. Singhvi repeated his earlier charge that GoWB/WBIDC had acted with the sole intention of reducing the Chatterjee Group from a majority shareholder in HPL to a minority, which was sufficient ground for an application under Sections 397, 398 and 402 of the Companies Act, 1956.

55. Dr. Singhvi contended that despite having acknowledged the Chatterjee Group as a prime sponsor of HPL and that the CDR Package and the Re-financing Package of HPL had been considered because of Dr. Chatterjee, the Lenders sacrificed their own interest by permitting the Chatterjee Group to be ousted from the management of HPL after the complaint was filed before the Company Law Board by the Chatterjee Group.

56. Dr. Singhvi submitted that the appointment of Mr. S.K. Bhowmick as Managing Director of the Company, after being appointed as the Additional Director as there was no vacancy on the Board and his appointment as Managing Director, was wholly illegal since only a Director could be appointed to the said post. Dr. Singhvi submitted that the Company played a dubious role in disallowing the claim of Winstar to have a Director on the Board of HPL on the ground that there was no vacancy,

although, a vacancy had arisen on the resignation of Mr. Ratan Tata, which vacancy was utilized for regularization of the irregular appointment of Mr. Bhowmick and his subsequent re-appointment in view of the Agreements entered into on 12th January, 2002 and 30th July, 2004, which provide that CP(M)C is to be in management and control and the Managing Director is to be nominated and appointed by the Chatterjee Group. Dr. Singhvi submitted that the aforesaid acts were sufficient to indicate the manner in which the Company and the majority shareholders had acted against the interest of HPL in general, and had by their acts of oppression and mismanagement, seriously affected the entire scheme on the basis whereof the Chatterjee Group had agreed to invest large amounts in HPL.

57. Learned Senior Advocate, Mr. Ashok Desai, appearing for Haldia Petrochemicals Ltd., the Respondent No.1 in all the appeals, repeated and reiterated the submissions made on behalf of the

appellants regarding the manner in which the GoWB conceptualised HPL as a showcase project of the GoWB on its coming into existence. Mr. Desai submitted that apart from equity, for the purpose of starting the project HPL had planned to avail credit from financial institutions and banks to the extent of Rs.2,400 crores. The project involved a total investment of Rs.3,600 crores. Mr. Desai submitted that this in itself would indicate that the principle of quasi-partnership, as urged both by Mr. Nariman and Mr. Sarkar, could not apply to the Company, both at the time when it was conceived and during the subsequent period when the shareholdings of the parties changed periodically. Mr. Desai submitted that, in any event, HPL is today recognized as a deemed Government Company under Section 619-B of the Companies Act, 1956 and steps have been taken by the Comptroller and Auditor General of India under Section 619(2). However, since its incorporation in 1985, HPL was

and continues to remain a Board-managed Company with 16 Directors on its Board with equal representation of the two major promoters, namely, GOWB and the Chatterjee Group having 4 Directors each, 5 Nominee Directors, 2 independent Directors and 1 Managing Director.

58. Mr. Desai submitted that although on behalf of the appellant it was contended that allotment of shares to IOC was highly improper and oppressive, such a course of action had to be resorted to since not only was HPL suffering from severe financial crunch, but that Naphtha, which is the main raw material for production of Polymer and Chemicals, was being supplied by IOC, which has its refinery by the side of the HPL plant at Haldia. Mr. Desai submitted that IOC, therefore, had a strong, commercial and symbiotic relationship with HPL which had developed over the years and HPL had also started procuring Naphtha on credit basis and the dues on such account had also multiplied. It was,

therefore, in the interest of HPL that when the Chatterjee Group failed to infuse equity into the Company, 150 million shares were allotted to IOC for providing such equity.

59. Mr. Desai submitted that the case of the Appellants could be summarised into a few specific issues, namely,

(a) that the Chatterjee Group had all along acted on the basis of the promise which had been held out by GoWB, WBIDC and the Company that the Company would always remain a private Company in which the Chatterjee Group would have managerial control and that it was towards that end that 155 million shares were transferred by WBIDC to the Chatterjee Group, though, ultimately it went back on its word and refused to register the same;

(b) GoWB, WBIDC and HPL beguiled the Chatterjee Group into agreeing to the transfer of 150 million shares to IOC by entering into agreements in which it was admitted that upon transfer of the 155 million shares to the Chatterjee Group its shareholding was 51% and that the Chatterjee Group was in management and control of the affairs of the Company;

(c) even if the ingredients of Sections 397 and 398 of the Companies Act were not proved during the hearing of the Company Petition, the Company Law Board had ample jurisdiction to pass appropriate orders for the benefit of and in the interest of the Company, under Section 402 thereof.

60. Mr. Desai submitted that all the aforesaid submissions made were misconceived and that in order to file a complaint under Section 397 of the above Act, the complainant had to be a **Member** (emphasis supplied) of the Company, having the requisite standing under Section 399 of the Act. It was also urged that the conduct complained of had to be such as to be oppressive to the complainant/complainants as shareholders/members. Inasmuch as, CP(I)PL was not a member of HPL, it could not have filed and maintained the complaint under Section 397 before the Company Law Board. Mr. Desai submitted that it was no doubt true that upon transfer of the shares, the transferee became the beneficial owner thereof, but till the shares were registered in the Company's Share Register and subsequently, in the records of the Registrar of Companies, the transferee did not acquire the right to vote at a meeting of the Company on the basis of acquisition of the said shares. Mr. Desai

submitted that for all practical purposes the transferor remained in control of the transferred shares and also enjoyed the right to vote on the strength thereof. The failure of the transferor to have the shares registered with the Company, did not amount to an act of oppression of the Company, but was an area of dispute between the transferor and the transferee and it could not be said that the inaction of the transferor amounted to oppression within the meaning of Section 397 of the Companies Act. Mr. Desai also submitted that the oppression complained of should be such as would lead to a conclusion that it would be just and equitable to wind up the Company under Section 433(f) of the above Act.

61. Referring to the decision of this Court in Shanti Prasad Jain's case (supra), Mr. Desai submitted that in the said decision it had been emphasized that the oppression complained of had to be shown as having been brought about by a majority

of members exercising a predominant voting power in the conduct of the Company's affairs and must relate to the manner in which the affairs of the Company were being conducted. Such conduct must also be shown as being oppressive to a minority of the members in relation to the shareholding in the Company. It was also emphasized that although, the facts disclosed might appear to furnish grounds for the making of a winding up order under the "just and equitable" principle, such facts must be relevant in disclosing that the winding up order would unfairly prejudice the minority members in relation to the shareholders. Referring to the use of the expression "legitimate expectation" by Lord Justice Hoffmann sitting in the Court of Appeal, in the decision rendered in Ebrahimi's case (supra), Mr. Desai submitted that subsequently in the case of Saul D Harrison & Sons Plc (1995) 1 BCLC 14, after referring to the decision in Ebrahimi's case (supra), Lord Justice Hoffmann held that such an

expression had been borrowed from public law to describe the correlative right in the shareholder to which such a relationship might give rise.

62. Mr. Desai also urged that the decision in Kalinga Tubes Ltd.'s case (supra) was also relied upon by this Court in the Needle Industries case (supra), wherein it was held that on a true construction of Section 397, an unwise, inefficient or careless conduct of a Director in the performance of his duties cannot give rise to a claim for relief under that Section. 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. As to the findings of both the Company Law Board and the High Court in relation to the applicability of Section 398 of the above Act, Mr. Desai submitted that since both the Courts had held that

the same was not attracted, there was really little to add to the observations of both the forums that there was absolutely no reason to say that GoWB and WBIDC with their associates were conducting the affairs of HPL in any manner prejudicial to HPL's interests. The allotment made in favour of IOC was, in fact, in the interest of the Company and the allotment of shares to IOC was part of the terms and conditions of the debt restructuring package.

63. Regarding the failure of WBIDC to register the 155 million shares in favour of CP(I)PL, Mr. Desai submitted that, in fact, there was no pleading in that regard in the Company Petition filed by CP(I)PL. Accordingly, neither could CP(I)PL maintain the Company Petition, not being a member of HPL, nor could any prayer have been made for a direction upon the Company to register the said shares in the name of CP(I)PL. Mr. Desai pointed out that though such a pleading was subsequently included in the Rejoinder Affidavit, no application

was ever made for amendment of the pleadings and the prayers in the Company Petition.

64. To support his submissions, Mr. Desai referred to the decision of the Calcutta High Court in Re. Bengal Luxmi Cotton Mills Ltd. [1969 CWN 137], Sangramsingh P. Gaekwad & Ors. Vs. Shantadevi P. Gaekward & Ors. [(2005) 11 SCC 314], R. Ramanathan Chettiar Vs. A & F Harvey Ltd. & Ors. [967 (37) Comp. Case 212], wherein the principles laid down in the Needle Industries case (supra) had been followed. Mr. Desai submitted that the 155 million shares transferred to CP(I)PL by WBIDC continued to be held by WBIDC and were never lodged with the Company.

65. Lastly, on the question of allotment of 150 million shares to IOC, Mr. Desai referred to the observations of the Company Law Board which recorded that such allotment could not be questioned by the Chatterjee Group, since the same

was neither clandestine nor surreptitious and was under contemplation from 2000 itself and the idea of inducting IOC was initiated by Dr. Chatterjee himself, as would be evident from the letter dated 24th March, 2000, addressed to the Chief Minister, as the Company was in dire need of funds. Mr. Desai pointed out that the said view was endorsed by the learned Single Judge of the High Court by observing that the Chatterjee Group had failed to produce any evidence with regard to the allegations that the allotment of shares to IOC was pursuant to a clandestine agreement to permit IOC to participate in the management of HPL.

66. Mr. Desai submitted that the case made out by the appellants before the Company Law Board was not only devoid of substance, but was entirely misconceived, since the same was not maintainable at the instance of CP(I)PL which was not a member of HPL. Even the allegations of oppression remained unproved, since the entire content related to the

transaction between WBIDC and CP(I)PL, which was not the act of the Company, as contemplated in Section 397, but a private dispute between two groups of shareholders. Mr. Desai submitted that the appeals were liable to be dismissed with appropriate costs.

67. Mr. Dushyant Dave, learned Senior Advocate, appearing for the Industrial Development Bank of India (IDBI) pointed out that a loan agreement had been entered into between HPL and IDBI for a sum of Rs.12,500 lakhs and in the event the borrower defaulted on the loan, the Bank would have the right to convert upto 20% of the loan into fully paid up equity of the Company. The Bank was also given the right to appoint a Nominee Director on the Board of HPL. Mr. Dave submitted that in 2003 the question of restructuring of the debt came up for consideration and in its meeting held on 8th August, 2003, the Company agreed to allow IDBI to refer the Company to the Corporate Debt

Restructuring (CDR) Cell with a debt restructuring proposal. Subsequently, on a 22nd January, 2004, at a meeting of the Empowered Group, Dr. Chatterjee agreed for conversion of debt to equity to the extent of Rs.140 crores. Thereafter, on 23rd March, 2004, the Board of Directors of HPL approved a CDR package and Dr. Chatterjee's proposal to convert debt to equity. Dr. Chatterhee was, in fact, interested to give effect to the same. Mr. Dave submitted that subsequently the debt restructuring plan failed to fructify and the Bank was informed by the Principal Secretary, Government of West Bengal, on 27th July, 2005, that the permission which had been granted in the credit restructuring package, be treated as annulled.

68. In the pending proceeding before the CLB, Chatterjee Petrochemicals Ltd. had got an interim order in its favour staying further allotment of shares of Rs.135 crores to IDBI. However, IDBI was neither a party to the proceedings nor was any

relief, either final or interim in nature sought against IDBI. But by virtue of the interim order of injunction passed by the CLB, the allotment of shares to IDBI was stayed, as that would have reduced the Chatterjee Group to a minority. Mr. Dave submitted that the application filed by IDBI before the CLB was kept in abeyance and no order was passed thereupon as it was likely to hamper the progress of negotiation. Mr. Dave submitted that the writ petition filed by IDBI against the said order before the Delhi High Court was dismissed by the learned Single Judge and the appeal preferred therefrom was also dismissed by the Division Bench. Ultimately, in its final judgment dated 31st January, 2007, the CLB gave directions to the effect that Chatterjee Group would purchase 155 million shares from GoWB/WBIDC at a minimum price of Rs.28.80 per share. It was also directed that the 155 million shares transferred to the Chatterjee Group would be dematerialized and

registered and that the allotment to the IOC would remain.

69. Mr. Dave submitted that the question of CP(I)PL having any legitimate expectation did not arise and such a case was not also pleaded before the Board. Furthermore, since nothing had been proved before the Board that the conduct of GoWB and WBIDC was such as to justify an order of just and equitable winding up, no order could have been passed by the Board on the Company Petition filed by the appellants and the learned Single Judge of the High Court rightly allowed the appeals preferred against the order of the Board.

70. Appearing for the Respondent No.16, Mr. Altaf Ahmed, learned Senior Advocate, submitted that nowhere in the Company Petition had any allegation been made against the Managing Director as to his involvement in any manner in the acts of oppression alleged to have been committed against the

complainant. Accordingly, as had been held by the CLB in its final order dated 31st January, 2007, the Company Petition, though filed under Sections 397 and 398 of the Companies Act, was essentially one under Section 397 of the aforesaid Act. Mr. Ahmed submitted that the said finding of the CLB had been duly upheld by the High Court.

71. Mr. Ahmed submitted that the question raised by the Chatterjee Group with regard to the employment of Mr. Bhowmik as the Managing Committee was without any basis whatsoever, since he was appointed unanimously by the Board of Directors consisting of the nominees of the different shareholders. Mr. Ahmed also pointed out that the Respondent No.16 had been responsible for the resurrection of HPL from the brink of financial disaster which had been occasioned by the failure of the promoters to infuse equity into the Company. It was only after assessment of his performance during the initial two year period of his tenure

that the Board of HPL reappointed him for a further period of 3 years, inspite of the objection from the Chatterjee Group.

72. Mr. Ahmed submitted that the Respondent No.16 has moved I.A.Nos.25-28 of 2009 for a direction upon the Company to pay his arrears of salary as per the resolution passed by the Board of Directors on 28th May, 2008, for the period covering 29th March, 2005 to 31st March, 2007. A further prayer has also been made to fix the pay of the said Respondent for the period from 1st April, 2007, till 31st March, 2010, at a rate as might be deemed just, proper and reasonable.

73. As far as the Tatas are concerned, it was submitted that the Tata Group was one of the original promoters of HPL and continues to hold more than 2% of the shares in the Company. It was submitted that the Tatas were keen to see HPL flourishing and had, accordingly, between 1994 and

2000 made significant infusion of funds into HPL, including a sum of Rs.11.89 crores which was given as an interest free loan. Even in 2000 when the Company was in dire financial straits, the Tatas brought in their share of Rs.35.71 crores along with other shareholders, except for the Chatterjee Group which failed to bring in its share of Rs.107.14 crores. It was made clear that the Tata Group had no faith in the Chatterjee Group since from the very inception of HPL the Chatterjee Group wanted control of HPL, without making any effective contribution at times when such contribution was most needed and had, therefore, worked against the interest of the Company, its shareholders and the public at large.

74. Mr. K.K. Venugopal, learned Senior Advocate, who appeared for the Government of West Bengal and its officials, urged that the relief prayed for in the Company Petition for specific relief, could not be granted under Section 397 of the Companies Act.

Since the said question had been adequately dealt with on behalf of WBIDC, Mr. Venugopal chose to deal with the directions given by the CLB to the GoWB to disinvest its entire shareholding in HPL, which was a Company set up in public interest and for which a huge extent of land had been acquired for the public purpose of maintaining supplies and services essential to the life of the community, by setting up a Petro Chemical Complex at Haldia. Mr. Venugopal contended that it was settled law that the decision of the Government to disinvest or not to disinvest was not in the realm of public law and was not, therefore, amenable to challenge or interference, unless it amounted to an abuse of power by the Government.

75. Mr. Venugopal submitted that the order and directions of the CLB would exclude the State Government from having any future role to play in the running and management of HPL. Learned counsel submitted that in a matter of this nature, the

public interest should have been considered first before such directions are given. Mr. Venugopal submitted that the proceedings under Section 397 of the Companies Act should not have been allowed to be made a vehicle for relief which was available to the Chatterjee Group under the provisions of the Specific Relief Act, 1963. It was also submitted that the Company Law Board erred in applying the principles of private law in the exercise of its jurisdiction under Sections 397/398 and 402 of the Companies Act, since the decision of the State Government not to disinvest would have to be decided by applying the public law in appropriate proceedings. In this regard, Mr. Venugopal referred to the decision of this Court in BALCO Employees' Union (Regd.) Vs. Union of India & Ors. [(2002) 2 SCC 333], wherein it was observed that it is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or

something better could be evolved. This Court also observed that the courts are not inclined to strike down a policy merely because it has been urged that a different policy was fairer or wiser or more scientific or more logical. This Court went on to observe that the procedure of disinvestment is a policy decision involving complex economic factors and the courts have consistently refrained from interfering with economic decisions, unless it was demonstrated that economic expediency was so violative of constitutional or legal limits on power or is so abhorrent to reason, that such interference was necessary. The Courts would in given cases interfere if it could be demonstrated that the policy was contrary to any statutory provision or the provision of the Constitution or there was illegality in the decision itself.

76. Mr. K.K. Venugopal submitted that from the very inception, GoWB had played a major role in conceptualizing and setting up of HPL with the

primary object of industrial development of the region in particular, and the State in general and subserving the underlying public interest. Mr. Venugopal submitted that HPL had been conceived as a showcase project of the GoWB. It was only because of the active role of the State Government that it was also possible to acquire a total of 1031.305 acres of land for the project at Haldia, without any trouble and disturbance, from the year 1973 onwards. Mr. Venugopal submitted that the direction given by the CLB would be against the very grain of the concept of a Joint Venture between WBIDC, which was owned by GoWB, and the R.P. Goenka Group (RPG) and subsequently, with the exit of the RPG Group, the Tata Group as well as the CP(M)C. It was also submitted that even the financial institutions, namely, IDBI and SBI, etc., who had a total stake of Rs.2989 crores in HPL, drew great comfort from the continued presence of the State Government and its active participation

in the management of HPL. On the other hand, on several occasions the very same financial institutions had expressed their concern regarding the capability and intentions of the Chatterjee Group in managing the Company and inducting funds as necessary for the growth and development thereof. Mr. Venugopal submitted that the acts of oppression alleged by the Chatterjee Group and the relief claimed by them, apart from being based on alleged breach of contract, aimed at invoking the jurisdiction of the CLB under Section 397 read with Section 402 of the Companies Act, 1956, to compel the Government to disinvest its shareholding in HPL. Mr. Venugopal submitted that the CLB did not have the jurisdiction to grant such relief and, in any event, in view of the overriding public interest, no relief should be granted to the appellant in the instant appeals.

77. Mr. Anil Dewan, learned Senior Advocate, who appeared for Mr. Tarun Das, who was functioning as

the Chairman of HPL, adopted the submissions made by Mr. Desai and Mr. Venugopal and urged that the Company Petition itself was not maintainable as it had been filed by a Company which was not a member of HPL, despite being the owner of 155 million shares thereof. Mr. Dewan submitted that instead of assisting the Company in meeting its financial liabilities, the appellants not only failed to infuse equity into the Company but also confined their focus on acquiring only 51% of the shareholding in order to maintain its control over the management of the Company. Mr. Dewan submitted that the judgment of the High Court did not call for any interference in the instant proceedings.

78. In continuation of Mr. Desai's submissions, Mr. C.A. Sundaram, learned Senior Advocate appearing for the Respondent No.2, reiterated the factual aspect of the case as portrayed by Mr. Desai. Mr. Sundaram, however, urged that the stand now being taken by the Chatterjee Group that the

induction of IOC into HPL had adversely affected their interest and had reduced the Chatterjee Group to a minority shareholder in the Company, it was, in fact, Dr. Chatterjee himself, who had initiated the idea of allotting 150 million shares to IOC. Dr. Chatterjee was the Chairman of the Committee which prepared and sent the offer of allotment to IOC which was accepted by its return letter enclosing a cheque for Rs.150 crores in favour of HPL. Between April, 2005 and July, 2005, eight draft Share Purchase Agreements were exchanged between the Chatterjee Group and the GoWB regarding sale of the shares held by WBIDC to CP(M)C. However, the Chatterjee Group never seemed to be in a position to complete the transaction and repeatedly asked for the inclusion of fresh conditions, such as a pre-condition that IOC should not be allotted any shares of HPL. In the meantime, having accepted the offer of allotment of 150 million shares and having sent the price for

the same to HPL, IOC sent legal notices to HPL calling upon the Company to issue and allot the said 150 million shares to IOC and to credit the same to the account of IOC after dematerialization.

79. Mr. Sundaram submitted that in the aforesaid cauldron of events, the GoWB wrote to the Chatterjee Group on 27th July, 2005, stating that it had decided to defer its proposal to disinvest shares in favour of the Chatterjee Group as it was not in a position to conclude matters. On account of the severe financial crunch being faced by HPL and in view of the stand of IOC, which was the main supplier of Naphtha to HPL, on 2nd August, 2005, HPL allotted 150 million shares to IOC and a return of allotment was also filed with the Registrar of Companies in respect thereof. On 3rd August, 2005, the cheque given to IOC for Rs.150 crores was encashed by HPL.

80. Mr. Sundaram submitted that it was no doubt true that at the initial stages it had been the intention of GoWB and WBIDC to involve Dr. Chatterjee and his Group of Companies as the prime stakeholders in HPL with management control, but at crucial times when support in the form of equity was required, the Chatterjee Group failed to provide the same. Mr. Sundaram submitted that even when on 3rd June, 1996, GoWB wrote to Dr. Chatterjee that on account of HPL's financial crunch, all promoters had been requested to induct 50% of the equity and the last date for such infusion was 18th June, 1996, the Chatterjee Group failed to make such investments, although, both the Tatas and WBIDC brought in their respective equity contributions of Rs.35.5 crores and Rs.117 crores. Once again, since the Lenders were insisting on immediate infusion of Rs.581 crores into HPL and HPL was on the threshold of becoming a Non-Performing Asset, a Rights Issue Offer was made by

HPL to the existing shareholders for subscription of 34,99,99,988 shares at the rate of Rs.10/- per share. Despite Dr. Chatterjee's assurance to bring in Rs.53.5 crores immediately along with additional fund of Rs.53.5 crores and a further sum of Rs.300 crores, the Chatterjee Group did not subscribe to the Rights Issue, thereby depriving the Company of Rs.107 crores at a very crucial time. In order to re-assure HPL, the Chatterjee Group on 12th January, 2002, agreed to induct a minimum of Rs.500 crores and such other further funds towards equity and equity-like instruments to effectuate the Corporate Debt Restructuring. However, despite such commitment, till today, the Chatterjee Group has not brought in the amount of Rs.500 crores committed by it. On the other hand, acting on the assurance given by the Chatterjee Group, WBIDC agreed to transfer shares worth Rs.360 crores to the Chatterjee Group to ensure that it controlled 51% of paid-up equity to enable it to remain in the

majority. Mr. Sundaram submitted that out of the said number of shares, 155 million shares were, in fact, transferred to CP(I)CL to maintain a shareholding of 51%. However, WBIDC even agreed to transfer shares beyond the said 155 million shares to ensure that the 51% shareholding of CP(M)C was maintained. It was also agreed that the transfer would be effected within 10 days of the acceptance of Letter of Comfort by WBIDC. Mr. Sundaram submitted that although the shares were transferred in the name of CP(I)CL, the said transfers were never completed as they were not registered either in the Company's books or with the Registrar of Companies and WBIDC continued to have voting rights on the said 155 million shares. Mr. Sundaram submitted that to cap it all, instead of bringing in equity of an amount of Rs.53.5 crores, as promised as per the decision taken by the Company on 3rd June, 1996, to induct 50% of its equity, the Chatterjee Group brought in only Rs.61.5 crores and

that too as debt and not equity, despite the fact that post-dated cheques issued to vendors were still bouncing and other commitments were not met. In addition, the Corporate Debt Restructuring could not be implemented since CP(M)C could not induct a strategic investor. Ultimately, out of sheer compulsion in order to save the Company from becoming a Non-Performing Asset, a decision had to be taken to induct IOC as a portfolio investor, though there may have been discussion to bring in IOC as a strategic investor.

81. Mr. Sundaram submitted that one of the questions which arise in these proceedings is whether the Company Law Board, acting under Sections 397 and 398, read with Section 402 of the Companies Act, could direct sale of shares in the absence of a finding that there had been oppression by one body of shareholders against another or mismanagement of the Company. According to Mr. Sundaram, the second question, which is directly

connected with the first, is whether in the absence of such a finding the Company Law Board could direct sale of shares in the absence of a further finding that such sale of shares was necessary in the interest of the Company. The third question posed by Mr. Sundaram was whether in addition to the findings indicated above, the Company Law Board could direct sale of shares under Sections 397 and 398 read with Section 402 of the above Act in the absence of a finding that without giving such a direction it might be just and equitable to wind-up the Company.

82. On the aforesaid issues, Mr. Sundaram reiterated the submissions made by Mr. Desai that the said questions have been answered by this Court in Shanti Prasad Jain's case (supra) and in the subsequent decisions in Sangramsinh P. Gaekwad (supra), M.S.D.C. Radharamanan (supra), V.S. Krishnan (supra), the Needle Industries (supra) and

in the case of Hanuman Prasad Bagri Vs. Bagress Cereals Pvt. Ltd. [(2001) 4 SCC 420].

83. Mr. Sundaram submitted that the next issue involved the question as to whether the concept of legitimate expectation of a body of shareholders would be applicable to a large public limited company or only in quasi partnerships and family companies and whether in those situations also the sale of shares could be directed in order to break a deadlock. In this regard, reference was made to the decision of this Court in Kilpest Pvt. Ltd. & Ors. Vs. Shekhar Mehra [(1996) 10 SCC 696] and Hind Overseas Pvt. Ltd. Vs. Raghunath Prasad Jhunjhunwalla & Anr. [(1976) 3 SCC 259]. In Hind Overseas Pvt. Ltd.'s case, this Court had held that 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 excluded from management, the principles of dissolution of partnership cannot be

liberally invoked. It was further observed that it is only when shareholding is more or less equal and there is a case of a complete deadlock in the running of the company on account of lack of probity in the management and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, a case for winding up may arise. However, in a given case, the principles of dissolution of partnership may apply if the apparent structure of the company is proved not to be the real structure and on piercing the veil it is found that in reality it is a partnership. Mr. Sundaram submitted that, in any event, the application of the just and equitable clause would depend upon the facts and circumstances of each case. A note of caution was also introduced that even admission of a petition could prejudice and cause immense injury to a company in the eyes of the investors, if ultimately the petition is dismissed. Mr. Sundaram urged that

in a petition under Section 397/398 of the Companies Act, it was not always incumbent on the CLB to order the winding up of a company on the just and equitable principle, but in order to pass any order under Section 397, the Company Law Board would have to arrive at a specific finding that there was just and equitable reason to order such winding up.

84. The next issue canvassed by Mr. Sundaram is that the Court would have to examine as to whether the direction given for sale of shares was in order to maintain the status quo which was being disturbed on account of the oppressive measures taken. In this regard, Mr. Sundaram referred to the decisions of this Court in Dale & Carrington Invt. (P) Ltd. Vs. P.K. Prathapan & Ors. [(2005) 1 SCC 212] and M.S.D.C. Radharamanan's case (supra), along with the decision in Allianz Securities Ltd. Vs. Regal Industries Ltd. [2002 (11) CC 764 = (2000) 25 SCL 349 (CLB)]. On the concept of

legitimate expectation, Mr. Sundaram submitted that it has to be considered whether the same should be restricted to maintaining the state of affairs at the time when the parties became shareholders or whether any subsequent understanding arrived at by private treaty between the shareholders would fall under the purview of the Company Law Board to enable it to deal with such questions between private shareholders.

85. Mr. Sundaram repeated that in this regard it would have to be decided as to whether the CLB could direct sale and transfer of shares to a group to give it majority control on an application under Section 397/398 read with Section 402 of the Companies Act and to enforce specific performance of agreement between the parties whether legitimate or not, especially when such specific performance was not necessary in the interest of the company, or to prevent winding up of the company. Another question of equal importance in this connection was

whether specific performance could be directed at the instance of a party whose own conduct had been inequitable in failing to carry out its promises, to the severe prejudice of the company.

86. Another issue raised by Mr. Sundaram, which has a direct bearing to the facts of this case, is whether a Company can effect transfer of shares in the absence of transfer deeds and a request for transfer, and whether the transfer of shares is complete only when such transfers are duly registered and entered in the Register of Members of the Company. In this regard, Mr. Sundaram referred to the decisions of this Court in Howrah Trading Company Vs. CIT [AIR 1959 SC 775]; Life Insurance Corporation of India Vs. Escorts Ltd. [(1986) 1 SCC 264], Mannalal Khetan Vs. Kadarnath Khetan [(1977) 2 SCC 424], Claude Lila Parulekar (Smt.) Vs. Sakal Papers (P) Ltd. [(2005) 11 SCC 73], J.P. Srivastava & Sons Pvt. Ltd. Vs. Gwalior Sugar Co. Ltd. [(2005) 1 SCC 172], Mathrubhumi

Printing & Publishing Co. Ltd. Vs. Vardhman Publishers Ltd. [(1992) 73 CC 80] and several other decisions to which we shall shortly refer as they have a bearing on the issue involving the rights acquired by the Chatterjee Group on the transfer of 155 million shares by WBIDC, which were not, thereafter, registered in the name of the Chatterjee Group in the Register of Members of the Company, nor was the factum of such transfer communicated to the Registrar of Companies.

87. Mr. Sundaram also raised another question as to why on failure of reciprocal promises in a contract on account of non-performance of the promises made by one of the parties, the benefits accrued to such party through part performance should not be restituted to the other party. In this regard, reference was made to Sections 51 to 54 of the Contract Act and the decision of the Privy Council in Satgur Prasad Vs. Harnarayan Das [(AIR 1932 PC 89] and the decision of the Delhi High Court in

Suit No.1481 of 1996, to which reference may be made, if required.

88. Lastly, on the question of allotment of the 150 million shares by WBIDC to IOC, Mr. Sundaram submitted that on account of the failure of the Chatterjee Group to bring in equity when the Company was in dire need of funds, such allotment was fully justified under the doctrine of *Indoor Management.* However, even if a legitimate dispute could be raised in regard to such transfer, such transaction could not be avoided by the Company Law Board as the same was in the interest of the Company, which would otherwise have been converted into a Non Performing Asset.

89. What emerges from the materials on record and the submissions made on behalf of respective parties is that HPL was incorporated in 1985 by the West Bengal Industrial Development Corporation and the R.P. Goenka Group, and their nominees were the

subscribers to the Memorandum of Association. Soon thereafter, in 1990, the Goenka Group left the Company and Tata Chemicals and Tata Tea were inducted into the project between 1990 and 1993. However, since the TATAs were not very keen to continue with the Project, in June 1994, Dr. Purnendu Chatterjee, a Non-Resident Indian industrialist and financier, evinced his interest in implementing the project. Accordingly, a Memorandum of Understanding was entered into between WBIDC and the Chatterjee Petrochem (Mauritius) Company and the Tatas on 3rd May, 1994. Certain assurances were given to Dr. Chatterjee that the Company would remain a private enterprise with the Chatterjee Group in control of the management thereof. A further assurance was given to the effect that WBIDC/GoWB would transfer their entire shares in the Company to the Chatterjee Group, which would then acquire a complete majority

for the purposes of management and control of the Company.

90. In addition to the above, certain duties and obligations to be performed by the Chatterjee Group were also indicated, mainly confined to the question of bringing in equity in an otherwise cash-strapped situation then prevailing in relation to the Company's finances. It also appears that the assurances given by WBIDC/GoWB were on account of the aforesaid assurances given by the Chatterjee Group to bring in equity. Inasmuch as, the Chatterjee Group failed to abide by its commitments, the Company had no other alternative, but to bring in IOC by selling and transferring 150 million shares to the said Company.

91. The parties also agreed that they would be entitled to seek specific performance of the terms and conditions of the Agreement in accordance with the provisions of the Specific Relief Act, 1963.

Various other terms and conditions were included with the intention of guaranteeing that CP(M)C would acquire a controlling interest to the extent of at least 51% shares which would also give it complete control over the day-to-day affairs of the Company. In addition, it was agreed that in future the composition of the Board would be altered to reflect the revised shareholding structure and WBIDC would vote along with CP(M)C on all issues in the shareholders meeting and its nominee would also vote along with the nominee Directors of the CP(M)C.

92. Despite the concessions given and/or afforded to the Chatterjee Group, it had failed to take advantage of the same and a subsequent Agreement dated 8th March, 2002, had to be entered into for recording the fact that in terms of the Agreement dated 12th January, 2002, 155,099,998 equity shares of WBIDC had been transferred/delivered to CP(I)PL on the same day. It was also indicated in the

Agreement that all the aforesaid shares which had been transferred and delivered to the Petitioner No.4 would be pledged with WBIDC and, accordingly, their shares had been duly lodged along with their share certificates with WBIDC and such pledge had been acknowledged.

93. It is in the aforesaid background that we have to consider the Petition filed by the Chatterjee group before the Company Law Board under Sections 397, 398, 399, 402, 403 and 406 of the Companies Act, 1956, and the reliefs prayed for therein.

94. The law relating to grant of relief on a petition under Sections 397, 398 and 402 of the Companies Act, 1956, has been crystallised in various decisions of this Court, including those cited on behalf of the parties. The common refrain running through all these decisions is that in order to succeed in an action under Sections 397 and 398 of the Companies Act, the complainant has

to prove that the affairs of the Company were being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members. For better appreciation of the above, Section 397 of the above Act is extracted hereinbelow :

> **"397. Application to [Tribunal] for relief in cases of oppression.—**
>
> 1) Any member of a company who complains that the affairs of the company are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.
>
> (2) If, on any application under sub-section (1), the Court is of opinion—
>
> > (a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and
> >
> > (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order

> on the ground that it was just and equitable that the company should be wound up,
>
> the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit."

However, as was observed by this Court in Shanti Prasad Jain's case (supra) the law has not defined as to what would amount to "oppressive" for the purposes of Section 397 and it is for the Courts to decide on the facts of each case as to whether such oppression exists which would call for action under Section 397. It was also emphasized that the conduct of the majority shareholders should not only be oppressive to the minority, but must also be burdensome and operating harshly upto the date of the petition.

95. The main grievance of the Appellants appears to be that having been induced into investing large sums of money in establishing the petrochemical complex on various promises, particularly that the Company would continue to retain its private

character and the Chatterjee group would have control over its management, such promises, although, reduced into writing in the form of agreements, not only remained unfulfilled, but even the character of the Company was altered with the transfer and sale of 150 million shares by the Company in favour of IOC. Coupled with the above, is the other grievance that despite having transferred 155 million shares in favour of CP(I)PL, and having received the full price therefor, the Company had not registered the same in the Company's Register of Share-holders, thereby depriving the Chatterjee Group from exercising its right to vote in respect of the said shares. The third grievance of the Chatterjee Group is that by not registering the transfer of the 155 million shares in their favour, but, on the other hand, transferring 150 million shares in favour of IOC, the character of the Company was altered from a Private Company into a Government Company and also

reduced the Chatterjee Group to a minority, despite the promises held out earlier and as incorporated in the Agreements dated 20th August, 1994, 12th January, 2002 and 8th March, 2002.

96. Let us examine as to whether any of the complaints contained in the Company Petition before the CLB make out a case that the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members, which was sufficient to justify the passing of a winding-up order on the ground that it was just and equitable that the Company should be wound-up, but that to wind-up the Company would prejudice such member or members. In Shanti Prasad Jain's case (supra), referred to hereinabove, in a similar situation, it was observed by this Court as follows :-

> "It is not enough to show that there is just and equitable cause for winding up the Company though that must be shown as a 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 will be evident that in order to pass orders under Section 397 of the Companies Act, 1956, the CLB has to be satisfied that the Company's affairs are being conducted in a manner oppressive to any member or members and that the facts would justify the making of a winding-up order on the just and equitable principle, but that such an order would unfairly prejudice the Applicant before the CLB.

As was discussed by this Court in the Needle Industries case (supra), unwise, inefficient or careless conduct of a Director cannot give rise to claim for relief under Section 397 of the Act. For relief under this Section, the Applicant would have to prove that the conduct of the majority of the shareholders lacked probity and was unfair so as to cause prejudice to the Applicant in exercising his legal and proprietary rights as a shareholder. This, in fact, is the golden thread of the various decisions in relation to petitions under Section 397, 398 and 402 of the above Act. All the various decisions cited by the learned counsel for the various parties are *ad idem* on this issue and applying the said principles, each complaint under Section 397 will have to be judged on its own merit for the CLB to arrive at a conclusion as to whether the ingredients of Section 397 were satisfied and pass appropriate orders thereafter.

97. As has been indicated in some of the cases cited, the language of Section 397 suggests that the oppressive manner in which the Company's affairs were being conducted could not be confined to one isolated incident, but that such acts would have to be continuous as to be part of a concerted action to cause prejudice to the minority shareholders whose interests are prejudiced thereby.

98. In the aforesaid context, what do the facts reveal in the instant case and do they bring the acts of oppression complained of within the purview of Section 397 for grant of relief under Section 402 of the Companies Act?

99. The case of the Chatterjee Group is woven around two particular issues, namely, that it had been induced to invest in HPL so as to make it a successful commercial enterprise on the promise that the Company would always retain a private

character and the Chatterjee Group would have control over its management, but such a promise had not been adhered to and, on the other hand, negotiations were undertaken by WBIDC to induct IOC, a Central Government Company, with the intention of ultimately handing over the management of the Company to IOC. The aforesaid case of the Chatterjee Group is also based on the grievance that while keeping the Chatterjee Group under the impression that it intended to ensure that the Chatterjee Group had the requisite number of shares to allow it to have a majority shareholding and thereby control of the Company's management, the Company carried on clandestine negotiations with WIBDC to transfer all the shares held by it in the Company to IOC to give it management and control over the Company's affairs.

100. The second ground, as made out by the Chatterjee Group, was that despite having transferred 155 million shares in favour of CP(I)PL

on 8th March, 2002, it did not register the same in the name of CP(I)PL, which remained the beneficial owner, the right to vote on the basis thereof remained with WBIDC. This was done despite the fact that the price for the said shares had been received by way of a private arrangement and the Lenders and financial institutions had given their consent to the same. According to the Chatterjee Group, this one act of omission on the part of the Company was sufficient to attract the provisions of Section 397 of the Companies Act and for the CLB to pass appropriate orders on account thereof. It is on account of the second ground on which the Company Petition was filed that a prayer had been made therein for a direction upon WBIDC and IOC to immediately register the transferred 155 million shares in the name of CP(I)PL.

101. From the facts as revealed, it is clear that when Dr. Purnendu Chatterjee expressed his interest in setting up of the Haldia Petrochemicals Ltd.,

various incentives had been offered to him by the GoWB and WBIDC to invest in the Company and to make it a successful commercial enterprise. Such investments were, however, contingent upon Dr. Chatterjee's bringing in sufficient equity to set up and run the Company. As would be seen, at the very initial stage all the understanding between Dr. Chatterjee and GoWB & WBIDC, both WBIDC and the Chatterjee Group were to hold 433 million shares each, while Tata was to hold 144 million shares. The promise extended by WBIDC and GoWB to the Chatterjee Group to provide at least 60% of the shares held by WBIDC at Rs.14/- per share to the Chatterjee Group so as to give the Chatterjee Group the majority shareholding in the Company, as was indicated in the Agreements dated 12th January, 2002, 8th March, 2002 and 14th January, 2005, did not ultimately materialise and, on the other hand, the Chatterjee Group was reduced to a minority on account of its decision not to participate in the

Rights Issue, and, thereafter, by transfer of 150 million shares by WBIDC in favour of IOC.

102. Although, the Chatterjee Group has complained of the manner in which it had been reduced to a minority in the Company, it is also obvious that when the Company was in dire need of funds and the Chatterjee Group also promised to provide a part of the same, it did not do so and instead of bringing in equity, it obtained a loan from HSBC through the Merlin Group, which only increased the debt equity ratio of the Company. Furthermore, while promising to infuse sufficient equity in addition to the amounts that would have been brought in by way of subscription to the Rights Issue, the Chatterjee Group imposed various pre-conditions in order to do so, which ultimately led GoWB and WBIDC to terminate the agreement to transfer sufficient number of shares to the Chatterjee Group to enable it to have complete control over the management of the Company and also to retain its private

character. It is at a stage when there was a threat to the supply of Naphtha, which was the main ingredient used by HPL for its manufacturing process, that it finally agreed to induct IOC into the Company as a member by transferring 150 million shares to it. It may not be out of place to mention that it was on Dr. Chatterjee's initiative that it had been decided to induct the IOC as a member of the Company at meetings of the Directors which were chaired by Dr. Chatterjee himself. Of course, as explained on behalf of the Chatterjee Group, even the induction of the IOC as a member of the Company is concerned, was part of a conspiracy to deprive the Chatterjee Group of control of the Company since GoWB and WBIDC never intended to keep its promise regarding transfer of at least 60% of its shareholdings in favour of the Chatterjee Group. Such a submission has to be considered in the context of the financial condition of the Company and the response of the Chatterjee Group in meeting

such financial crunch. In our view, if in the first place, the Chatterjee Group had stood by its commitment to bring in equity and had subscribed to the Rights Issue, which was a decision taken by the Company to infuse equity in the running of the Company, it would neither have been reduced to a minority nor would it perhaps have been necessary to induct IOC as a portfolio investor with the possibility of the same being converted into a strategic investment.

103. The failure of WBIDC and GoWB to register the 155 million shares transferred to CP(I)PL could not, strictly speaking, be taken to be failure on the part of the Company, but it was the failure of one of the parties to a private arrangement to abide by its commitments. The remedy in such a case was not under Section 397 of the Companies Act. It has been submitted by both Mr. Nariman and Mr. Sarkar that even if no acts of oppression had been made out against the Company, it would still be

open to the learned Company Judge to grant suitable relief under Section 402 of the Act to iron out the differences that might appear from time to time in the running of the affairs of the Company. No doubt, in the Needle Industries case, this Court had observed that the behaviour and conduct complained of must be held to be harsh and wrongful and in arriving at such a finding, the Court ought not to confine itself to a narrow legalistic view and allow technical pleas to defeat the beneficial provisions of the Section, and that in certain situations the Court is not powerless to do substantial justice between the parties, the facts of this case do not merit such a course of action to be taken. Such an argument is not available to the Chatterjee Group, since the alleged breach of the agreements referred to hereinabove, was really in the nature of a breach between two members of the Company and not the Company itself. It is not on account of any act on the part of the Company

that the shares transferred to CP(I)PL were not registered in the name of the Chatterjee Group. There was, therefore, no occasion for the CLB to make any order either under Section 397 or 402 of the aforesaid Act. If, as was observed in M.S.D.C. Radharamanan's case (supra), the CLB had given a finding that the acts of oppression had not been established, it would still be in a position to pass appropriate orders under Section 402 of the Act. That, however, is not the case in the instant appeals.

104. In our view, the appellants have failed to substantiate either of the two grounds canvassed by them for the CLB to assume jurisdiction either under Section 397 or 402 of the Companies Act, 1956, and it could not, therefore, have given directions to WBIDC and GoWB to transfer 520 million shares held by them in HPL to the Chatterjee Group and the High Court quite rightly

set aside the same and dismissed the Company Petition.

105. Consequently, all the appeals are dismissed. Having regard to the peculiar facts of the case, the parties shall bear their own costs.

……J.
(ALTAMAS KABIR)

New Delhi **……J.**
Dated: 30.09.2011 **(CYRIAC JOSEPH)**