(1974) 03 BOM CK 0029

Bombay High Court

Case No: O.C.J. Miscellaneous Petition No. 683 of 1973

Baldevdas R. Raheja		APPELLANT
	Vs	
The Union of India (UOI)		RESPONDENT

Date of Decision: March 20, 1974

Acts Referred:

- COMPANIES ACT, 1956 - Section 203, 250, 255, 256, 260
- Constitution of India, 1950 - Article 14, 311
- Criminal Procedure Code, 1973 (CrPC) - Section 164, 364
- Electricity Act, 1910 - Section 6
- Industries (Development and Regulation) Act, 1951 - Section 10E, 18A

Citation: (1977) 79 BOMLR 581

Hon'ble Judges: Rege, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rege, J.

This is a petition by certain shareholders of the National Rayon Corporation Limited (respondent No. 7) for a writ of mandamus for withdrawing or cancelling the order dated June 25, 1973 made by the Company Law Board (respondent No. 2) appointing respondents Nos. 5 and 6 as Government Directors for one year from June 30, 1973 on the Board of Directors of respondent No. 7 company and for declaring the same to be void and inoperative. They have also asked for a further writ in the nature of certiorari for quashing the said impugned order and also for a declaration that certain directors mentioned in prayer (c) had been duly elected at the annual general meeting of respondent No. 7 company held on May 11, 1973 and that they were entitled to act as Directors of respondent No. 7 company.

2. The short facts leading to this petition may be stated as follows:

3. Respondent No. 7 company, namely, the National Rayon Corporation Ltd., was incorporated in 1946. The present subscribed share capital of respondent No. 7 company consists of 3,20,000 ordinary shares of Rs. 100 each and 1,75,000 Preference shares of Rs. 100 each. Both the categories of shares carry equal voting rights. Respondent No. 7 company is engaged in the manufacture of Rayon Yarn and other allied products. It was promoted by Chinais in association with Tatas and Messrs Chinai and Company Private Limited were appointed as Managing Agents from its very inception. At the relevant time, the company built up assets of an order of Rs. 5,00,00,000. In 1969.1970 the Board of Directors of the company consisted of eleven Directors, including Kasturbhai Lalbhai, Arvind Mafatlal, K.M.D. Thackersey, Mathuradas Mangaldas Parekh and Naval Tata. Apart from the qualification shares, none of the Directors had any significant shareholding of the company. Some time in April 1956, L.C. Kapadia and N.C. Kapadia, who were the nominees of Kapadia Brothers, obtained substantial shareholding in the said company, some of them being from the Chinais and the Life Insurance Corporation of India. On April 8, 1969 L.C. Kapadia wrote a letter to Rasiklal Chinai stating that he would like to assure him on behalf of his family and himself that none of them had any intention whatsoever of interfering with the management of the company, whether it be through the existing system of managing agency or in the event of its cessation through any other stewardship under the control of Rasiklal Chinai. The Managing Agency held by the Chinais came to an end on December 31, 1969. Before that time they had disposed of a part of their share holdings in the Company mainly in favour of the Kapadias and their share holdings in September 1970 were about 7 per cent, of the total shareholding. It appears that in the meantime the Kapadias had increased their shareholding by purchasing shares in the open market as well as through the Life Insurance Corporation on behalf of the companies held or controlled by them or through their own relations, nominees, agents or brokers. The shareholding in the company in the names of themselves as well as in the name of companies owned or controlled by them in 1970 was 4,405 Ordinary shares and 45,960 Preference shares. They had also another block of 50,000 Ordinary shares and 32,000 Preference shares held by them through their Benamidars, nominees and brokers on payment of margins. The position of the Chinais and the Kapadias in 1969 relatively was that the Chinais had management and control of the company with a very small shareholdings, while the Kapadias had large shareholdings with no actual control of the company, with the result that there was a struggle for control between the two.

4. In order to forestall any attempt on the part of Kapadias to get the control of the management of the company (i.e. the seventh respondent) the Board of Directors, dominated by the Chinais, on the expiry of the Chinais Managing Agency by the end of 1969, attempted to move a resolution at the annual general meeting held in June 1969 for appointment of Jivanlal C. Chinai and his son, Rasiklal J. Chinai, as Managing Directors for a period of five years on remuneration of Rs. 15,000 per month plus

one per cent, commission and various other perquisites. The said resolution was opposed by the Kapadias and was therefore not moved.

5. In January 1970, the Board of Directors co-opted two senior executives, viz., C.G. Mahant and Rustom K. Framjee on the Board of Directors and appointed Rasiklal Chinai as President on a remuneration of Rs. 10,000 per month and appointed Rustom K. Framjee and C.G. Mahant as Vice-Presidents on a remuneration of Rs. 7,500 per month each, in addition to one per cent, commission and various other perquisites. As the Articles of Association of the company did not provide for the appointment of Managing or whole-time Directors, the President and Vice-Presidents were constituted one-man Committees with substantial powers of management delegated to them. The said scheme was opposed by the Kapadias. It seems that in that regard a suit was filed by them in this Court and an interim order was passed therein restraining the President and Vice-Presidents from exercising any managerial functions or drawing any remuneration without a resolution of the company at its General Body meeting and without the approval of the Central Government.

6. On the eve of the next annual general meeting, which was to be held in June 1970, one hundred shareholders of the Chinai group filed a petition u/s 250 of the Companies Act, 1956, to freeze the voting rights of the shares held by the Kapadia group. Three different complaints u/s 409 of the Companies Act, 1956,-one by Rasiklal Chinai, the second by Arvind Mafatlal and the third by Kasturbhai Lalbhai, who were the Directors and Chairman of the company respectively-were also filed for preventing any change in the Board of Directors. Notices of the said complaints were sent to the Kapadia Brothers and their other companies.

7. At the annual general meeting held in June 1970, there was a regular proxy war between the Chinai group and the Kapadia group. At the said meeting, the resolution sponsored by the Board of Directors recommending increase in the number of Directors and appointment of supporters of the Chinai group, including Rasiklal Chinai, Natwarlal Chinai, Rustom K. Framjee and C.G. Mahant, as directors was defeated, but the two nominees of the Kapadia group were elected by a margin of 15,000 votes.

8. After the said meeting and before the result of the elections at the meeting were announced, the Board of Directors co-opted Rasiklal Chinai, Rustom K. Framjee and C.G. Mahant, all of the Chinai group, as Directors and entrusted them with the work of day-to-day administration of the company. The Kapadias also complained against this action of the Board of Directors stating that the same was illegal and against the advice contained in the Company Law Board''s letter dated June 22, 1970.

9. After hearing the respective parties, the Company Law Board dismissed the said application u/s 250. However, so far as the application u/s 409 was concerned, the Company Law Board directed that any resolution passed or that might be passed or

any action taken or that might be taken to effect a change in the Board of Directors after the date of the complaint shall have no effect, unless confirmed by the Company Law Board. The said direction was to remain in force till December 31, 1971. It also confirmed the election of J.R. Shah and S.N. Desai as Directors and the co-option of Rasiklal Chinai, Rustom K. Framjee and C.G. Mahant as Directors of the company under the provisions of Sections 256 and 260 of the Companies Act.

10. While passing the said order in respect of the said petitions, the Company Law Board suo motu initiated proceedings u/s 408 of the Companies Act for the appointment of Government Directors by issuing show cause notices to the company, the Chinai group and the Kapadia group. In reply to the said show cause notice, the company by its letter dated May 27, 1971 expressed no opinion, while the Chinai group by their letter dated May 21, 1971 welcomed the intention of the Government as they otherwise apprehended the control of the company''s management by the Kapadias. The Kapadia group, however, by their letter dated May 31, 1971 opposed the said action alleging mismanagement by the Chinai groups and their nominees. After giving hearing to the concerned parties and on the material before it, the Company Law Board by its Order dated June 30, 1971, acting u/s 408 of the Companies Act, appointed two Government Directors viz. T.A. Pai, the then Chairman of the Life Insurance Corporation of India, and K.C. Raman on the Board of Directors of the company for a period of two years in the interest of the company, its shareholders and also in the interest of the public. On the said T.A. Pai being appointed a Minister in the Central Cabinet, he was replaced by one H.M. Trivedi as the Director of the company on April 7, 1972.

11. The said Order of the Company Law Board showed that at the relevant time there was a proxy war going on between the Chinai group and the Kapadia group whereby the Chinais were intending to retain control over the management of the company inspire of the lesser shareholding, while the Kapadia group was striving to get control over the management on the strength of their large shareholding, particularly Preference shares. No Managing Director for the company was appointed, but the day-to-day management of the company was being conducted by a Committee of Directors, viz., N.C. Kapadia and one C.G. Mahant who belonged to the Chinai group. At the time of the passing of the said order, the position of the Board of Directors of the Company was as follows:

12. There were three independent Directors of the company, viz., Kasturbhai Lalbhai, Naval H. Tata and K.M.D. Thackersey, while there were three Chinai group directors, viz., Rasiklal Chinai, Rustom K. Framjee and C.G. Mahant and four Kapadia group directors, viz., L.C. Kapadia, N.C. Kapadia, J.R. Shah and S.N. Desai. The Kapadia group had acquired the shares in the National Rayon Corporation limited as follows:

13. In 1965 the Kapadia group had purchased 4,000 shares from R.J. Chinai at the rate of Rs. 193 per share; in 1966 died acquired 8,000 preference shares in the open

market at the rate of Rs. 65 per share and in May 1969 they purchased 36,000 preference shares from the Life insurance Corporation of India at the rate of Rs. 100 per share and transferred the same to the British Burmah Petrolium. Company Limited and another Kapadia group company at the rate of Rs. 75 per share.

14. However, the Company Law Board found that with regard to the shares standing in the names of Kapadias, they were not of a speculative character, but in so far as the shares held by the Kapadia group in the names of their bankers, nominees, brokers and as pledgees were concerned, the Kapadia group was indulging in unhealthy practices with a avowed object of controlling the voting power and that the means employed by them in respect of the said shares were of a speculative nature. By the said order the Company Law Board also held that the Chinai group management was not satisfactory and that under the circumstances as then existed, the appointment of two Government Directors was in the interest of the company, its shareholders and also in the public interest.

15. On July 20, 1971, at the company''s annual general meeting, one Devji Rattansey was elected as a Director through the Kapadia group. Before February 1972 Kasturbhai Lalbhai resigned. On July 15, 1972 one S.P. Mehta was co-opted as a Director and on April 7, 1972 T.A. Pai, was replaced by H.M. Trivedi as a Government Director. On May 23, 1972, at the 25th Annual General Meeting of the company, the Articles of Association of the company were changed entitling the company to appoint a Managing Director. This was changed because of the support of the Kapadia group. On May 11, 1972, at the Board Meeting, J.R. Shah, one of Kapadias'' nominee, proposed N.C. Kapadia as the Managing Director of the company, and he was supported by the other directors of the Kapadia group. However, since all the other Directors opposed it, the said resolution was ultimately dropped. At that time N.C. Kapadia was admittedly working as a Managing Director of the Kohinoor Mills Limited.

16. On March 23, 1972, 117 shareholders of the respondent No. 7 company, including Mrs. K.S. Patel, daughter of Rasiklal J. Chinai, as well as Rasiklal J. Chinai himself, made an application to the Company Law Board for continuing the said two Government Directors on the Board of Directors of the respondent No. 7 company as their tenure was coming to an end by June 1973. At the date of the said application the Board of eleven Directors of the respondent No. 7 company, consisted as follows:

(1) Naval Tata; (2) Rasiklal J. Chinai; (3) L.C. Kapadia; (4) N.C Kapadia; (5) Shantanu Desai; (6) J.R. Shah; (7) Devji Rattansey; (8) Mr. S.P. Mehta; (9) P.V.R. Rao; (10) K.C. Raman, and (11) H.M. Trivedi.

17. Of these five directors, viz. L.C. Kapadia, N.C, Kapadia, Shantanu N. Desai, Jayantilal R. Shah and Devji Rattansey belonged to the Kapadia group. Two Directors, viz., K.C. Raman and H.M. Trivedi, were Government Directors. S.P. Mehta

was a director representing the interests of the Unit Trust, while P.V.R. Rao was a Director representing the interest of the Industrial Credit and Investment Corporation of India Ltd., Naval Tata was an independent director and Rasiklal J. Chinai belonged to the Chinai group.

18. The said application made by the 117 shareholders for continuance of the Government Directors u/s 408 of the Companies Act, 1956, set out in detail a part of the contents of the previous order made by the Company Law Board on May 7, 1971 in respect of the application under Sections 409 and 250 of the Companies Act, 1956, holding that the shares held by the Kapadias in the names of Benamidars, brothers, and financiers, etc. were of a speculative nature. It also set out several allegations against the Kapadias showing several acts on their part of mismanagement in the company as well as in several concerns which were under their management and control. They also expressed an apprehension that after four Directors, viz., Shantanu Desai, R.J. Chinai, L.C. Kapadia and Devji Rattansey, who were to retire by rotation, had gone out, if the Government Directors were not continued, the Kapadia group by getting the new Directors from their group elected on the strength of Preference shares, would come in the control and management of the company and that the same would be detrimental to the interest of the company, of its shareholders and the interest of the public as such.

19. After the said application was received by the Company Law Board, it made enquiries through its inspectors as regards the several allegations against the Kapadias made in the said application and after obtaining their report on May 18, 1973 issued a show cause notice (exh. F to the petition) to the company (respondent No. 7), stating, firstly, that the enquiries made by the Company Law Board suggested that but for the presence of the two Government Directors on the Board of Directors, the Kapadia group of Directors would have been in majority and that the company would have been managed in a manner prejudicial to its interests and also to the public interest and that the two Government Directors and four other independent Directors not belonging to the Kapadia group were able to guide the business of the respondent No. 7 company on correct lines. The said show cause notice further stated that in spite of being in a minority the Kapadia group had used the presence of their nominees in the Commitee of Directors constituted to conduct the daily affairs of the company for taking or attempting to take decisions which were at variance with the guidelines issued by the Board of Directors and were prejudicial to the interests of the company. Then, the said show cause notice set out about nine instances of the alleged mismanagement by the Kapadia group in respect of certain transactions mentioned therein. It also pointed out that the Kapadia group, by putting forward the nomination of N.C. Kapadia as Managing Director, although it had earlier been decided to bring in professional management by the appointment of the Chief Executive Officer, was trying to take over control over the management of the company, that large out-standings were due from the Kohinoor Mills Co. Ltd., which was managed by the Kapadia group of which N.C.

Kapadia was the Managing Director, and that the payments had not been received from the Kohinoor Mills Co. Ltd. within the normal period of credit of fifteen days. It further alleged that the Kapadia group was unloading a considerable portion of their holdings in Equity shares, while retaining the Preference share holdings and that they were trying to retain the management control by reason of the voting rights attached to the Preference share holding, that they had been selling Equity shares which fetched a considerable value in the market and the said fact revealed that the Kapadias were not genuine investors, but were only interested in getting control over the management to enable the company to be used for their own purposes. Lastly, it was alleged that the performance of the Kohinoor Mills, where the Kapadias were in management and control, had been dismal as shown by the detailed report of the auditors for the year ended March 31, 1971 which provided unimpeachable evidence that their management did not have any interest in the company. After enumerating all the allegations against the Kapadias in respect of the management of the respondent No. 7 company, the said show cause notice went on to state that the public financial institutions had made substantial investment and the company played a vital role in the national economy and that in the affairs of the respondent No. 7 company large public interest was involved both financially and in its manufacturing operations, that the company had on its roll a large number of skilled, unskilled and white-collared employees and under the circumstances the company''s affairs could not be allowed to be mismanaged in any manner and any attempt to do so by those who had control over voting rights by virtue of the fact that preference shareholders had equal voting rights as that of Equity shareholders, would affect prejudicially the interests of the company and the public interest. The Company Law Board, therefore, called upon the company to show cause why action should not be taken by the Government to appoint two Directors u/s 408 of the Companies Act, 1956.

20. It is not disputed that this show cause notice was served initially only on the company.

21. At the meeting of the Board of Directors of the company held on May 28, 1973 the said show cause notice, along with a letter dated May 28, 1973 from N.C. Kapadia and a letter dated May 24, 1973 from Devji Rattansey and the draft reply to the show cause notice as prepared by one of the Directors were considered. The said meeting was attended by nine out of eleven Directors of the company, viz., Naval Tata (Chairman), R.J. Chinai, L.C. Kapadia, N.C. Kapadia, K.C. Raman, Devji Rattansey, Sanat P. Mehta, P.V.R. Rao and H.M. Trivedi, while two directors, viz., Shantanu Desai and J.R Shah, both belonging to the Kapadia group, were absent. By its letter dated May 28, 1973 signed by all the Directors present at the meeting of the company, the company informed the Company Law Board about what had transpired at the meeting and the decision taken by the majority of the Directors present agreeing to the prima facie conclusion of the Company Law Board to the continuance of the Government Directors on the Board of Directors of the Company.

A copy of the said letter is annexed as exh. No. 1. to the affidavit of Joshi on behalf of the company.

22. In paragraph 2 of the said letter it was pointed out, inter alia, that the Directors other than those of the Kapadia group had considered that the Government Directors had been of great assistance in lending stability to the Board and many a times their present on the Board had been of crucial importance, while, on the other hand, Laljibhai C. Kapadia, Nimjibhai C. Kapadia and Devji Rattansey of the Kapadia group were of the opinion that there was no necessity for the continuance of the said two Government Directors on the Board of Directors so far as the respondent No. 7 company was concerned. It was pointed out in paragraph 3 of the said letter that the Chairman had made a strong appeal at the annual general meeting of the company for preservation of the status quo, but, notwithstanding such appeal, some shareholders had pressed their proposal to add seven additional Directors to the Board to vote and the votes were in the process of being counted. As regards the nine specific instances of mismanagement set out against the Kapadias in paragraph 3 of the said show cause notice, the letter stated that those instances related to a period before the present Board had been constituted and that the present Board of Directors had occasion to review the administrative arrangements for the day-to-day management of the respondent No. 7 company and had been reconstituted, so as to make it more broad-based, the committee which dealt, inter alia, with purchases and sales and that the Board in the matter of any dispute had taken appropriate decision without dissent.

23. The said letter of the company also pointed out that at the said meeting of the Board of Directors there was a difference of view amongst the directors as regards paragraph 8 of the said show cause notice dealing with the question of continuance of the appointment of the Government Directors on the respondent No. 7 company''s. Board. It pointed out that six members of the Board, including the Chairman and others, viz., R,J. Chinai, Sanat P. Mehta, P.V. Raghavendra Rao, K.C. Raman and H.M. Trivedi had noted that the company was presently engaged in implementing a major project to manufacture Nylon Cord, involving an outlay of over Rs. 10 crores, for which it had already obtained a foreign exchange loan from the Industrial Credit and Investment Corporation of India Ltd., which would require to raise substantial additional finances and that the said project was of vital importance to'' the economy of the country. It quoted a portion from the letter received from the Industrial Credit and Investment Corporation of India Ltd. who had lent money to the company for the said project stating that they should be assured that there would be no significant changes in the Board or responsibilities of the individual members which were likely to be detrimental to the interests of the company. The said letter also pointed out that at the annual general meeting held on May 11, 1973 the representative of the Unit Trust of India pleaded on behalf of his institution and other public financial institutions for preservation of the status quo of the Board of Directors. The letter then goes on to state that taking all those

factors into account the six Directors agreed with the prima facie conclusion of the Company Law Board that the Government should appoint, u/s 408 of the Companies Act, 1956, two Directors with effect from June 30, 1973, when the tenure of the existing nominees expired. It also made it clear that the four other Directors, including two Government Directors, K.C. Raman and H.M. Trivedi, were of the view that in the existing situation it was in the interests of the company as well as in the public interest if the two existing Government Directors were also continued as Government Directors for the extended period. The letter also made it clear that the Directors, viz. Laljibhai C. Kapadia, Nimjibhai C. Kapadia and Devji Rattansey did not agree with the above except with regard to paragraph 4 of the said letter which related to the alleged incidents of mismanagement mentioned in the show cause notice. Their view was that action u/s 408 of the Companies Act, 1956, should not be taken. The letter also stated that the resolution moved by the Kapadia group calling an extra-ordinary general meeting of the company by the Board to ascertain the view of the company as to the show cause notice was rejected by a majority vote.

24. Thereafter Kapadias who were not served with the show cause notice, wrote to.the Company Law Board for giving them copies of the application made by Kunjalata Patel and other 117 shareholders of the company and also of the show cause notice and at the instance of the Company Law Board, the attorneys for the respondent No. 7 forwarded to Kapadias'' attorneys a copy of the said show cause notice as well as a copy of the application made by Kunjalata Patel and other 117 shareholders. In reply to the said show cause notice and application Kapadias sent a detailed reply dealing with each and every allegation made by Kunjalata S. Patel and other shareholders in their said application,, as well as the allegations made against them in the show cause notice.

25. It appears that thereafter petitioner No. 4 Nitinkumar Manilal Shah and other 107 shareholders made a representation on June 5, 1973 through Messrs. Chhatrapati and Co. to the Company'' Law Board opposing the continuance of the Government Directors. They, however, did not ask for any hearing being given to them. By another representation dated June 13, 1973 made by the fifteen shareholders to the Company Law Board through Messrs. Chhatrapati and Co., certain allegations were made against the existing directors appointed by the Government and asked the Company Law Board to take into consideration the said representation. They also did not ask for any hearing. Further, under the covering letter of one Succhdev letters written by 2,621 shareholders opposing the continuance of the Government Directors were sent to the Company Law Board with a copy thereof to N.C. Kapadia. The said letter also did not request for any personal hearing.

26. Another group of 101 shareholders also including one Ashok Champaklal Shah (petitioner No. 3) through Messrs. Gagrat and Co. addressed a letter dated June 14, 1973 to the Company Law Board stating that they wished to appear at the hearing,

but that they did not propose to file a separate reply to the show cause notice dated May 18, 1973 and requested the Company Law Board to treat the reply already filed by the Kapadia concerns as their reply.

27. At the meeting of the Company Law Board which was held between May 16, 1973 and June 25, 1973, hearing was given by the Board to the applicants-shareholders, the company, the Kapadia group through their counsel assisted by their attorneys and a group of shareholders who had made a separate representation through Messrs. Gagrat and Company and who had adopted in toto the reply filed by the Kapadia concerns to the show cause notice. After hearing the parties, on June 25, 1973, the Company Law Board passed an order continuing the appointment of the said two Government Directors for a further period of one year from June 25, 1973 (exh. 4 to the petition).The said order was passed by the Company Law Board on the following grounds which it found to exist on the material before it:

(1) There was sufficient indication from the conduct of the Directors who were members of the Kapadia family that if they were allowed to take control of the Board of Directors of the company by reason only of the Preference shareholdings held by them and their closely held companies, the interests of the company and those of the public would be prejudicially affected and that the performance of the Kapadias'' management in other companies was not one which would inspire confidence and it would be taking a grave risk to allow a company of the importance of National Rayon Corporation Limited to pass into their hands.

(2) The company had welcomed the appointment of the Government Directors.

(3) The public financial institutions which had made substantial investment had desired that there should not be any significant change in the Board which was likely to be detrimental to the interests of the company.

(4) The company was playing a vital role in the nation''s economy and that it was necessary that there was no disruption in the management which would affect its smooth functioning, and that such a disruption was bound to be the result if either of the two warring groups, viz., the Chinais and the Kapadias, commanded absolute majority in the Board of Directors of the company.

(5) The interest of a large number of skilled, unskilled and white-collared employees in the management was bound to suffer if there was an unhealthy change in management of the company.

(6) The Kapadia group which represented only a microscopic minority of Equity shareholders had opposed the continuance of the Government Directors for reasons which were not convincing.

(7) The continuance of the Government Directors on the Board of Directors of the company would not in any way prejudicially affect the interests of the shareholders

as the said action u/s 408(7) of the Companies Act, 1956, would only require any change in the Board of Directors to be approved by the Company Law Board.

(8) The company was poised to go ahead with its Nylon Tyre Cord Project which was expected to be ready for production by 1974 at a cost of Rs. 12.56 crores for which the company would have to resort'' to borrowings and that the Industrial Credit and Investment Corporation of India Ltd., was taking interest in arranging finance for the said purpose and that it was necessary to consider the apprehensions of the Industrial Credit and Investment Corporation of India Ltd., as expressed in its letter addressed to the Chairman of the company.

(9) It was also in the interests of the vast majority of equity shareholders to keep suitable control over the expenditure and outlay in the new Project so that mismanagement or some other factor of a similar nature might not siphon away a large chunk of the investment in the Project.

(10) Lastly, it found that the wide publicity attached to the attempt of the Kapadias to get seven of their nominees elected as Directors at the Annual General Meeting held on May 11, 1973 had its effect on the Stock Exchange which was an eloquent testimony to the apprehensions of the investing public about the future of the company, should the management pass into the hands of the Kapadias.

28. The six petitioners who happened to be a few of the shareholders of the company, viz., petitioners Nos. 1, 2, 3 and 4 being Equity shareholders and petitioners Nos. 5 and 6 being the Preference shareholders, have filed this petition challenging the said order dated June 25, 1973 passed by the Company Law Board on various grounds. Petitioners Nos. 3 and 4 were also amongst the shareholders who had made representations to the Company Law Board through Messrs. Chhatrapati and Co. and Messrs. Gagrat and Company. The petition is supported by thirty-five other shareholders whose names are given in the list annexed to the petition exh. A. It is also supported by certain other shareholders by their affidavits. The petitioners have challenged the said order in their individual capacity mainly on the following four grounds:

(1) Admittedly the said Order has been passed only by two of the members of the Board, viz. Roma Mujumdar, and P.B. Menon, when the Board consists of the Chairman Y.T. Shah and the said two members, and the Chairman had not taken part in the proceedings. The petitioners have therefore contended that the said order has been passed by persons who were not properly invested with power to do so.

(2) Secondly, according to the petitioners, the said Order has been passed by the Company Law Board without observing the principles of natural justice, inasmuch as (a) the said show cause notice was not served on every shareholder, including the petitioners, and no notice of the hearing was given to them, and (b) at the hearing certain documents on which the Company Law Board had relied upon for the

purpose of passing the orders, were not disclosed.

(3) Thirdly, the Order was bad, as it was passed by the Company Law Board, by relying OIL facts which were irrelevant or relying on non-existent facts or by not taking into consideration facts or documents which were relevant and which it ought to have taken into consideration.

(4) Lastly, it is contended that Section 408 of the Companies Act, 1956, being violative of Article 14 of the Constitution of India, was ultra vires and therefore the Order passed under the said section was invalid.

29. All the respondents have put in their affidavits in reply denying the validity of the said contentions raised by the petitioners. The main contesting party is, however, the Company Law Board, which is the second respondent and its members being the third and fourth respondents. The other respondents, viz., the two Government Directors (respondents Nos. 5 and 6), the company (respondent No. 7). Kunjalata S. Patel (respondent No. 8) have supported the Company Law Board. Kunjalata S. Patel was joined as respondent to this petition at her instance.

30. Before I deal with the said contentions, I may mention that the Company Law Board in the affidavit of its member (respondent No. 3) has contended that the petitioners have no locus standi in the petition. However, the learned Counsel for the Company Law Board has at the outset stated that he would restrict the ambit of the said contention only, to the extent of contending that the petitioners had no right to have a notice of hearing and consequently to be heard by the Company Law Board and that he would not contend that the petitioners have no right to maintain the petition. In that event, the said contention of the Company Law Board need not be dealt with separately but can be considered along with the contention of the petitioners that the order was passed by the Company Law Board without observing the principles of natural justice.

31. Dealing with the contentions of the petitioners the first contention is that the order passed by the Company Law Board was passed by an authority not vested with the power u/s 408, read with Section 637 and Section 10E(4A) and (5) of the Companies Act, 1956, as the said order was passed by only two members, viz., respondents Nos. 3 and 4, while the Company Law Board consisted of three members, viz. the Chairman Y.T. Shah and two members P.B. Menon and Roma Mujumdar.

32. It is contended by the petitioners in ground (an) of paragraph 17 of the petition that there was no previous approval of the Central Government for entrusting the inquiry to the two members, respondents Nos. 3 and 4. The petition was subsequently amended by incorporating paragraph 17 (an)(i) to contend that the powers and functions of the Central Government u/s 408 were specifically assigned to the Chairman and the members of the second respondent Board to be exercised by them jointly under the provisions of Section 10E(4A) of the Companies Act, read

with Rule 3 of the Company Law Board (Procedure) Rules, 1964, as amended by the Central Government Notifications dated October 15, 1965 and July 13, 1970 and therefore respondents Nos. 3 and 4 could not pass the order without acting jointly with the Chairman. The petitioners have further contended that no meetings by the second respondent relating to the proceedings u/s 408 were convened according to the Rules and no notices of such meetings were given or issued or served in accordance with the aforesaid Rules and further no notice of the meeting in respect of the proceedings resulting in the impugned order was given to or served on Y.T. Shah as a member and in the absence of a meeting convened as aforesaid, there was no question of the Chairman and respondents Nos. 3 and 4 acting and exercising powers u/s 408 of the Companies Act in a quorum of two members only and therefore the order passed at the meeting held by two members only was bad.

33. It is not disputed in this case that the Chairman Y.T. Shah refused to participate in the proceedings in connection with the company as, according to him, his father was employed till his death in 1970 with one of the concerns belonging to the Kapadias. However, against the said petitioners'' contentions respondent No. 3 P.B. Menon in paragraph 8 of his affidavit in reply dated November 8, 1973 on behalf of the Company Law Board has contended that the powers and functions to be exercised by the Board relating to the matters u/s 408 were to be exercised by the Chairman, and the members, i.e. the Company Law Board, according to its Rule regarding quorum, and that in the absence of the Chairman of the Board, Y.T. Shah, at the relevant time, the other two members constituted a quorum and had conducted the said deliberations. Further, in reply to the amended ground it is pointed out by the said Menon in his supplemental affidavit dated December 14, 1973 that after the representation dated March 15, 1973 from Kunjalata S. Patel and the other shareholders dated April 10, 1973 was received by the Company Law Board, two of the shareholders had stated to the Hon''ble Minister for Law and Justice, Mr. H.R. Gokhale, that till his death in January 1970 the father of Y.T. Shah was an employee of the Standard Barrels belonging to the Kapadias and that the case of the respondent No. 7 company, i.e. the National Rayon Corporation Limited, should not be handled by the Chairman Y.T. Shah, as Y.T. Shah had helped Kapadias in the past. In view of the aforesaid representation, Y.T. Shah had informed the deponent that he had decided not to participate in any proceedings of the Company Law Board relating to the National Rayon Corporation Ltd. (i.e. respondent No. 7) and that the papers relating to the said case need not be put up to him, which fact was also intimated by Y.T. Shah to the Honourable Minister for Law and Justice. Subsequently meetings were held, without Y.T. Shah remaining present. Under the said circumstances, no formal notice of the meeting of the Board was given to him, nor was it necessary to do so. According to him, therefore, the meetings were properly held.

34. In Order to understand the position in law as regard the said contention it would be proper to first consider in this connection the relevant provisions of the

Companies Act, 1956, and the Rules made thereunder. Section 408 of the Companies Act empowers the Government, under certain circumstances, to appoint not more than two persons to hold office as directors for such period not exceeding three years on any one occasion. Section 637 of the said Act, inter alia, permits delegation of its powers and functions u/s 408 of the said Act on such conditions, restrictions and limitations as may be specified only to the Company Law Board. Sub-section (1) of Section 10E, which was introduced in the Companies Act by amendment on January 1, 1964, defines the "Company Law Board" as the Board of Company Law Administration to exercise and discharge such powers and functions conferred on the Central Government by or under the said Act or any other law as may be delegated to it by the Government. Under Sub-section (2) of Section 10E, the Company Law Board is to consist of members not exceeding five and Sub-section (3) of the said Section 10E provides that one of the members shall be appointed by the Central Government to be the chairman of the Company Law Board. Sub-section (4) provides that no Act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board. Sub-section (5) provides that the procedure of the Company Law Board shall be such as may be prescribed. Sub-section (6) provides that in the exercise of its powers and discharge of its functions, the Company Law Board shall be subject to the control of the Central Government.

35. Section 642 of the Companies Act deals with the power of the Central Government to make rules for carrying out the purposes of the Companies Act. A Notification dated February 1, 1964 was issued in pursuance of the said rule-making powers under Sub-section (7) of Section 642, read with the said Sub-section (5) of Section 10E of the Companies Act, 1956, framing Rules called "The Company Law Board (Procedure) Rules, 1964." Rule 3 of the said Rules, dealing "with the distribution of business, provided that the Chairman may, with the previous approval of the Central Government, by order in writing, distribute the business of the Board among himself and the other member or members, and specify the cases or classes of cases which shall be considered jointly by the Board. The distribution of work of the Board made by the Chairman under the said Rule 3 came to be challenged on the ground that the said Rule was invalid as it provided sub-delegation of the powers of the Company Law Board to the Chairman in the case of The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, . In that case by a majority judgment it was held that the power given to the Chairman to distribute the work clearly fell within the rule-making power under Subsection (5) of Section 10E. I will have an occasion to advert to this decision a little later. However, at the time when the said matter was pending before the Supreme Court, the said Section 10E came to be amended on October 15, 1965 by adding thereto Sub-section (4A). The said Sub-section (4A) provided that the Board, with the previous approval of the Central Government, may, by an order in writing, authorize the Chairman or any of its other members or its principal officer (whether known as

secretary or by any other name) to exercise and discharge, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions as it may think fit, and every order made or act done in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board. As a result of the said amendment, the said Rule 3 of the said Rules made under Sub-section (5) of Section 10E was amended by a Notification dated October 15, 1965. The said Rule 3, as amended, provided that the distribution of the business of the Board among the Chairman and other members shall be regulated in accordance with the order issued under Sub-section (4A) of Section 10E of the said Act. It seems that at the time of the above cited decision of the Supreme Court although the said amendment of Section 10E as well as the amended Rule 3, had come into effect, no specific order thereunder was passed authorising the Chairman or any of the officers of the Board to exercise the functions of the Government and the Supreme Court had therefore to deal with Rule 3 as it existed before the amendment.

36. Thereafter by a Notification dated December 16, 1966 a further set of Rules, being Rules 3A to 3F providing for the meetings of the Board its quorum etc. were added. Rule 3A provided that the Board may meet at such time and place, for the transaction of its business, as it may think fit, provided that in the absence of a decision of the Board to the contrary, the Chairman or, in his absence, a member may convene a meeting of the Board at such time and place as he may think fit, or may adjourn any meeting of the Board.

37. Rule 3B provided that the two members personally present at the meeting of the Board shall be quorum for that meeting of the Board.

38. Rule 3C provided for transaction of the business of the Board by a general or special order by circulation instead of at a meeting of the Board.

39. Rule 3D provided that the decision of the Board shall be expressed in terms of the views of the majority.

40. Rule 3E provided that the proceedings of the meetings of the Board shall be recorded in such manner as may be specified by the Board and the same shall be signed and dated by the Chairman or, in his absence, by the member presiding over the meeting, as soon as may be after the conclusion of the meeting and the proceedings so signed shall be conclusive evidence of the proceedings recorded therein.

41. Rule 3F provided that the Board may, if it thinks fit, give to any party interested in that matter before it an opportunity of being heard.

42. After the said Rules were framed, in pursuance of the provisions of Sub-section (4A) of Section 10E, with the previous approval of the Central Government, an order was made on July 13, 1972 providing for the specific allocation of work of the

Company Law Board. The said order authorised the Chairman and each of the other members thereof to exercise and discharge its powers and functions in the manner specified in the order. Clause 1 (a) provided that the powers and functions in respect of items (i) to (iv) mentioned therein which included, inter alia, the matters respecting action u/s 408 of the Companies Act were to be exercised or discharged by the Board jointly by the Chairman and the members. Clause 1 (b) of the said order provided for the matters in respect of which the Chairman could exercise the powers, while Clause l(c) and l(d) of the said order provided for the work allotted to the members individually. The result of the passing of the said order also was that under the said amended Rule 3 the distribution of the work of the Board was to be in accordance with the said order and the said order was automatically incorporated as Rule 3.

43. The effect of the said Rules of procedure made u/s 10E(5), read along with the said Order dated July 13, 1972, which was incorporated in the said Rule 3, evidently was that the powers exercisable and functions to be discharged u/s 408 of the Companies Act by the Government, as in this case, were required to be exercised only by the Board, i.e., jointly by the Chairman and the two members of the Board. However, in this case admittedly the powers and functions u/s 408 have been exercised and discharged by only two members.

44. The question, therefore, firstly is whether, in spite of the said order passed u/s 10E(4A) of the Companies Act, the said Rule 3B providing for the quorum at the Board meeting would have application in the cases where the function and powers u/s 408 of the Companies Act are required to be discharged or exercised by the Board.

45. The learned Counsel for the petitioners contended that the said order being made specifically u/s 10E(4A), it cannot be read along with or as a part of the Rules of meetings under the rule-making power u/s 10E(5) read with Section 642 of the Companies Act, and since the said order requires the functions and powers u/s 408 to be exercised and discharged in a specific manner, viz., by the Board, i.e., jointly by the Chairman and two members, exercise of the same in any other manner, as in this case by only two members, would make the order invalid.

46. It is difficult to accept the said contention of the learned Counsel for the petitioners. Firstly, however although the said order is made by the Central Government in exercise of powers u/s 10E(4A), the said order having been incorporated in Rule 3, the same has become a part of the Rules framed by the Central Government under its rule-making power u/s 10E(5), read with Section 642, of the Companies Act and it should be read as one of the Rules of Procedure made u/s 10E(5). The Supreme Court by its majority judgment in the case of Barium Chemicals Ltd. v. Company Law Board, while dealing with the validity of the said Rules as they stood before the said order made on July 13, 1972 giving power to the Chairman to distribute the work with the consent of the Central Government held

that the said Rule was valid in spite of the enactment of Sub-section (4A) of Section 10E, and that in spite of the enactment of Sub-section (4A) of Section 10E of the Companies Act, the Central Government had u/s 10E and Section 642(1) of the Companies Act, ample power to frame Rules to authorise its Chairman to distribute the business of the Board and that the rule-making power was not cut down by the subsequent insertion of Sub-section (4A) in Section 10E. Secondly, even assuming that the said order is read as being outside the said Rules made in exercise of the rule-making power u/s 10E(5), still the said Rules regarding the meetings of the Board will have to be applied in cases where the power is to be exercised by the Board, for it cannot be gain said that the Board as such could discharge its functions and exercise its powers only at its meeting and not otherwise. Rule 3A, in terms, provides that the Board has to meet at such time and place as it may deem fit to transact its business. In that case the other Rules regarding the meetings being Rules 3B to 3F will have to apply to the Board meetings transacting its business as provided in the said order. Therefore Rule 3B of the said Rules providing that two members present at the meeting shall constitute a quorum of the Board meeting, would be equally applicable to the meetings of the Board held to exercise powers and discharge functions u/s 408 of the Companies Act and the decision taken at such a meeting having a proper quorum would still be the decision of the Board. In my view therefore on the reading of the provisions of Section 10E of the Companies Act along with the Rules, the Rule of quorum at the Board meeting as contained in Rule 3B would apply to the meetings of the Board in spite of the said order being passed u/s 10E(4A).

47. Certain decisions relied upon by the learned Counsel for the petitioners in support of the said contention may now be considered.

48. In support of his contention the learned Counsel for the petitioners, firstly, relied upon the decision in the case of AIR 1936 253 (Privy Council) That was case under Sections 164 and 364 of the Code of Criminal Procedure giving powers to the Magistrate to record a confession. As regards the exercise of the said powers the Privy Council observed as follows (p.257):

...Wether a Magistrate records any confession is a matter of duty and discretion and not of obligation. The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all.

The learned Counsel for the petitioners has relied strongly on the said observations and contended that if the exercise of the power u/s 408 of the Companies Act was to be done in a manner stated in the order dated July 13, 1972, namely, by the Board, i.e., the Chairman and members jointly, then it could be done in that manner only and the exercise of the said powers otherwise, viz., by two members only, would not be valid.

49. The said decision relied upon by the learned Counsel for the petitioners cannot have any Application to the facts of the present case, particularly because in that case there was no question of the power being exercised at the meeting the Rules providing for the quorum at the meeting. What we are concerned here is whether, when under the order u/s 10E(4A) the power is to be exercised by the Board who can only do it at a meeting, the rule of quorum at the meeting was applicable. The decision cited by the learned Counsel for the petitioners has no relevance to that question.

50. The other decision relied upon by him is in the case of Allingham v. Min. of Agriculture [1948] 1 All E.R. 780. In that case by virtue of Regulation 66 of the Defence (General) Regulations, 1939, the Ministry of Agriculture and Fisheries delegated to County War Agricultural Committee his powers, under Regulation 62(1) to give directions with respect to the cultivation, management or use of land for agricultural purposes. The Committee decided that eight acres of sugar beet should be grown by the occupiers of certain land, but left to its executive officer the selection of the field, which was required by the Regulation to be specified in the notice to the occupier. The officer consulted a local Sub-Committee appointed to make recommendations to the Committee and served notice on the occupiers specifying the field to be so cultivated. It was held that on the principles of delegatus non potest delegate, the Committee could not delegate the power to determine the land to be cultivated to the officer and therefore the notice was ineffective and non-compliance with it was not an offence. In that case the main question was as regards the sub-delegation of its authority by the Committee which was not permitted. That question has no relevance to the question before us. All that the decision holds is that the Committee to which the powers were delegated could alone exercise the power and not delegate the same to other persons.

51. The third decision relied upon by the learned Counsel for the petitioners is in the case of Cook v. Ward (1877) L.R. 2 C.P.D. 255. It was held in that case:

Where a board constituted by an Act of Parliament are authorized by it to delegate any of their powers to a committee, the powers so conferred upon the committee must be exercised by them acting in concert, and it is not competent to the committee to apportion amongst themselves the duties so delegated to them, and one of them acting alone, pursuant to such apportionment, cannot justify his acts under the Act of Parliament.

This decision, again, has no relevance to the question before me. The said decision deals with the question of delegation of its powers by the Board, with which we are not concerned in the present case. There is also nothing on the facts of that case to show that there were any rules of the meeting of the Board fixing a quorum or that the Court was concerned with it.

52. The fourth decision relied upon by the learned Counsel for the petitioners is the decision of the House of Lords in the case of Vine v. National Dock Labour Board [1957] A.C. 488. In that case the plaintiff, a dock labourer employed in the reserve pool by the defendants, the National Dock Labour Board, under the scheme set up by the Dock Workers Regulation of Replacement Order, 1947, was allocated work with a Stevedoring Company but failed to report to them. A complaint lodged with the defendants was heard by a disciplinary committee appointed by the Local Dock Labour Board, who upheld the complaint and, purporting to act under Clause 16(2)(c) of the order, gave the plaintiff notice to terminate his employment with the defendants. His appeal to a tribunal set up under the Scheme was dismissed. He started proceedings against the defendants claiming damages for wrongful dismissal and a declaration that his purported dismissal was illegal, ultra vires and void. The lower Court awarded him damages and granted a declaration. The Court of appeal held that damages were a sufficient remedy and that the declaration should not be granted. On appeal to the House of Lords, it was held that the plaintiff''s dismissal was invalid, since the Local Dock Labour Board had no power under the Scheme to delegate to a disciplinary committee their disciplinary powers given by Clause 16 of the order, under which a man might be entirely excluded from the employment of a dock worker. This decision also on the facts could not have any relevance to the question before me, as in that case, again, the only question was as regards the delegation of power by the disciplinary committee.

53. The last decision on this point relied upon by the learned Counsel for the petitioners is in the case of Gujarat Electricity Board Vs. Girdharlal Motilal and Another, . In that case the question was about the exercise of the powers by the Board u/s 6(1)(a) of the Indian Electricity Act, 1910, as amended in 1969. The Court held that the provisions of Section 6(1) conferring powers on the Board to take away the property of the licensee were mandatory and must be strictly complied with, that such a power must be exercised strictly in accordance with law and that when the Legislature had prescribed the manner of its exercise, it must exercise it in that manner and in no other way. This decision also could have no relevance to the question before me, for it is not disputed that the Board has to exercise the powers given to it by the said order dated July 13, 1972 as well as under Rule 3. The only question is whether while exercising the power at the meeting, the rule regarding the quorum at the meeting as contained in Rule 3B had application to the meetings of the Company Law Board.

54. However, the further question is whether, under the circumstances mentioned by the third respondent, Menon, a member of the Board, in his two affidavits in reply, the Company Law Board can avail itself of the rule of quorum to validate the order passed only by two of the members of the Board. According to the said affidavits the Chairman of the Board, Y.T. Shah, had declined to participate in the proceedings of the company as his father was once employed with one of the Kapadias'' concerns and he had informed the third respondent not to put up the

papers concerning the said proceedings before him and therefore no formal notice of the Board meeting was given to him. The learned Counsel for the petitioners has contended that the question of transacting business by quorum could only arise when a member had after notice of the meeting being given had remained absent. According to him, however, in the present case where no notice of the meeting was admittedly given to the Chairman and where the Chairman had initially expressed his inability to attend the meeting, no question of transacting the business by remaining two members on the basis of the rule of quorum can ever arise and the Government in that case would be required to pass a fresh order distributing the specific work to the two members of lue Board only so that the order passed by them would be valid. He has further contended that in this case although Y.T. Shah, the Chairman of the Board, had expressed his inability to participate in the said proceedings, even under the rules, it was necessary to give him notice of the meetings of the Board and since meetings of the Board were held without giving such a notice, the proceedings of the Board and the order passed thereat were bad.

55. To support his said contention he has, firstly, relied on the decision in the case of Young v. Ladies'' Imperial Club [1920] 2 K.B. 523. That case related to the meeting of the committee of the Ladies Imperial Club Ltd. commenced to erase the name of the plaintiff member from the list of its members. The rules of the Club provided that a member cannot be suspended unless a resolution to that effect had been passed by a certain majority of the members of the committee actually present at a meeting especially convened for the purpose. Notice of such meeting was sent to all members excepting one who had personally intimated to the Chairman that she would be unable to attend the meeting of the committee. In an action for a declaration that the plaintiff was still a member of the Club, it was held that the omission to summon the absent member of the committee invalidated the proceedings of the committee. From the judgment it appears that on the evidence before the Court the reason found to have been given for not summoning the said member, Duchess of Abercorn, was held to be insufficient. The observations in the judgment also show that the general rule that notice of the meeting should be given to every member of the committee admits of exceptions, although the instances of exception given cannot be considered to be exhaustive. At page 528 the observations are:

�as to the general principle, I think, there can be no question. If the absent member of the body is at such a distance that It is physically impossible for him to attend in obedience to a summons, then the convener of the meeting is excused from sending the notice to that member, and without any such notice to him the meeting of the body will be properly convened. I am inclined to think, but I do not express any very definite opinion, that the same exception would properly be held good where it was undoubted that a member of the body was so dangerously ill that it was impossible for him to be moved, even although he might not be at a distance;...

Further, the observations at p. 536 also show that the view of the Court was that every member of the committee ought to be summoned to every meeting of the committee except in a case where summoning can have no possible result. The observations in the Halsbury''s Laws of England (third edn.), vol. IX, p. 46, are also to the similar effect. This decision therefore cannot support the contention of the learned Counsel for the petitioners. Since the general rule of giving the notice of meeting to every member admits of exception, the Court will have to find out from the facts and circumstances of each case whether there was a sufficient ground to excuse the giving of notice.

56. The other decision on the question relied upon by the learned Counsel for the petitioners is in the case of In re Portuguese Consolidated Copper Mines, Limited (1889) L.R. 42 Ch.D. 160. In that case the Articles of Association of the company excluded Table ''A'' to the Companies Act, 1862. They, inter alia, provided that shares should be allotted by the directors; that the qualification of a director should be the holding of at least forty shares; that the directors should not be more than ten nor less than three in number; that the first directors should be appointed by the majority of the subscribers to the Memorandum of Association; and that the directors might determine the quorum necessary for the transaction of business. On October 22, the seven subscribers to the Memorandum met and unanimously appointed four persons as directors. On October 24, Section applied for one hundred shares. On the same day the first meeting of directors was held, at which only two of the four directors were present. No sufficient notice of this meeting had been give to all the directors. They resolved that two directors should form a quorum and then proceed to allot shares, including one hundred to Section They adjourned the meeting till the next day. Section received notice of allotment on the 24th. At this time none of the directors had any shares, but at the adjourned meeting on the following day forty shares were allotted to each of them. On the 25th Section gave notice to the company that he withdrew his application. On the 25th the meeting was further adjourned to the 26th. On the 26th three directors were present, and one of them, who had been absent on the 24th, expressed in writing his approval of the resolution as to a quorum. At this meeting the former allotments were confirmed. The other absent director on the same day wrote an approval of the resolution as to a quorum, and it was resolved by the company on the 27th on application by Section to have his name removed from the Register. North J. held that the two directors had no power to appoint themselves a quorum, and that, consequently, the allotment of shares to Section was invalid, and that it could not be ratified after Section had withdrawn his application for shares, but that the allotment, if it had been made by all the four directors, would not have been invalid merely because they had not previously acquired any qualification by the holding of shares. It was further held that assuming every other point to be decided in favour of the companv, the allotment was invalid on the ground that notice of the meeting of the 24th had not been given to all the directors, that this meeting was

therefore irregular and that the adjourned meeting of the 26th was therefore equally irregular. In the appeal Court, Lord Esher M.R. observed (p. 167):

...First of all, there is no legal evidence of his having said or done anything about the meeting; what it is suggested that he said is mere hearsay. But suppose there had been evidence that Lord Inchiquin had been told that they were going to hold a meeting or meetings during the next week, and had then said, "I cannot be there". It is said that he did so, and that is now relied on as a waiver of the right to notice. In my opinion he could not waive his right to notice. As he was within reach, and it was perfectly possible to give him notice, it was the duty of the directors to give him notice of the meeting. The circumstances existing at the time when he used the words relied on as a waiver might have been wholly altered, or he might have taken a different view if he had had notice of the time and object of the meeting. That notice ought to have been given to him, and there was no such notipe. The meeting of the 24th of October was therefore invalid, and I think that is sufficient to determine this case without deciding any of the other points

The facts of the case on which the above view was taken appear to be quite different from the one before me. In that case there was no evidence at all of one of the directors having said that he could not be there. Secondly, even if he had said so, it was possible that on giving notice he could have attended the meeting and therefore the Court held that waiver of the notice could not validate the meeting. As it is pointed out in the said judgment by Lord Esher M.R., the circumstances existing at the time when relied on as a waiver might have been wholly altered or that he might have taken a different view if he had notice of the time and object of the meeting. That could not be the case here because the refusal on the part of the Chairman Y.T. Shah to associate himself with the proceedings so far as respondent No. 7 company was concerned, could not have been altered as the ground on which he had refused to take part, viz., that his father was employed in one of the concerns of the Kapadias till January 1970, could not have altered as could have happened on the facts of the aforesaid decision. However, the said observations relied upon by the learned Counsel for the petitioners do show that the rule that a notice of the meeting should be given to every director admits of exceptions. The said decision therefore, cannot take the petitioners'' contention any further.

57. The last decision cited by the learned Counsel for the petitioners is in the case of Shri Parmeshwari Prasad Gupta Vs. The Union of India (UOI), . In that case it was held that notice to all the directors of a meeting of the Board of Directors as required by Article 109 of the Articles of Association of the Company was essential for the validity of any resolution passed at the meeting and where admittedly no notice was given to one of the directors of the Company, the resolution passed at the meeting of the Board of Directors was invalid. The said decision would have no application in this case, for there the Court had not to deal with the question of possible exceptions to the general rule that notice of the hearing should be given to

every director in order that the proceedings of the meeting of the Board be valid.

58. The learned Counsel for the petitioners Mr. Bhabha also referred to a passage in Halsbury''s Laws of England, fourth edn., vol. I, foot-note one to para, 73 at page 89 that if all the members of the tribunal are prejudiced, then the Government will have to re-constitute the tribunal. The said passage again cannot help to support the petitioners'' contention, firstly, because it relates to a case where all the members of the tribunal were likely to be prejudiced, which is not the case here and, secondly, as the said observations further, as para. 73 itself shows that if it is impossible to re-constitute such a tribunal, then the tribunal would have authority to adjudicate upon the matters before it.

59. The question in this case therefore is whether in the circumstances of this case not giving of the notice of the meetings to the Chairman, Y.T. Shah, could be excused so as to validate the proceeding of the meeting of the Board held by only two of the Board''s members. The Company Law Board by their two affidavits by its member Menon has placed on record the fact that the Chairman Y.T. Shah had at the initial stage before any meeting of the Board in that connection was held, intimated to the Board as well as the Minister for Law and Justice under whom the said Board functions, that he would not be able to participate in the said proceedings and not to send the papers in respect thereof to him on a legitimate ground that his father was once employed by one of the concerns of the Kapadias. Under the circumstances, in my view it was not necessary to give notice of the meeting to the Chairman Y.T. Shah, as, as pointed out in the aforesaid decision in Young''s case, summoning him could have no possible result. The remaining twp members of the Board who held the meetings and passed the order were therefore properly vested with th powers to do so under the Rules. Further, as observed by Bachawat J. in the majority judgment in the case of Barium Chemicals, the said rules should be construed liberally. Further, I may point out that u/s 10E(4) by reason of any defect in the constitution of or any vacancy in the Board, no act of the Board shall be called in question. Under the circumstances, in my view, the proceedings of the Board or the impugned order cannot be invalidated on the ground that no notice of the meetings of the Board was given to the Chairman or that the meetings of the Board held and proceedings were conducted and the order was passed by only two of its members who were sufficient to form a quorum at the Board''s meeting under the said Rules. The said contention of the learned Counsel for the petitioners, therefore, cannot be accepted.

60. The next ground on which the said order of the Company Law Board is challenged is that the order is passed without observing the principles of natural justice. The learned Counsel for the petitioners, firstly, argued that the said order being a quasi-judicial order, the observance of the principles of natural justice in passing the order was necessary. In the alternative, he has argued that even if the order passed u/s 408 of the Companies Act was held to be an administrative order,

since it gave rise to civil consequences, observance of the principles of natural justice before passing the order was also necessary. Non-observance of the principles of natural justice in passing the impugned order is said to be on two grounds: Firstly, that no notice of the proceedings was given and consequently no opportunity of hearing was given to the shareholders, including the petitioners, and, secondly, the documents on which the Company Law Board relied for passing the order were not disclosed at the hearing.

61. On the other hand, the learned Counsel for the Company Law Board (the second respondent) has contended, firstly, that the impugned order u/s 408 of the Companies Act was purely an administrative order and therefore the Board was not required to observe the principles of natural justice in passing the said order. Secondly, he has contended that, even if it were held that the said order was a quasi-judicial order or an administrative order giving rise to civil consequences and therefore observance of the principles of natural justice was necessary in passing the order, the Board had observed the principles of natural justice necessary to be observed under the circumstances. According to him, looking to the object of the section and the other circumstances, in this case the principles of natural justice did not require the Board to give to every shareholder a notice of hearing and consequent hearing if he so desired.

62. Firstly, in support of his contention that the impugned order u/s 408 of the Companies Act was a quasi-judicial order, the learned Counsel for the petitioners has cited the decision of the Supreme Court in the case of Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another, . In that case an order made u/s 326 of the Companies Act was challenged. The said section required that before passing an order sanctioning the appointment of managing agents, the Government was to satisfy itself about certain things mentioned in that section. The Supreme Court held that since the order u/s 326 was required to be missed on the satisfaction, inter alia, that it was in the interest of public, including the shareholders, it would be a quasi-judicial order.

63. As against this, the learned Counsel for the Company Law Board to support his contention that the impugned order was merely an administrative order, has, firstly, relied upon the decision of this High Court in the case of Alarakhia Somijee Vs. Collector of Nasik, . In that case the order challenged was made under the Bombay Land Requisition Act. Under the said Act the Government was required to make a declaration as to vacancy after making such inquiry as is deemed fit. The expression "such inquiry as it deems fit" was considered by this Court to be an administrative enquiry and not a quasi -judicial inquiry remiirina the officer before making an order of vacancy to hold a Judicial inquiry and that the nature, the extent and the scope of the inquiry was left over to be determined bv the Government. The said decision was approved by the Supreme Court in the case of Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others, which was also a case under the same Act. The same view was

subsequently taken bv this Court in an unreported decision in Navinchandra C. Sayta v. State of Maharashtra (1972) Mis Pet 662.

64. The other decision relied upon by the learned Counsel for the Company Law Board was in the case of Beetham v. Trinidad Cement, Ltd [1960] 1 All E.R. 274. In that case the question was as regards the validity of the Governor''s appointment of the Board of Enquiry under the Trade Disputes (Arbitration and Enquiry) Ordinance to inquire into the trade dispute between the company and the union. The contention raised there was that the order was bad as the Governor had appointed the Board without holding an inquiry and giving a fair opportunity to both the parties to make representations before holding an inquiry. The Court held that the inquiry to be made by the Governor was in his administrative capacity and was not in the nature of a judicial or quasi-judicial inquiry.

65. The last decision relied upon by him was of the Supreme Court in the case of The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, In that case the impugned order was passed in proceedings taken by the Government under the Industries (Development and Regulation) Act, 1951. Although the powers exercisable by the Government under the said Act were far more drastic than those exercised by the Government u/s 408 of the Companies Act, the Court held that the orders passed therein were purely executive orders.

66. As I will presently point out, this controversy as regards the order being quasi-judicial or administrative in so far as the question of the observance of the principles of natural justice by the authority making the order is concerned, is now unnecessary and immaterial, for the Supreme Court by its subsequent decisions, including the one in the case of Kesava Mills on which the learned Counsel for the Company Law Board has himself relied, has held that even in administrative orders giving rise to civil consequences, such observance of principles of natural justice was necessary. Two of such decisions to which reference may be made are: (1) in the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, and (2) Kesava Mills Co. v. Union of India.

67. The most important case holding that the principles of natural justice are required to be observed not only in the quasi-judicial orders, but also even in administrative order, is the case of A.K. Kraipak v. Union of India, In that case the consideration was as regards the selection of a candidate for the post of a Conservator of Forests by a Selection Board, one of the members of which was also one of the candidates for the selection whose names were to be considered bv the Board. The validity of the order of the Selection Board which was an administrative order came to be questioned before the Supreme Court on the ground that the same was vitiated for non-observance of the principles of natural justice, the contention being that the person who was a candidate for the post also being a member of the Selection Board, the Board was likely to be biased in its decision. While holding that the order was vitiated for the non-observance of the principles of

natural justice, the Supreme Court observed as follows:

In the past only two rules were recognised but in course of time many more subsidiary rules came to be added to these rules. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice there is no reason why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry.

68. The same principles were reiterated in the later decision of the Supreme Court in the case of Kesava Mills Co. v. Union of India. After reiterating the principles laid down in the decision in Kraipak''s case, the Court observed:

The principles of natural justice do apply to administrative orders or proceedings. The concept of natural justice cannot be put into a strait jacket. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly.

69. It is clear from the said decision that now even if the order were administrative one, if it gave rise to civil consequences in passing the same the authority is required to observe the principles of natural justice. On the ratio of the said decisions, even if in this case the order made by the Company Law Board u/s 408 of the Companies Act were held to be an administrative order, it cannot be disputed that the same gave rise to civil consequences and therefore in making the said order the Company Law Board was required to observe the principles of natural justice. Under the circumstances, the contention of the learned Counsel for the Company Law Board that in this case the Company Law Board was not required to observe the principles of natural justice cannot be accepted.

70. However, the next contention of the learned Counsel for the petitioners is that, the Company Law Board failed to observe the principles of natural justice by not giving to the shareholders, including the petitioners'' either the show cause notice or the notice of hearing and thereby deprived them of the opportunity of being heard. The learned Counsel for the Company Law Board however has contended that in the scheme of Section 408 of the Companies Act the Company Law Board in

observance of the principles of natural justice was not required to give any such notice to and in consequence hear every shareholder if he desired.

71. The Supreme Court has observed in its afore cited decisions in Kraipak''s case and Kesava Mills'' case that the principles of natural justice are not embodied rules and cannot be put into a strait jacket and that they have to be determined according to the facts and circumstances of each case after taking into consideration, as pointed out by the Supreme Court itself in the above-cited decision in Kraipak''s case, (1) the facts and circumstances of the case (2) the frame-work of the law under which the enquiry is to be held, i.e., in this case Section 408 of the Companies Act, (3) constitution of the tribunal or body of persons appointed for that purpose and (4) whenever a complaint is made in the Court that some principles of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case. In this case, therefore, it would be necessary to find out on the consideration of the aforesaid things whether in passing the order u/s 408 of the Companies Act it was obligatory on the Company Law Board in observance of the principles of natural justice to give to the shareholders a notice, i.e., a notice of hearing to every individual shareholder, and in consequence to hear him, if he so desired.

72. In that regard first it will be proper to consider the scope and the purpose of Section 408 of the Companies Act, 1956, under which the said order has been passed. The said section is a part of chap. VI of Part VI of the Companies Act dealing with the prevention of oppression and mismanagement. Sections 379 to 407 of the said chapter deal with the Court''s power of intervention in the case of the mismanagement of the company or for the prevention of oppression of the shareholders of the company. The provisions of Section 402 show that the ambit of the Court''s powers of intervention in the company''s mismanagement are very large as compared with the powers of the Government u/s 408 under the similar circumstances which are restrictive and of temporary nature. Section 408 entitles the Government only under certain circumstances, to appoint two persons of its choice on the Board of Directors of the company for a limited period for preventing the affairs of the company being conducted in a manner which is oppressive to any member of the company or in the manner which is prejudicial to the interest of the company or to the public interest. Looking to the provisions of the said chapter, it appears clear that the said provisions being for the prevention of oppression of shareholders or the mismanagement of the company or in the interests of the public as well as of the company, they are of an urgent and emergent nature enabling the Court or the Government on circumstances arising to take urgent steps in the matter to prevent harm to the shareholders, company and the public.

73. The scope of the provisions of the said chapter of the Companies Act, 1956, covering Sections 397 to 412 came to be considered by the division Bench of this Court in the case of Shanti Prasad v. Union of India (1973) 75 Bom. L.R. 778. While

comparing chap. II of the Companies Act with the said chap. VI, which includes Section 408, the Court observed (p. 811):

...In other words, it is very clear that Chapter II which includes Section 255 deals with corporate management of a company through directors in normal circumstances, while Chapter VI deals with emergent situations or extraordinary circumstances where the normal corporate management has failed and has run into oppression or mismanagement and steps are required to be taken to prevent oppression and/or mismanagement in the conduct of the affairs of a company. It is in view of this scheme which is very apparent on a fair reading of the arrangement of chapters and the sections contained in each chapter which are all grouped under Part VI of the Act that the question will have to be answered as to whether the powers of Court under Chapter VI (which includes Sections 397 and 398 and 402) should be read as subject to the provisions contained in the other Chapters which deal with normal corporate management of a company and in our view, in the context of this scheme having regard to the object that is sought to be achieved by Sections 397, 398 read with Section 402, the powers of the Court thereunder cannot be so read. Further an analysis of the sections contained in Chapter VI of Part VI of the Act will also indicate that the powers of the Court u/s 397 or 398 read with Section 402 cannot be read as being subject to the other provisions contained in sections dealing with usual corporate management of a company in normal circumstances. As stated earlier, Chapter VI deals with the prevention of oppression and mismanagement and the provisions therein have been divided under two heads-under head A powers have been conferred upon the Court to deal with cases of oppression and mismanagement in a company falling u/s 397 and Section 398 of the Act while under head B similar powers have been given to the Central Government to deal with cases of oppression and mismanagement in a company but it will be clear that some limitations have been placed on Government''s powers while there are no limitations or restrictions on Court''s powers to pass orders that may be required for bringing to an end the oppression or mismanagement complained of and to prevent further oppression or mismanagement in future or to see that the affairs of the company are not being conducted in a manner prejudicial to public interest. In other words, whenever the Legislature wanted to do so it has made a distinction between powers conferred on the Government (vide Section 408) and powers conferred on the Court (vide Section 402) while dealing with similar emergent situations or extraordinary circumstances arising in the management of a company and in the case of the Government it has placed restrictions or limitations on Government''s powers but no restrictions or limitations of any thing have been prescribed on the Court''s powers;...

74. These observations clearly support the view that the powers of the Government u/s 408 of the Companies Act are of an urgent and emergent nature enabling the Government, under certain circumstances, to step into the company''s administration to prevent oppression of members or in the interests of the

shareholders, the company and the public. Therefore, looking to the said object for which Section 408 was enacted, it cannot be expected and desired that before passing any order under the said section, the Government were required to conduct a detailed and time consuming inquiry in the matter by giving notice to every shareholder of the company, having a large number of shareholders, as in this case, and to hear each of them if he so desired. In my view, the scope and the object of the said section does not contemplate and cannot permit of any such detailed enquiry and to hold otherwise would be frustrating the whole object of the section. Further, the use of the expression "as it deems fit" in connection with the enquiry to be made by the Government u/s 408 as well limits the scope of the enquiry. The above cited decision of our High Court in the case of Alarakhia v. Collector of Nasik, the decision of the Supreme Court in the case of Jayantilal Amratlal v. F.N. Rana, show that the use of the expression "such enquiry as it may deem fit to make" left the nature and the ambit of the enquiry to the discretion of the authority concerned.

75. Further, the powers exercised by the Government by an order u/s 408 are not intended to interfere with or displace the existing management of the company, but are only intended to maintain a control over the same. The said powers in their very nature are restricted as to the number of the Directors to be appointed and the duration of the order. The exercise of the powers u/s 408 by the Government, therefore, does not directly touch the rights and interests of each individual shareholder. Under the circumstances, it appears that while passing the order u/s 408, it is not obligatory on the Government to send to every shareholder either a show cause notice or a notice of hearing and hearing him if he so desired.

76. The learned Counsel for respondent No. 8, Mr. Tulzapurkar, in that connection has drawn my attention to the observations in the decision of the House of Lords in the case of Wiseman v. Borneman [1869] 3 ALL E.R. 275, to the following effect (p. 278):

Even where the decision is to be reached by a body acting judicially there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see the material against him.

77. I may also refer to certain observations relied upon by the learned Counsel for the Company Law Board in the book of "Judicial Review of Administrative Action" (2nd edn.) by De Smith to show that even if a party may be affected by the order passed by the administrative authority, still under certain circumstances it would not be necessary to give a notice as to the action and consequent hearing to such party. He has, firstly, relied on the observations at page 168 to the following effect:

In administrative law a prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication if any of the following factors is present, singly or in combination with another:...

78. One of such circumstances mentioned at page 174 is:

Where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature.

79. The other circumstance mentioned at page 176 is:

Where for any other reason it is impracticable to give prior notice or opportunity to be heard.

80. It is observed there "In those circumstances one may assume that the rule will be held to be impliedly excluded in so far as the number of persons affected by a particular order made or decision given was so great as to make it manifestly impracticable for being given a notice or an opportunity of being heard by a competent authority before passing the order." In the present case the existence of both the said circumstances, namely, the object of the section requiring prompt action and the large body of shareholders would make the giving of notice and opportunity of being heard impracticable.

81. However, the learned Counsel for the petitioners cited before me in support of his contention a decision of the Supreme Court in the case of Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd., In that case the Company Judge on the report of the Official Liquidator u/s 457 of the Companies Act had issued orders for sale of the leasehold rights of the company under liquidation but no notice thereof was given to the landlord either by the Official Liquidator or by the Court. The Court held that the landlord was entitled to appeal against the order u/s 483 of the Companies Act as the Official Liquidator or the Court were bound by the rules of natural justice to issue notice to the landlord before ordering sale. In that case inspite of the fact that Rule 103 of the Companies (Court) Rules, 1959, expressly provided for the issue of such a notice, no notice was given. The said decision does not lay down any such proposition as contended by the learned Counsel for the petitioners.

82. The learned Counsel for the petitioners has further pointed out that u/s 640B(2) of the Companies Act, the company was required to issue notice to the members in respect of an application u/s 408 indicating the nature of the application proposed to be made. It is not disputed that Section 408(1) does not contemplate any application by the company and therefore the said provisions of Section 408B(1) can have no application to an order u/s 408(1). The only application the company could make under that section is under Sub-section (5) for sanctioning the change of the Board of Directors. On the analogy of Sub-section (5) of Section 408, read with Section 640B, the learned Counsel for the petitioners has contended that acting u/s 408(1) the Company Law Board would equally be required to give notice to each shareholder. It is difficult to accept the said contention. If it were intended to give such a notice while passing the order u/s 408(1), the same would have been specifically provided for either under Sub-section (1) of Section 408 itself or u/s 640B of the Companies Act. That not having been done, such a provision cannot be incorporated in Section 408(1) by way of an analogy. The said contention of the

learned Counsel for the petitioner therefore cannot be accepted.

83. In my view, therefore, looking to the scope and object of Section 408 under which in this case the Government or the Company Law Board were to hold an enquiry it does not appear to be necessary on their part in observance of the principles of natural justice to give to every shareholder of the company a show cause notice or a notice of hearing and in consequence to give every shareholder an opportunity of being heard if he so desired.

84. However, it will have also to be considered further whether under the facts and circumstances of this case such an opportunity of being heard was necessary to be given by the Company Law Board to each and every shareholder for the just decision of the case.

85. In this case it is not disputed that the Company Law Board had served the show cause notice and the notice of hearing only on the company and the applicant shareholders on whose application the Company Law Board had moved. However, as it is evident from the show cause notice the only parties against whom the allegations were made in the show cause notice were the Kapadias and Kapadias alone. The Kapadias very well knew about the show cause notice, they being the Directors and as the said show cause notice was admittedly discussed at the Board meeting and a reply thereto sent by the company on May 28, 1973 was admittedly signed by them. Further, so far as the Kapadias were concerned, they, through their attorneys, had requested the Company Law Board to give them a copy of the said show cause notice, as well as a copy of the application made by Kunjalata Section Patel and other shareholders and at the instance of the Company Law Board, the attorneys for the company had, in fact, supplied the Kapadias with the same and the Kapadias had replied in detail to the same. It is also not disputed that the said show cause notice served on the company was considered in detail at the meeting of the Board of Directors of the company on May 28, 1973 where nine out of eleven Directors were present and a detailed reply signed by all the Directors present, including Kapadia Directors, stating exactly the majority view of the Directors was sent by the company to the Company Law Board by its letter dated May 28, 1973. It is also not disputed that at the hearing before the Board not only the Kapadias represented by their attorneys Messrs. Gagrat and Company and their counsel were heard, but also 117 shareholders supporting the Kapadias who had made representations to the Board through Messrs. Gagrat and Company were also heard through their respective counsel.

86. However, the learned Counsel for the petitioners has contended that on the contents of the company''s letter dated May 28, 1973 alone, the Company Law Board was not right in accepting the majority view of the company''s Directors in favour of continuance of the Government Directors as the view of the company and it was incumbent upon the Company Law Board not to accept the views expressed by the majority of the Directors at the Board meeting, but in the interests of justice

to take steps to hear the views of the individual shareholders in respect thereof. His said contention is based on three things; which, according to him, were apparent from the contents of the letter. Firstly, according to him, the said decision taken by the majority of the Board of Directors, which included two Government directors, was of persons at least two of whom were suffering from bias and gave rise to a conflict of duty as against their interest. Secondly, the contents of the letter make it very clear that although it was suggested by the Kapadias by moving a resolution to take the views of the general body meeting of the shareholders in respect of the said show cause notice, but the said resolution was defeated by the majority of the Directors. And, thirdly, it was very clear from the said letter that at the meeting of the general body of the respondent No. 7 company held on May 11, 1973, in spite of the Chairman of the company Mr. Tata asking the shareholders to maintain the status quo in the management of the company, certain shareholders had, in fact, insisted on electing seven more directors and the elections thereof were in fact held.

87. Before dealing with the said contention, firstly, it may be mentioned that there is sufficient authority to hold that the management of a company was primarily with the Board of Directors of the company and so long as the general body does not take any action to change that management and to remove or to appoint a new Board of Directors as such, the decisions taken by the Board of Directors which are subject to the rule of majority are to be considered to be the views of the company. At page 5.28 in Palmer''s Company Law (21st edn.), the following observations appear:

The general clause in the articles vesting the management of the company in the directors is of great practical importance: it means that the directors have full power of management, and are only subject to control by the shareholders in manner laid down by statute and articles. It further means that the shareholders cannot, by ordinary resolution of the general meeting, exercise a power given to the directors by the articles or overrule the directors when exercising such a power. Thus, where the articles contained a clause similar to article 80, a resolution of the company in general meeting for payment of preference dividends in advance by instalments was held to be invalid as interfering with the management, which had been delegated by the articles to the directors. The shareholders are, of course, at liberty by special resolution altering the articles to vest in the general meeting a power given to the directors, and then to exercise such power,

88. Similarly, at page 136 of the Modern Company Law by Gower (3rd edn.) it is observed:

The result of this discussion appears to be that the directors have ceased to be mere agents of the company. Both they and the members in general meeting are primary organs of the company between whom the company''s powers are divided. The general meeting retains ultimate control, but only through its powers to amend the articles (so as to take away, for the future, certain powers from the directors) and to

remove the directors and to substitute others more to its taste. Until it takes one oi other of these steps the directors can, if they are so advised, disregard the wishes and instructions of the members in all matters not specifically reserved (either by the Act or the articles) to a general meeting.... The old idea that the general meeting alone is the company''s primary organ and the directors merely the company''s agents or servants, at all times subservient to the general meeting, seems no longer to be the law as it is certainly not the fact.

89. The said principles have been reiterated by our Court in the case of Shanti Prasad v. Union of India, at page 806. In that case the question was whether directors can file an appeal when the company itself has not filed an appeal but an appeal has been filed by the shareholders. After citing the aforesaid passages from Gower''s Principles of Modern Company Law at page 583 and the foot note, as well as from pages 136.137 dealing with the chapter "The directors as primary organs of the company", this Court observed as follows (p. 807):

...From the above discussion it will thus appear clear that the normal rule is that in an action arising out of a dispute within the Company the appropriate agency to start an action on the company''s behalf is the Board of Directors, though as an exceptional measure it has been ruled that if the directors cannot and will not start proceedings in the company''s name, the power to do so reverts to the general meeting. But the manner in which the general meeting can retain the ultimate control is only through its power to amend the Articles and remove the directors and to substitute others more to its taste, and until the general meeting takes one or the other step, the directors can, if they are so advised, disregard the wishes and instructions of the members in all matters not specifically reserved to a general meeting.

90. These observations, in my view, show that the power of management of the company is vested in the Board of Directors as a result of the Companies Act as well as the Articles of Association of the company and unless and until the general body by the policy of its Articles chooses to take them away, and substitute others more to its taste, the Board of Directors in its right continues to manage the affairs of the company. The decisions of the Board of Directors are to be taken by a majority. In this case, therefore, in the absence of any definite action to the contrary being taken by the general body of the company at a general meeting, the Company Law Board was entitled to accept the majority views of the Board of Directors in favour of appointment of Government Directors as expressed in their letter dated May 28, 1973 as the views of the company and to act upon the same. Looking to the position of the directors present at the said meeting, even if the views of the two Government Directors were excluded from consideration, still the directors favouring the appointment of Government Directors would be in majority and the said views expressed in the company''s letter would be the views of the company. The Company Law Board, while passing an order u/s 408, was concerned mainly

with the existing management of the company. It, therefore, cannot be said that the Company Law Board was wrong in accepting the majority view in favour of the appointment of Government Directors as expressed in the company''s said letter dated May 28, 1973 as the views of the company.

91. If the Company Law Board was entitled to accept the decision of the majority of directors as the decision of the company, the question further is whether the contents of the said letter made it obligatory on the Company Law Board to give to each shareholder of the company a show cause notice or an opportunity of being heard as contended by the learned Counsel for the petitioners. Before I consider the said three circumstances which, according to the learned Counsel for the petitioners, made it incumbent upon the Company Law Board, in the observance of the principles of natural justice, to give notice to the individual shareholders and to hear them, it would be better to set out shortly the contents of the said letter (exh. No. 1 to the affidavit in reply to the interim relief of Dinesh Sadashiv Joshi, Secretary of the Company Law Board, dated August 17, 1973). It is not disputed that the said letter was signed by all the Directors present, incorporating therein truly and fully all that transpired at the meeting. The minutes of the meeting show that at the meeting out of eleven Directors nine Directors were present. The Directors who were absent were Shantanu N. Desai and J.R. Shah who were the Directors admittedly supporting the Kapadias. Of the Directors present K.C. Raman and H.M. Trivedi were the Government appointed Directors. Sanat P. Mehta who was initially appointed as Director on behalf of the Unit Trust was co-opted as a Director unopposed at the meeting of the company held on May 11, 1973, while P.V.R. Rao represented the Industrial Credit and Investment Corporation of India Ltd. Naval Tata, Chairman, was an independent Director. The Directors belonging to the group of Kapadias, apart from the two absent Directors, were Laljibhai C. Kapadia, Nimjibhai C. Kapadia and Devji Rattansey, while the one falling in the Chinai group was Rasiklal J. Chinai. At the meeting it appears that two letters, one from Nimjibhai C. Kapadia dated May 28, 1973 and the other from Devji Rattansey dated May 24, 1973 and the show cause notice were considered. So far as the show cause notice issued by the Company Law Board was concerned, after discussing all the three documents, the Board unanimously accepted a letter drafted by P.V.R. Rao as showing the views of the company in respect of the show cause notice. It is not disputed that at the said meeting the resolution moved by the Kapadias for convening a general meeting to ascertain the views of the company on the show cause notice dated May 18, 1973 from the Company Law Board was defeated by majority of six to three. The directors voting for the holding of such a meeting were Laljibhai Kapadia, Nimjibhai Kapadia and Devji Rattansey, while all the other Directors opposed the said resolution.

92. Dealing with the relevant parts of the said letter, firstly, it states that at the meeting it was thought by the Directors, viz., the Chairman Tata, Rasiklal Chinai, Sanat P. Mehta, P.V.R. Rao, K.C. Raman and H.M. Trivedi that the Government

Directors had been of great assistance in lending stability to the Board and their presence on the Board had been of crucial importance. However, it appears that it was considered by Laljibhai Kapadia, Nimjibhai Kapadia and Devji Rattansey that there was no necessity of continuance of the operation of Section 408 of the Companies Act, so far as the company was concerned. They do not appear to have disputed the views expressed by the other directors that the Government Directors were of great assistance. Then, it is pointed out in para. 3 of the said letter that inspite of the appeal by the Chairman at the general body meeting for the preservation of the status quo, some shareholders had pressed their proposal to add seven additional directors to the Board by taking a vote and their votes were in the process of being counted. Paragraph 4 of the said letter deals with the nine instances of allegations made against the Kapadias in the show cause notice and it is pointed out, without laying any blame in respect thereof on the Kapadias, that they were instances of a period prior to the existing Board of Directors was constituted and that thereafter they had reconstituted the committees, particularly the committee dealing with sales and purchases to make it more broad-based and in the cases of unresolved differences of opinion the matter was required to come up before the full Board and the Board in such cases had taken appropriate decisions without dissent.

93. Then it is also pointed out that there was a difference of view amongst the members of the Board-six members, including the Chairman and Directors Rasiklal J. Chinai, Sanat P. Mehta, P.V.R. Rao, K.C. Raman and H.M. Trivedi, had, in terms, noted that the company was engaged in the implementation of a major project to manufacture Nylon Cord involving an outlay of over Rs. 10 crores and had obtained foreign exchange loan from the Industrial Credit and Investment Corporation of India Ltd., and were required to raise substantial additional finance for the said project. The letter also quotes a portion from the letter from the Industrial Credit and Investment Corporation of India Ltd., which ultimately stated that they expected to be assured that there would be no significant changes in the Board (or responsibilities of individual members) which were likely to be detrimental to the interests of the company. It also mentions that at the annual general meeting held on May 11, 1973, the representatives of the Unit Trust of India on behalf of the Unit Trust as well as other public finance institutions pleaded for preservation of the status quo of the Board of Directors and that after taking into consideration all these factors the six directors had agreed with the prima facie conclusion of the Company Law Board that the Government should appoint its own two Directors u/s 408. The letter also pointed out that the four Directors, viz the Chairman Tata, R.J. Chinai, Sanat P. Mehta and P.V.R. Rao, were of the view that it would be in the interests of the company as well as in the public interest if H.M. Trivedi and K.C. Raman were continued as directors for the extended period as the experience and knowledge they had gained of the working of the company would remain available to the company with advantage. The letter further points out that the said views

were opposed by Nimjibhai C. Kapadia, Laljibhai C. Kapadia and Devji Rattansey. The letter further points out that in view of the circumstances governing the subject-matter the Board by majority decided that there was no purpose in convening an extraordinary general meeting of the company called for by the Kapadias.

94. According to the learned Counsel for the petitioners the first circumstance apparent from the said letter which ought to have made the Company Law Board reject the views of the majority of Directors, including the Government Directors, as the views of the company and to issue a show cause notice to every shareholder and give them opportunity of being heard was that the resolution moved by the Kapadias and supported by Devji Rattansey to take the views of the general body by convening an extraordinary general meeting of the company to consider the said show cause notice was not accepted by the Board and was defeated by a majority. It is difficult to see how the Company Law Board was entitled to reject the said views expressed in the said letter as the views of the company though expressed by a majority of the Directors only on the ground that the resolution for calling the extraordinary general meeting of the company was defeated. Even if such a resolution was defeated at the Board of Directors meeting, there were provisions in the Companies Act entitling either the Kapadias or the other shareholders to call such an extraordinary general meeting of the company for considering the show cause notice. Since this was not done, the Company Law Board was entitled to accept the views expressed in the said letter as the views of the company.

95. The second circumstance that is relied upon is that it was evident to the Company Law Board from the said letter that at the general body meeting held on May 11, 1973 in spite of the appeal to the contrary by the Chairman Tata, certain shareholders had pressed for election of seven additional Directors, that the voting in respect thereof had taken place and the votes were in the process of being counted. It is contended by the learned Counsel for the petitioners that from this circumstance at least the Company Law Board ought to have given an opportunity of being heard to the shareholders generally.

95. In my view that circumstance as well can have no relevance to the issue. Apart from the fact that the election of seven more directors would have ordinarily required the sanction of the Central Government, for making an order u/s 408, the Company Law Board would be concerned only with the existing management of the company and was not concerned with the future management of the company or the election of additional directors. The said circumstance was therefore really irrelevant for considering whether the Company Law Board ought to have given an opportunity of being heard to every shareholder.

96. The third circumstance in the said letter that has been relied upon by the learned Counsel for the petitioners is that the two Government Directors, while voting along with four other directors to continue the appointment of the two

Government Directors u/s 408 of the Companies Act by the Company Law Board, had acted with bias and were under the circumstances placed in a situation where their duty conflicted with their interest and therefore the Company Law Board ought not to have considered the view of the company expressed by a majority of the Directors as the views of the company. Firstly, it is quite apparent from the position of the Directors present at the meeting and the manner in which they had expressed their views that even if the votes of the two Government Directors were to be excluded, by majority of one, the Board of Directors could have expressed the views of the company in favour of the appointment of the Government Directors. There is also no allegation that the existence of the said two Government Directors had in any way influenced the views of the other Directors who had voted for retention of the appointment of the said Government Directors. The said contention of the learned Counsel for the petitioners therefore has no substance.

97. Apart from that, u/s 408(4) of the Companies Act, it is quite clear that after the Government appointed the Directors on the Board of Directors of the company, they form an integral part of the Board of Directors and are entitled to take part in the day-to-day management of the company in the same way as the other Directors of the company, as provided by Sections 291 and 292 of the Companies Act. Section 291 of the said Act entitles the Board to exercise all such powers and to do all such acts and things as the company is authorised to exercise and do, unless precluded by the Act or by the Memorandum and Articles of Association of the company, while Section 292 speaks about certain things to be done only at the meeting and not otherwise. It is not contended that the consideration of the show cause notice was a matter which either under the said Act or Memorandum and Articles of Association was required to be considered only at the general body and not by the Board of Directors. The Government appointed Directors therefore being in the management of the company were, along with the other Directors, in their own right, entitled to express their views on the question of the appointment of Government Directors. In that case there is no question of their duties conflicting with their interest or they being biased. It may, however, be mentioned that when the question of the same Directors being continued to act as Government Directors was considered, the said Government Directors had desisted from expressing their view. In my view, therefore, merely because two Government Directors had expressed their view, along with four other Directors of the company, in favour of appointment of Government Directors, would not necessitate the Company Law Board to give opportunity of being heard to every shareholder. In my view, therefore, as pointed out above, none of the said three circumstances appearing in the company''s letter dated May 28, 1973 would make it incumbent upon the Company Law Board to give every shareholder an opportunity of being heard as contended by the learned Counsel for the petitioners.

98. The next question that may be considered is whether, apart from the facts and circumstances of the case or the scope and object of Section 408 of the Companies

Act, under which the enquiry is held and order is passed, in any event, it was necessary in this case to give to every shareholder an opportunity of being heard for the just decision of the case. As I have pointed out above, admittedly the Company Law Board had given an opportunity of being heard not only to the company and the applicants, but also to Kapadias and other shareholders supporting Kapadias who demanded an opportunity of being heard. In acting u/s 408 of the Companies Act the only thing with which the Company Law Board was concerned, was the existing management of the company but for the appointment of the Government Directors. The contents of the show cause notice and the conclusions of the Company Law Board in its order which I have pointed out above would show that the allegations therein and the conclusions arrived at were only against the Kapadias and the apprehension on which it was based was only that if the Kapadias were allowed to come into the management of the company on the strength of the Preference shares, they would mismanage the company to the detriment of the interest of the company, its shareholders and the public. With the said allegations and conclusions the other individual shareholders were not concerned in any way. Under the circumstances, even otherwise for the just decision of the case, the Company Law Board was not, in observance of the principles of natural justice, bound to give to every shareholder an opportunity of being heard.

99. Under the circumstances, in my view, in this case neither on the facts and the circumstances, nor under the object and scope of. Section 408 of the Companies Act under which the impugned order was passed, nor otherwise for the just decision of the case, it was necessary for the Company Law Board in observance of the principles of natural justice to give to every shareholder a notice of the proceedings before it and in consequence an opportunity of being heard and the impugned order therefore cannot be invalidated on that ground.

100. If the petitioners were not entitled to an opportunity of being heard before the Company Law Board in the said proceedings, then they were also not entitled to challenge the order on the ground that at the hearing Company Law Board did not disclose to the persons who were heard, viz. the Kapadias and the shareholders supporting them, the material relied upon by the Company Law Board in passing the said order and on that ground as well the said order cannot be invalidated. However, even considering the said contention in relation to the Kapadias who appeared before the Company Law Board, the same also, in my view, has no substance.

101. Firstly, the non-disclosure at the hearing before the Company Law Board that is alleged is as regards the enquiry report of the Inspectors appointed by the Company Law Board on which thi; said show cause notice was based. It is not disputed that after having receive an application from Kunjalata Section Patel and other 116 shareholders for continuance of the appointment of the Government Directors u/s 408, the Company Law Board had through its inspectors made

inquiries into the affairs of the company and that the said inspectors had submitted to the Company Law Board their inquiry report. That is very clear from the show cause notice issued by the Company Law Board to the company, which starts by saying "the results of the enquiries suggest...." Even the impugned order of the Company Law Board shows that at the hearing the learned Counsel for the Kapadias had made a request to show them the report on which the said show cause notice was based, which was rejected. The contention of Mr. Jethmalani appearing for the Kapadias and their concerns before the Company Law Board that since the said report had not been revealed, the same could not be relied upon was also rejected. As regards the said report of the inspectors on which the show cause notice was based, the question is whether the persons who were heard by the Company Law Board were entitled to the disclosure thereof, or by non-disclosure thereof the order would become bad.

102. In my view, it is quite clear that the show cause notice is based on the said report. The said show cause notice had set out in detail the specific charges levelled against the Kapadias and asked them to show cause only against the said allegations. If the only charges that the Kapadias had to meet were contained in the show cause notice, non-production of the inspector''s report on which the said show cause notice was based could not in any way prejudice the parties heard, nor would its non-disclosure: amount to non-compliance with the principles of natural justice or that the inquiry was unfair. The impugned order does not show that while passing the said order the Company Law Board has relied on the said report.

103. The learned Counsel for the Company Law Board has cited before me certain decisions to show that it is not obligatory on the authority to disclose reports in respect of every inquiry. The first decision is of the Supreme Court in the case of New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd., . There it was contended that the appellate authority under the Motor Vehicles Act had not observed the principles of natural justice by not giving full and effective opportunity to the first respondent to present its point of view before it. There the appellate authority had relied upon a report of the police though it had not been placed in the hands of the parties. Looking to the nature of the report the Court held that the fact that the appellate authority had read out the contents of the police report was enough compliance with the rules of natural justice and negatived the contention of the respondents.

104. The other authority is in the case of Kesava Mills Co. v. Union of India. There also the Court although it held that an order u/s 18A of the Industries (Development and Regulation) Act, 1951, taking over of a textile mill company and the persons concerned have received a fair treatment and also all reasonable opportunities to make out their own case before the Government, they could not be allowed to make any grievances of the fact that they were not given a formal notice calling upon them to show cause why their undertaking should not be taken over or that they

had not been furnished with a copy of the report, more so when the Government gave them ample opportunity to re-open and run the mill on their own if they wanted to avoid the take-over. The report there was made by an investigating committee appointed by the Government about which the appellants knew and that the appellants knew that there was likelihood of the Government appointing a Controller and taking over the mill and therefore there was no question that the appellants were not fully aware of the scope and attitude of the investigation initiated by the Government. The Court under the circumstances held that the company had full opportunity to make all possible representations before the Government against the proposed take over of its mill u/s 18A.

105. The next decision cited is in the case of Shadi Lal Gupta Vs. State of Punjab, . That was a case under the Punjab Civil Services (Punishment and Appeal) Rules, 1952. Rule 8 provided that no order under Rule 4 shall be passed imposing a penalty on a Government servant unless he had been given an adequate opportunity of making a representation that he may desire to make and such a representation had been taken into consideration. A contention was raised before the Court that he was not given a copy of the report of the Treasury Officer submitted after giving a hearing to which he was entitled and the order was passed against him taking into consideration the same behind his back and therefore he was prejudiced. The Court there held that all that Rule 8 required was that the allegations on which the charges were based should be made known to the employee concerned and an opportunity to make a representation with regard to them should be given and that he need not be told the punishment which was to be imposed on him either at the time the charge-sheet was served or at any other stage. It further held that examination and cross-examination of witnesses and furnishing a copy of the report were the requirements of Rule 7 and not of Rule 8.

106. The other decision referred to by the learned Counsel for the Company Law Board is in the case of Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, In that case it was held that the principles of natural justice were not inflexible and might differ in different circumstances, that when a proper inquiry committee consisting of three respectable and independent members of the staff as appointed by the Principal of a Medical College to inquire into the complaint of the inmates of students hostel of that college about their indecent behaviour with them in the hostel compound itself during odd hours of night, in such a case the rules of natural justice did not require that statements of girl students should be recorded in the presence of male students concerned or that the latter should be furnished with the report of the inquiry committee.

107. The last decision in that regard referred to by the learned Counsel for the Company Law Board is an unreported judgment of the Supreme Court in Civil Appeal No. 1602 of 1967 (1970) 40 AWR 515 (SC) . The contention raised there was that the State Government before passing the order had called for the comments of

the Rent Control and Eviction Officer, Kanpur, that those comments had not been made available to the appellant before he represented his case to the State Government and that therefore the order of the State Government was vitiated as it contravened the principles of natural justice. It was further contended that the very fact that the State Government had occasion to look into the comments of the Rent Control and Eviction Officer behind the back of the appellant, had vitiated the order made by it as the proceedings before the State Government were a quasi-judicial one. The said contention was negatived by the Supreme Court by observing (p. 797):

...Before coming to the conclusion that any particular procedure adopted had contravened the principles of natural justice, the Court must be satisfied that the procedure adopted was not conducive to reach a just decision. A party is not ''entitled as of right to have his attention called to any material that may come before a quasi-judicial tribunal unless the material in question is likely to prejudice his case either directly or indirectly.

108. The ratio of the said decisions is that the question of non-disclosure of the report amounting to non-compliance with the principles of natural justice would have to be dealt with on the facts and circumstances of each case and all that the Court had to find out is whether such a non-disclosure had in any way acted to the prejudice of the party or whether the disclosure was necessary on the ground of fair play or just decision of the matter. In this case, in my view, it cannot be said that the non-disclosure of the inspectors'' report had caused any prejudice to the parties appearing before the Company Law Board or that it was necessary to be disclosed on the ground of fair play, particularly when, firstly, the show cause notice was based on the said report which alone the parties had to meet and, secondly, the Company Law Board itself, while passing the order, had not relied upon any part of the said report. Under the circumstance non-disclosure of the said report did not amount to any non-compliance with the principles of natural justice.

109. The other documents alleged to have been not disclosed are certain views of the Financial Bodies supporting the continuance of the Board of Directors of the company of the Government Directors as referred to by the Company Law Board in its order. In that regard the learned Counsel for the petitioners, has, firstly, drawn my attention to the fact that these allegations and non-disclosure have not been denied by the Company Law Board in its affidavit of Menon, although the order specifically states that the public financial institutions which had made substantial investments had desired that there should not be any significant change in the Board of Directors of the company (or responsibility of individual members) which were likely to be detrimental to the interests of the company. Here the petitioners have contended that those wishes of the financial institutions in writing have not been disclosed to the persons to whom hearing was given, namely, the Kapadias. As regards the letter from the Industrial Credit and Investment Corporation of India Ltd., it is not disputed that the Kapadias knew about it because that has been not

only specifically mentioned, but a part of which has been incorporated in the company''s letter dated May 28, 1973 to the Company Law Board in reply to the show cause notice to which the Kapadias were themselves parties. Secondly, the minutes of the General Body meeting of the company held on May 11, 1973 at which the Kapadias were present and of the proceedings thereat they should be presumed to be aware, also point out that one Mr. Banerjee representing the Unit Trust of India had stated that the Unit Trust as well as other Banking institutions who have got an interest in the company were in favour of retaining the Government control. Further, it is quite clear from the minutes of the meeting of the General Body of the company dated May 11, 1973 that one U.N. Banerjee of the Unit Trust of India had explained the stand of his Unit Trust with respect of the manage mental structure of the company and had stated that they were quite happy with the present position and the prospects of the company under the able leadership of Mr. N.H. Tata and that they believed that it was absolutely in the interests of the general body of shareholders that the present Board and manage mental structure was maintained intact. He had also added that they had the full support of the other financial institutions like the Life Insurance Corporation of India, the Industrial Credit and Investment Corporation of India Ltd. and the Nationalised Banks for their stand. He had further stated that the Unit Trust wished to make it known to the shareholders that it stood for certain principles primarily aimed at the functioning of companies and was not out to win any proxy war. It cannot be disputed that the Kapadias were aware of these things and in that view of the matter, it is futile for these petitioners-shareholders to contend that the said views of the Industrial Credit and Investment Corporation of India Ltd., and other financial institutions were not disclosed at the hearing.The third thing which is alleged not to have been disclosed is the letter dated June 25, 1973 from the company to the Company Law Board stating that the holdings of Maganlal Chhaganlal Private Limited of equity shares was only thirty shares. In reply to this allegation in para. 68 of the affidavit of Menon it is pointed out that the Board came to know from the letter dated June 20, 1973 addressed to it by the company that Maganlal Chhaganlal and Company were holding only thirty shares and that the Company Law Board was justified in its finding that the performance of the Kapadias was not such as could inspire confidence. The Kapadias could not complain about the non-disclosure of the said letter au they themselves were Directors of the company who had addressed the said letter. It is also not disputed that the Kapadias'' share-holding of equity shares appearing from the company''s books were thirty shares only. In that event, there is also no question of any prejudice being caused to the Kapadias as a result of such non-disclosure.

110. The next thing that is alleged not to have been disclosed is a statement by the Company Law Board in its order that the workers were also wanting to have one of their persons appointed on the Board. Firstly, the order does not state that the desire expressed by the workers was in writing. From the order it appears that the

Company Law Board had pointed out the said thing to the learned Counsel for the Kapadias when, in the course of his arguments, he had praised Kapadias for being responsible for bringing about a settlement between the workers and the management. In this case, therefore, there was no question of any document being disclosed to Kapadias.

111. Therefore, apart from the fact that these petitioners cannot contend that the order of the Company Law Board was bad as it had not disclosed to the parties appearing before it certain documents on which it had relied, in my view, even if the said contention were to be considered from the point of view of Kapadias, the same has no substance and therefore cannot be accepted.

112. The next contention of the petitioners is that the impugned order is bad as while passing the said impugned Order (1) the Company Law Board relied on matters which were irrelevant or non-existent, (2) that it did not rely on matters which were relevant and ought to have been relied upon, and (3) that the principal finding of the Company Law Board is based on no material at all.

113. Before I deal with the said contention, firstly, I may refer to certain observations in a decision of the Supreme Court relied upon by the learned Counsel for the petitioners and on which the said contention of the petitioners is based showing the ambit of Court''s powers of enquiry in cases where the authority passing the order is required to pass the same after being satisfied about the existence of certain circumstances mentioned in the provisions empowering the authority to pass the order. The said decision is in the case of R.D. & Chemical Co. v. Company Law Board. There the powers to be exercised by the Central Government were for appointing managing agents of the company u/s 326 of the Companies Act. The said Section 326 provided that the Central Government shall not accord its approval under Sub-section (1) for the appointment of managing agents in any case unless it is satisfied (I) that it is not against the public interest to allow the company to have the managing agents, (2) that the managing agent proposed is, in its opinion, a fit and proper person to be appointed, and (3) that the managing agent proposed has fulfilled any conditions which the Central Government required him to fulfil. While dealing with the said provision the Supreme Court observed as follows (p. 1793):

The Courts, however, are not concerned with the sufficiency of the grounds on which the satisfaction is reached. What is relevant is the satisfaction of the Central Government about the existence of the conditions in Clauses (a), (b) & (c) of Sub-section (2) of Section 326, The enquiry before the Court, therefore, is whether the Central Government was satisfied as to the existence of the conditions. The existence of the satisfaction cannot be challenged except probably on the ground that the authority acted mala fide. But if in reaching its satisfaction the Central Government misapprehends the nature of the conditions, or proceeds upon irrelevant materials, or ignores relevant materials the jurisdiction of the Courts to

examine the satisfaction is not excluded.

114. So far as Section 408(1) of the Companies Act is concerned, the Company Law Board, before passing the order thereunder, is required to satisfy itself that the order was necessary to prevent the affairs of the company being conducted in a manner which is oppressive to any member of the company, or in a manner prejudicial to the interest of the company, and was necessary in public interest. The main question, therefore, is whether in this case it can be said that in passing the impugned order, the Company Law Board had no material at all or had relied on all irrelevant material or had not relied upon the material that was relevant in doing so.

115. Before dealing with the said contention, it would be proper to set out in detail the charges levelled in the show cause notice as well as the conclusions reached on the said allegations by the Company Law Board.

116. The show cause notice would show that from the beginning to the end it contains allegations only against the Kapadias'' group of concerns and no one else. The notice is based on the apprehension or allegation that the existing Kapadia group of Directors, viz., five in number, would have been in majority and the company would have been managed by them prejudicially to the interest of the company and also to the public interest if the two Government Directors on the Board were not appointed. The notice enumerates nine instances of mismanagement by the Kapadias alone showing that the Kapadia group of Directors had used the presence of their nominees in the Committee of Directors to conduct the daily affairs of the company for taking or attempting to take decisions which were at variance with the guidelines issued by the Board of Directors and prejudicial to the interest of the company. In para. 4 of the said show cause notice the allegation is that N.C. Kapadia as such wanted to be appointed as a Managing Director, although it had been earlier decided to bring in professional management by the appointment of a Chief Executive and therefore the Kapadia group had never missed any opportunity to get control over the management of the company. In para. 5 of the said show cause notice an allegation is made against the Kapadia group having loaned various amounts for a period of more than the normal period of credit to the Kohinoor Mills Co. Ltd., of which admittedly N.C. Kapadia was the Managing Director. Then, in para. 6, again, there is a specific allegation of the Kapadias unloading a considerable portion of their holding in Equity shares, while retaining the Preference share holdings and that they were not genuine investors but were only interested in getting control over the management to enable them to use the company for their own purposes. Lastly, in para. 7, there is a further allegation against the Kapadias alone to the effect that the performance of the Kohinoor Mills, which was managed by the Kapadias, was dismal, providing unimpeachable evidence that the Kapadias had no interest of the management at heart. Then, the show cause notice, after mentioning about the vital role in the national economy played by the company, the financial interest of the public

involved, the interest of the large number of skilled, unskilled and white-collared employees, goes on to point out that the company''s affairs could not be allowed to be mismanaged in any manner and my attempt to do so by those who had control over the voting rights by virtue of the fact that Preference shareholders had equal voting rights as those of Equity shareholders, viz. the Kapadias, would effect prejudicially the interest of the company and public interest. Ultimately, it points out that the said instances relating to the attempts by Kapadia group alone to misuse the managerial powers indicated that if the Directors were not appointed u/s 408 of the Companies Act, the chances of mismanagement of the affairs of the company and the oppression likely to be caused to some of the shareholders would not be prevented.

117. The Order of the Company Law Board, dated June 25, 1973 which deals with the allegations against the Kapadias, in the said show cause notice, shows, broadly speaking, that the Company Law Board has found on the facts and the circum stances of the case that if the control of the management were to go into the hands of the Kapadia group of Directors, then the interest of the company as well as of the public at large would be prejudicially affected. The said order, in terms, holds that:

(1) The conduct of the existing Directors who are members of the Kapadia family, if they were allowed to have control of the Board of Directors of the company by reason of the Preference share holding held by them and their closely held companies, the interests of the company and those of the public would be prejudicially affected.

(2) The performance of the Kapadia management in other companies was not such as could inspire confidence and that it would be taking a grave risk to allow the company of the importance of National Rayon Corporation Limited to pass into their hands.

(3) The company had welcomed the appointment of Government Directors.

(4) The public financial institutions which had made substantial investment had desired that there should not be any significant change in the Board (or responsibility of individual members) which were likely to be detrimental to the interests of the company.

(5) The company was playing a vital role in the nation''s economy and that it was necessary that there was no disruption in management which would affect its smooth functioning and that such a disruption was bound to be the result if either of the two warring groups, viz., the Chinais and the Kapadias, commanded absolute majority in the Board of Directors of the company.

(6) The interest of a large number of skilled, unskilled and white-collared employees in the. management of the Company was bound to suffer if there was any unhealthy change in the management of fee company.

(7) The Kapadia group which represented only a microscopic minority of Equity shareholders had opposed the continuance of the two Directors appointed by the Government for reasons which were not convincing.

(8) The interests of the shareholders of the company would in no way be prejudicially affected as the action u/s 408(1) would only require any change in the Board of Directors to be approved by the company.

(9) The interest of financial institutions, particularly the Industrial Credit and Investment Corporation of India Ltd., who have lent a large amount, would be prejudicially affected if any significant change was brought in the constitution of the Board of Directors of the Company.

(10) That the publicity attached to the attempt of the Kapadias for the election of their seven nominees as Directors of the company had lowered the prices of shares of the company in the market.

118. It is evident that the conclusions of the Company Law Board in the said order were mainly based on the apprehensions that if Kapadias were allowed to come in the management and control of the company, the company was likely to be mismanaged to the prejudice of the shareholders, financial institutions and interest of the company''s workers, etc. and that the said apprehensions were based on several allegations of mismanagement mentioned in the said show cause notice held by the Company Law Board on the material before it.

119. However, before dealing with the said contention of the learned Counsel for the petitioners as regards the validity of the said order, it would be also necessary to consider how far the present petitioners would be entitled to rely upon those circumstances to support their said contention.

120. The present petition has been filed by six of the shareholders of the company in their individual capacity. Although the petitioners are supported in their petition by some other shareholders by separate affidavits, it cannot be said that the petitioners have filed this petition in a representative character on behalf of the shareholders of the company. It is not disputed that before the Company Law Board, after the Kapadias, on behalf of their concerns, filed a detailed reply both to the show cause notice and to the application by Kunjalata Section Patel and other shareholders, some 101 shareholders, through their attorneys Messrs. Gagrat and Company, wrote to the Company Law Board supporting the stand taken by the Kapadias and their concerns in the reply filed by them and adopted the same as their own. Two other groups of shareholders, consisting of 108 and 15 shareholders also made two representations dated June 5, 1973 and June 13, 1973 respectively through Messrs. Chhatrapati and Co., opposing the continuance of the Government Directors on the Board and generally adopting the stand taken by the Kapadias. They, however, did not ask for any hearing. As from the table supplied by the learned Counsel for the petitioners at the hearing, it is quite apparent that many of

the shareholders who had joined the representation made through Messrs. Gagrat and Co., also formed part of the shareholders making representations through Messrs. Chhatrapati and Co. Also on June 16, 1973 one Bhagwandas K. Such de addressed a letter to the Company Law Board enclosing the letters written individually by about 2,621 shareholders opposing action u/s 408 of the Companies Act. The said letter, in fact, did not ask for a hearing being given, but only asked to take into consideration the views of the shareholders that they were opposed to the continuance of the Government Directors on the Board of Directors of the company as the same was detrimental to the interests of the shareholders, the company and the public and that there was no ground existing for the appointment of the Government Directors. Strangely enough, a copy of the said letter was forwarded to N.C. Kapadia. If, as it is contended by the petitioners, those shareholders were independent shareholders and were not put up by the Kapadia, it is difficult to see why a copy of the said letter came to be forwarded to the said N.C. Kapadia. Under the circumstances it is very clear that all those shareholders who were represented either by Messrs. Gagrat and Co. or Messrs. Chhatrapati and Company or those who sent their individual letters were put up by Kapadias and that the Company Law Board was not far from wrong in saying so. It cannot be disputed that petitioners Nos. 3 and 4 were parties to both the said representations, although it is difficult to say whether the other petitioners were or were not parties thereto. However, it was admitted at the hearing that all the six petitioners had, at the election of seven directors that took place at the meeting on May 16, 1973, given their proxies to the Kapadias in their favour. This would at least show that they are not independent shareholders if not put up by Kapadias.

121. Firstly, as pointed out above, these petitioners-shareholders cannot be considered to be independent as they had given their proxies to Kapadias for election of Directors. Nor is it their case that they had voted for the seven Directors; nor are the said seven Directors parties before me. Secondly, the reading of the petition shows that the petitioners, while challenging the order, have taken up cudgels on behalf of Kapadias against the Company Law Board, inspite of the fact that Kapadias themselves have chosen not to do so, although the allegations in the show cause notice and conclusions in the order vitally affected only them and no one else. Admittedly, the present petitioners were not concerned with any of the allegations contained in the show cause notice or the conclusions arrived at by the Company Law Board therein and the Kapadias who alone were concerned with the said allegations have not chosen to challenge them and therefore shall be deemed to have accepted them. The contention of the learned Counsel for the petitioners therefore that the petitioners are independent shares holders and as such entitled to contend that the impugned order is bad because irrespective of Kapadias or Chinais, in their own right and on their own strength they would be entitled to have their own independent Board of Directors elected, cannot be accepted. Under the circumstances, the present petitioners, while challenging the validity of the

impugned order, would not be entitled to go behind or challenge the conclusions of the Company Law Board that related to Kapadias. In that view of the matter, the ambit of the petitioners'' challenge to the order of the Company Law Board on the ground that the impugned order was made by considering only irrelevant material or that in passing the same relevant material was not considered or that the same was passed on no material would be narrowed down and their said contention can be considered only on the footing that all the conclusions reached by the Company Law Board on the allegations against Kapadias as contained in the show cause notice were valid.

122. Now, dealing with the said contention of the learned Counsel for the petitioners, firstly, he has contended that the order is bad because the Company Law Board has not taken into consideration while passing the said order the following relevant facts, viz.:

(1) Good management of the Kapadias regarding companies under their management by considering the condition of the said companies before and after the Kapadias took over the management.

(2) Records of Chinais as found in the earlier order.

(3) Ability of management by other independent Directors, elected at the election held on May 11, 1973.

(4) While holding that the Kapadias were speculators and not investors although the show cause notice only speaks about them not being genuine investors, the Company Law Board ignored the finding in the previous order that the Kapadias'' investment was not speculative.

(5) Request by Directors to convene an extraordinary general meeting of the General Body of the company to consider the show cause notice which was rejected by majority vote as disclosed by the company''s letter dated May 28, 1973.

(6) Government Directors themselves were parties to the decision of the company. The said circumstances may be dealt with in that order.

123. As regards the first of the said circumstances viz., that the Company Law Board, while passing the said order, did not take info consideration good management of the Kapadias in respect of other companies under their management, firstly, factually the said contention does not appear to be correct. It is not disputed, and from the order of the Company Law Board it appears that at the hearing before the Company Law Board the learned Counsel for the Kapadias had placed before the Company Law Board a comparative chart as regards the management by the Kapadias of the other companies, though, in fact, it did not form part of the charges mentioned in the show cause notice. The order itself sets out the rival contentions as regard the management by the Kapadias of the other companies. It appears from the order that when such a chart was tried to be produced, Mr. Dhebar appearing

for the applicants before the Company Law Board had objected to the Board considering the management of the Kapadias in other companies. However, it appears that the Company Law Board did consider the said chart and ultimately, in terms, expressed the view that the said management was not impressive. Kapadias alone who could have challenged the said views of the Company Law Board have not done so and they shall be deemed to have accepted the same. The present petitioners could have no right to challenge the said conclusions of the Company Law Board and contend that on the said chart the management of Kapadias in other concerns was good. In any event, the said contention of the learned Counsel for the petitioners, therefore, is not factually true and cannot be accepted.

124. In that view of the matter, the other argument of the learned Counsel for the petitioners on that contention that the Company Law Board had overlooked the provisions of the Company Law, particularly Sections 203 and 274, regarding the antecedents or disqualifications of Directors, has no substance and cannot stand.

125. The second circumstance alleged not to have been taken into consideration by the Company Law Board is the record of the Chinais as found by the Company Law Board in its previous order. It is difficult to see the relevance of this circumstance to the question whether the Kapadias'' management of the company would be good or bad.

126. The next circumstance which the learned Counsel for the petitioners has strongly urged before me and which possibly is the only circumstance which these petitioners could urge, is that the Company Law Board did not consider the ability of the seven Directors who were subsequently elected as a result of the voting at the meeting held on May 11, 1973, to manage the company irrespective of the fact whether the Kapadias could have managed or mismanaged the same if they had come into power. According to the learned Counsel the Company Law Board ought to have considered before passing the order the competency of the said seven Directors; but the order does not even refer to the said seven newly elected Directors, The said contention of the petitioners also has no substance. Firstly, admittedly, at the time when the Company Law Board passed the order on June 25, 1973, although the elections for seven Directors had taken place, the result of the elections were not declared. There was therefore no question of the Company Law Board at the time of the passing of the said order knowing who the elected Directors were going to be and consequently considering whether they were independent Directors or the Kapadia men. Secondly, the said contention of the petitioners is based on misconception of the provisions of Section 408(1) of the Companies Act. Under the said provision the Company Law Board was more concerned to find out the nature of the existing management of the company so that appointing Government Directors would be in the interests of the company, shareholders and the public. In this particular case, the Company Law Board was mainly concerned with the allegations of mismanagement by the Kapadias and

consequently apprehension that if, on the footing of the existing Board of Directors, in the absence of the two Government Directors, the Kapadias'' Directors were allowed to come in the management, they were likely to mismanage the company to the prejudice of the interests of the company, the shareholders and the public. It, therefore, cannot be said that, while passing the said order u/s 408 of the Companies Act, the Company Law Board ought to have taken into consideration the ability of the new Directors who would have been elected at the election already held.

127. The show cause notice was mainly concerned with the apprehension that if the company were allowed to continue to be managed without the said two Government Directors, the Directors of the Kapadia group would come into power and that Kapadias, being guilty of mismanagement, the company would be mismanaged. Paragraph 2 of the show cause notice states as follows:

The results of the inquiries suggest that but for the presence of the two Government Directors on the Board, the Kapadia group of Directors would have been in a majority and the Company would have been managed in a manner which is prejudicial to its interests and also to public interest.

It further goes on to say:

The various instances of attempts to misuse the managerial powers by some of the Directors detailed hereinabove indicate that if directors are not appointed u/s 408 of the Companies Act, 1956, the chances of mismanagement of the affairs of the company and also of oppression likely to be caused to some of the shareholders will not be prevented.

The show cause notice, therefore, makes it clear that the Company Law Board was only concerned with the then existing management of the company and with an apprehension that if the Government Directors were not appointed, the Kapadias'' group of Directors would be in majority and thereupon the company would be mismanaged. The same apprehension is also the basis of the impugned order of the Company Law Board. There it is mentioned that the public financial institutions had by expression of their views at the annual general meeting and in their direct representations, left the Company Law Board in no doubt that their interests were not safe, should the Kapadias gain control over the company. It also mentions that the several circumstances mentioned in the said order go to show that the company would be mismanaged if the management passed into the hands of the Kapadias.

128. The learned Counsel for the petitioners has relied in support of his contention very strongly on the statement in the concluding part of the order, viz.:

There is sufficient indication from the conduct of the directors who are members of the Kapadia family that if they are allowed to take control of the Board of Directors of this Company by reason of only the preference shareholdings held by them and

their closely held companies, the interests of the company and those of the public would be prejudicially affected.

129. Relying on the above observations, he has contended that the Company Law Board has indirectly styled the Directors who would be newly elected at the company''s general body meeting held on May 11, 1973, would be those belonging to the Kapadia group without taking into consideration their ability or without finding out whether they would be independent Directors or not. In my view, this appears to be a misreading of the observations. If the said observations are read in the light of the show cause notice itself, it is very clear that the said observations refer to the existing membership of the Board of Directors which were styled as ''Kapadia group'' and which would ordinarily be in majority if two Government Directors were not appointed. The said observations could not be read as making any reference to the Directors who were to be elected, for the Company Law Board has made it quite clear by its said order that the interests of the shareholders were in no way prejudicially affected as action u/s 408(1) of the Companies Act would only require any change in the Board of Directors to be approved by the Company Law Board. The said contention of the petitioners, therefore, cannot be accepted.

130. Further, according to the learned Counsel for the petitioners, the Company Law Board in its impugned order wrongly came to the conclusion that the Kapadias'' shareholdings in the company were speculative, totally ignoring the fact that the Company Law Board in its previous order dated June 30, 1971 had come to the contrary conclusion that the investment by the Kapadias in the company''s shares were not speculative but genuine investment. Firstly, this circumstance relates to the Kapadias only, and the Kapadias not having come forward to challenge the same, these petitioners would not be entitled to dispute the said conclusion of the Company Law Board. Secondly, even factually the said contention is not correct. In the order made by the Company Law Board u/s 409 of the Companies Act (which is annexed as exh. No. 1 to the affidavit in reply) it was found that the investments in respect of the shares standing in the names of the Kapadias were genuine investments, but it was also found that so far as the other shares, held by the Kapadias but standing in the names of their brokers, pledges, benamidars or financiers were concerned, the Kapadias were indulging in speculation. There the Company Law Board had expressly held that in respect of a large number of their nominees, brokers and financiers, the Kapadias had indulged in unhealthy practices with the avowed object of acquiring control in voting power to dislodge the present management and the means employed by them were of speculative character. The said order further stated that "the Kapadias'' own interest in the large block of shares acquired in the names of benamidars, brokers and financiers was to secure proxies while their nominees also had no genuine interest in those shares and that in that background and antecedents of the Kapadia group and the way they set about securing voting power in the National Rayon Corporation were not such as to inspire the fullest confidence in their competence to manage the affairs of the said

company in the best interests of the company and its shareholders". The said conclusion in the previous order of the Company Law Board negatives the very basis of the said contention of the petitioners and the same therefore cannot be accepted.

131. Further, the Company Law Board''s conclusion that the Kapadias were speculators and not genuine investors on the material before it does not appear to have been challenged by the Kapadias themselves. In that regard, the allegation against the Kapadias in the show cause notice was that the share holdings of the Kapadias were of a speculative nature and therefore they have only obtained the share holdings in order to gain control over the management of the company and that they were not really the investors in the share holding of the company. The Company Law Board in its previous order dated May 7, 1971, after holding that the shareholding of the Kapadias in the hands of their nominees, benamidars, brokers, etc. were of a speculative nature had observed:

The background and antecedents of the Kapadia group and the way set about in securing voting power in National Rayon Corporation are not such as to inspire the fullest confidence in their competence to manage the affairs of the N.R C. in the best interests of the company, and its shareholders and there is room for doubt whether the interests of the company would be their primary consideration if they secure full management control. In the circumstances a sudden influx of control by Kapadias on the strength of their newly acquired voting power would certainly disrupt the continuity of management in a manner likely to prejudice the interests of the company and it would be desirable that changes that occur in the composition of the Board should be regulated in the best interests of the company.

The said allegations were at no time challenged by the Kapadias. Even the said 117 shareholders, including Miss Kunjalata S. Patel, in their application after setting, out a part of the previous order of the Company Law Board had again made a similar specific allegation to that effect against the Kapadias. However, in reply to the said allegations the said Maganlal Chhaganlal Pvt. Ltd., B. B. Petroleum Co. Ltd., N.C. Kapadia and L.C. Kapadia in their affidavit in reply have failed to give any details about the precise holdings of the Kapadias and their concerns in the company''s shares; nor does it go to suggest that after the said previous, order of the Company Law Board dated May 7, 1971 there was any change of attitude on the part of the Kapadias in respect of the said share holdings. Further, Kunjalata S. Patel in her said petition in paragraphs 28 to 33 had made several detailed allegations against the holdings of Kapadia''s concerns, viz., B. B. Petroleum Co. Ltd., Messrs. Maganlal Chhaganlal and Co. It was pointed out that the shares of the various companies shown as standing in the names of the Kapadias were not, in fact, standing in their names as was pointed out from the Auditors'' report of the companies. However, the Kapadias in their reply to the said allegation have also not given particulars of the shareholdings.

132. Further, in paragraph 34 of the petition of Kunjalata S. Patel a specific allegation was made to the effect that since the passing of the order u/s 408 of the Companies Act, the Kapadia group, having failed to secure control of the National Rayon Corporation and having regard to the reduction of the holding by Chinais group and being assured of no opposition, had commenced unloading of their holding in the National Rayon Corporation, that according to the press reports the Kapadia group had sold one lakh Equity shares of the National Rayon Corporation, that a substantial part of those shares had been acquired by the Life Insurance Corporation of India and the Unit Trust of India and that a large block of those shares had been also purchased by a group of speculators and that the Kapadia group had retained their holdings in Preference shares. However, in reply to those specific allegations, all that is stated by the Kapadias in paragraph 32 of their affidavit in reply was that the disposal of part of their shareholding in the company by the Kapadias could not be said to be an instance of mismanagement and that it was denied that a large block of shares of the company had been purchased by a group of speculators as alleged and that the said shares were purchased by the Life Insurance Corporation of India. This denial, again, is in vague terms. If the allegations were not true, the Kapadias would have certainly come forward and given particulars as to the persons to whom they had sold the said shares. Similarly as I have pointed out above, the allegation in paragraph 6 of the show cause notice making a specific allegation that the Kapadias were unloading a considerable portion of their Equity shares, while retaining the Preference share-holding, which fact revealed that the Kapadias were not genuine investors and were only interested in getting control over the management to enable the company to be used for their own purposes, has been replied to only by saying that the said fact was entirely irrelevant to a proceeding u/s 408 of the Companies Act, that what the Kapadias did with their own investments was a matter of their own concern and that there was nothing wrong in disposal of some Equity shareholding. It is pertinent to note that at no stage of the hearing before the Company Law Board the Kapadias had ever-disclosed their share holding both in their own names and in the names of theirnominees, brokers, benamidars, etc. and otherwise their total shareholding as such. It is also necessary to mention that the said allegation in paragraph 31 of the affidavit; of Kunjalata Patel dated November 19, 1973 has not specifically been dealt with by the Kapadias.

133. It was contended by the learned Counsel for the petitioners that if only the Company Law Board had asked for from the Kapadia group the said particulars, the same would have been supplied. That contention cannot be accepted in the face of the specific allegation as to the speculative character of the dealings of the Kapadias in respect of their shareholding of the company not having been specifically denied by the Kapadias. If the Kapadias wanted to satisfy the Company Law Board in the teeth of the said allegations, of which they were aware, that their shareholdings of the company were not of a speculative nature but they were genuine investors, they

ought to have themselves come forward disclosing all the material facts before the Company Law Board. Therefore the Company Law Board''s conclusion on the material before it that Messrs. Maganlal Chhaganlal Pvt. Ltd. who held 73,957 Equity shares of the National Rayon Corporation Ltd. as on March 31, 1972, had brought down their holdings to a bare thirty shares on May 11, 1973 was justified.

134. The further two circumstances which, according to the learned Counsel for the petitioners though relevant, were not considered by the Company Law Board were:

(1) A request by the Kapadia Directors to convene an extraordinary general meeting of the company to consider the show cause notice and rejected by a majority vote as disclosed by the company''s letter dated May 28, 1973, and

(2) The Government Directors were parties to the voting on the show cause notice.

I have already dealt with the said two circumstances above in connection with the question as to the observance of the principles of natural justice by the Company Law Board in passing the order and pointed out that the Company Law Board was entitled to accept the company''s views expressed at a Board meeting in the absence of any contrary decision by the General body meeting which the Kapadias were entitled to convene but which they did not. I have also held that the Government Directors were not wrong in voting in favour of the continuance of the Government Directors and even in their absence the said resolution would have been rejected by majority. But, apart from that, the said two circumstances cannot be considered in any manner so relevant as to be necessarily taken into consideration by the Company Law Board in passing the impugned order.

135. Further, according to the learned Counsel for the petitioners the impugned order was bad because the Company Law Board had taken the following irrelevant circumstances into consideration while passing the said order:

(1) That the right of Preference shareholders like the Kapadias was a ''Historical right'';

(2) That the indication from the conduct of the Directors who were members of the Kapadia family that if they were allowed to control by reason of Preference shareholdings, the interest of the company would suffer;

(3) That the Company Law Board depended on the views of the Directors as the views of the company when the company''s letter dated May 28, 1973 to the show cause notice disclosed that at the annual general meeting of the company held on May 11, 1973 the shareholders had opposed the continuance of the Government Directors;

(4) Nine instances of mismanagement against the Kapadias, as mentioned in the show cause notice; and

(5) Lastly, alleged grievances of workers to continuing the Government Directors.

136. It is true that the Company Law Board in its order has referred to the fact that the Kapadias being only Preference shareholders, should not be allowed to get in control of the company on the strength of their Preference shareholding alone and has in that connection expressed a view that the voting right given to Preference shareholders like the Kapadias was a ''Historical Chance''. Firstly, this conclusion being against the Kapadias only and the Kapadias not having challenged the same, the present petitioners are not entitled to do so. Secondly, it cannot be disputed that at the relevant time the Kapadias were in control of only one per cent, of Equity shares, viz., only 146 shares in their names and 3,263 in the names of other persons out of the total Equity shares of 3,99,985, but at the same time they controlled majority of Preference shares in the company. Therefore, while dealing with the apprehension that if Kapadias were to come into power, they would mismanage the company to the prejudice of the company, shareholders and public, one of the relevant circumstances to be taken into consideration by the Company Law Board was the manner in which Kapadias had acquired the voting power. It cannot be disputed that although the Companies Act, 1956, under Sections 87 to 90, abolished voting rights of Preference shareholders excepting in certain cases, kept alive the voting rights of Preference shareholders existing at the date of the coming into force of the said Act. It is, therefore, apparent that when the Company Law Board speaks about the Preference shareholders'' like Kapadias'' voting right being a ''Historical chance'' all that it meant was that the right existed because in the said Company such rights existed prior to the coming into force of the Companies Act, 1956. The said observation appears to have been made while considering the manner in which the Kapadias were trying to gain control of the company.

137. In that connection to show that the said views of the Company Law Board were justified the learned Counsel for the Company Law Board referred to the following passage from the Palmer''s Company Precedents, 17th edn. (p. 778):

Formerly it was not usual to distinguish between the preference shares and the ordinary shares as regards voting. They were all treated as interested alike in the company and given the same right of voting, but for many years past it has been customary to give only qualified voting rights to preference shares. Sometimes preference shareholders are given no right of voting whatsoever at general meetings; but the Stock Exchange, London, does not generally approve of this. Sometimes the holders are not given any right of voting at general meetings unless their dividend is in arreas, or on questions specially affecting them-as, for instance, winding up or sale of the undertaking or reduction of capital. Sometimes preference shares are given rights of voting on a modified scale-for example, one vote for every two preference shares against one vote for every ordinary share. In any case the matter is one of great importance, for if the preference shares have full voting rights they may be able to direct the proceedings of the company in a manner opposed to the interest of the ordinary shareholders; they may be in a position, for instance, to elect directors and to control their proceedings, and to restrict the development of

the business; and they may unduly exercise their powers in their own favour and in a selfish spirit, for the interests of the two classes are very commonly more or less in conflict, the interest of the preference shareholders being to preserve business on a safe basis sufficient to produce their preference dividend, whereas the interest of the ordinary shareholders is to increase it, and for that purpose to incur some risks, if necessary.

138. Similar observations in that regard are to be found in the Pennington''s Company Law, 2nd edn. (p. 180):

...In the eyes of the ordinary shareholder, debentures and preference shares have the same features; they confer rights which have priority to his own, and, ignoring the fact that debentures constitute loan capital, whereas preference shares are part of the company''s share capital, the ordinary shareholder groups them together and calls them ''prior charges''. His own shares he knows as ''equities'' or ''risk capital''. The expression ''equity'' in this context is probably derived from the equity of redemption of a mortgagor, for the ordinary shareholder regards himself as being in the position of a mortgagor in that he will only receive anything out of the company''s property and profits after the holders of prior charges have been paid what is due to them.

139. The learned Counsel for the Company Law Board has further pointed out the following observations in "Modern Company Law" by Gower, 3rd edn. to the same effect at pages 363-64:

The result is, that after lawyers have spent some fifty years trying to teach lay investors that there is a fundamental distinction between preference shares and debentures, the lawyers themselves have ended up by being largely converted to the layman''s original view that both are really ''charges'' rather than ''equities,'' Today, preference shares may be expressly created as redeemable and, even if they are not, it seems that they may be redeemed at the option of the company through the medium of a reduction of capital. And, under the canons of construction finally adopted, the probability is that they will confer a right to a fixed return of both dividend and capital. In both respects they closely resemble debentures. Though their holders are members of the company, it is usual to deny them voting rights except in special circumstances, so that here too they do not greatly differ from debentureholders.

140. Further, it is observed:

But though they share the disadvantages of debentureholders they lack their advantages. They can only receive a return on their money if profits are earned and dividends declared, they rank after creditors on a winding up, and they have less effective remedies for enforcing their rights. Suspended midway between true creditors and true members they get the worst of both worlds.

141. On the said observations it cannot be said that the said remark of the Company Law Board against Kapadias holding of majority of Preference shareholding in the company had no basis and looking to the question that the Company Law Board had to deal with, the said consideration by the Company Law Board cannot also be termed as irrelevant.

142. In that view of the matter, the further conclusions of the Company Law Board based on the said observation that "if Kapadias were allowed to control the company by reason of their Preference shares the interests of the company would suffer" also cannot be attacked on the ground that it was irrelevant.

143. It is further contended by the learned Counsel for the petitioners that the observations of the Company Law Board, viz. "that there was sufficient indication from the conduct of the directors who were members of the Kapadia family that if they were allowed to take control of the Board of Directors of the company by reasons of only their Preference shareholdings held by them and their closely held companies the interests of the company and those of public would be prejudicially affected" were directed against those persons who would be elected as Directors in the elections held on May 11, 1973. According to the learned Counsel for the petitioners, therefore, by castigating them as Kapadia family Directors the Company Law Board did not have before it any material to come to that conclusion and therefore the said circumstance relied upon by the Company Law Board was irrelevant. Firstly, here again, as in other cases, Kapadias not having refuted the said allegation and conclusion of the Company Law Board these petitioners would not be entitled to do so. Further, the said contention is based on the misreading of the Company Law Board''s order. The said observations, in my view, relate only to the existing Directors and the position of the Board of Directors of the company, if the Government Directors were not appointed. As pointed out above, the Company Law Board at the stage of passing the said order was concerned only with the then existing management of the company and while doing so, one of the relevant factors necessary to be taken into consideration was the power of Kapadias to get control of the company only on the strength of the Preference shareholdings.

144. However, even assuming that the said reading of the Company Law Board''s Order were not correct, still the voting pattern of the results of the elections of the seven additional Directors declared after the passing of the impugned order shows that the apprehensions of the Company Law Board in that regard were more than justified. Votes cast at the said elections show that in respect of the seven elected candidates the Equity votes ranged between 1,17,520 to 1,17,589, while the Equity votes cast against all of them ranged from 1,44,811 to 1,47,051, but so far as Preference voting was concerned in favour of each of the persons elected the votes were 92,629, while votes cast against them were only 30,037. It is, therefore, quite clear that the said seven Directors were elected only as a result of Preference shares held by Kapadias or their nominees. Further, the manner of voting shows that so far

as elected candidates were concerned, the voting was mostly by proxy, and a very negligible part was in person, while voting against them was mostly in person and a very negligible part was foy proxy,

145. It is further contended by the learned Counsel for the petitioners that the Company Law Board''s reliance on the views expressed in the company''s letter dated May 28, 1973 in reply to the show cause notice, in favour of the continuance of the Government Directors as views of the company was a reliance on irrelevant fact when the said letter itself disclosed that at the annual general meeting of the company the shareholders had opposed the continuance of Government Directors. I have dealt with this aspect of the case above and have pointed out that the Company Law Board was entitled to accept the majority views expressed in the company''s said letter as the views of the company unless and until a resolution was passed to the contrary by the company at its general meeting. Reliance by the Company Law Board on the majority views expressed in the said letter cannot therefore be considered to be reliance on irrelevant facts.

146. Then the learned Counsel for the petitioners contended that the nine instances mentioned in the show cause notice were really irrelevant for consideration or were such which no reasonable person dealing with the case could have taken into consideration while passing the order. It is not necessary for me to deal in detail with each of the said nine instances, but the evaluation thereof by the Company Law Board after hearing Kapadia and going through the material produced before it, appears to me to be balanced and fair. Firstly, as in other cases, these instances relate to Kapadias alone who have not tried to refute them. The present petitioners therefore would not be entitled to challenge the conclusions of the Company Law Board in respect of the said instances. Apart from that, this Court cannot consider the sufficiency of the material before the Company Law Board in arriving at tho said ''conclusions. I find that there was sufficient material before the Company Law Board for its said conclusions on the said nine specific instances of mismanagement by Kapadias. It also cannot be said that these instances showing the mismanagement on the part of Kapadias were irrelevant for considering the main question before the Company Law Board, viz. whether the management by Kapadias of the company would be prejudicial to the company, the shareholders and the public.

147. According to the learned Counsel for the petitioners the further irrelevant circumstance which the Company Law Board has taken into consideration in passing the order was the demand of workers wanting their own Directors on the Board of Directors. From the order it does not appear that the Company Law Board has taken into consideration the said factor in passing the order. The order shows that in the course of the argument, as against the argument of the learned Counsel for Kapadias in praise of Kapadias that because pf the efforts made by Kapadias a settlement in the labour dispute was made, the Company Law Board mentioned

that Mr. Kulkarni with whom Kapadias were alleged to have arrived at a settlement had subsequently asked the Government to appoint a worker''s representative on the Board of Directors of the Company, The said contention of the learned Counsel for the petitioners therefore cannot be accepted.

148. The learned Counsel for the petitioners has farther contended that the order of the Company Law Board was bad as in passing the same it had relied on the following circumstance which were non-existent:

(1) That the newly elected Directors were Kapadias'' mea;

(2) The letter from the Industrial Credit and Investment Corporation of India Ltd. opposing the change;

(3) Alleged subsisting interest of the financial interest of the financial institutions opposed to any change;

(4) Kapadias who were microscopic minority as regards Equity shares were trying to control the company;

(5) M/s. Maganlal Chhaganlal and Co. were unloading Equity shares in 1972;

(6) Letter from the company dated June 28, 1973 not disclosed;

(7) Wide publicity given by Kapadias to the election of seven Directors caused slump in the value of the shares of the company; and

(8) The views of the Company Law Board that in-fighting between two warring groups, viz., Kapadias and Chinais, still existed.

149. Firstly, according to the learned Counsel for the petitioners the observation of the Company Law Board in the order that "there was sufficient indication from the conduct of the Directors who were members of the Kapadia family that if they were allowed to take control of the Board of Directors of the company by reason only of the Preference shareholdings held by them and their closely held companies, the interests of the company and those of the public would be prejudicially affected" relate to the Directors who were elected after the impugned order was passed. On that basis he has contended that there was no material before the Company Law Board to take the view that the said newly elected Directors were not independent Directors, but were members of Kapadia family. I have dealt with the said aspect in a different context above and have pointed out that the said observation really related to the Directors on the existing Board of the company, with whom the Company Law Board was concerned while passing the said order.

150. The next non-existent fact which is alleged to have been taken into consideration by the Company Law Board is that in its letter to the company dated April 26, 1973 the Industrial Credit and Investment Corporation of India Limited had opposed the change. The said letter quoted by the Company in its reply dated May

28, 1973 to the show cause notice, shows that the Industrial Credit and Investment Corporation of India Ltd. who had agreed to invest large amounts in the Company''s nylon cord project after discussion with the Chairman of the Board of Directors of the company as to the uncertainties concerning the company''s Board, wanted an assurance from the company that there would be no significant changes in the Board (or responsibilities of individual members) which were likely to be detrimental to the interests of the pompany. The said letter therefore clearly shows an apprehension on the part of the Industrial Credit and Investment Corporation of India Ltd. about the change of the company''s Board and showed opposition to any significant change in the Board. In that case in relation to the question which the Company Law Board was required to consider the reliance by it on the said views of the Industrial Credit and Investment Corporation of India Ltd. cannot be considered to be reliance on something which was non-existent.

151. Same thing applies to the statement in the order that other financial institutions and banks who had subsisting financial interest in the company had opposed the change in the Board and favoured the maintenance of status quo. The minutes of the meeting of the company held on May 11, 1973 would show that one Bannerjee representing the Unit Trust of India had on behalf of the Unit Trust and other financial institutions expressed the said opinion and the apprehension expressed by him on which the Company Law Board has relied cannot be considered to be a non-existent circumstance. No objection also can be taken to the observation of the Company Law Board that the said financial institutions had subsisting interest in the company. As a matter of fact, the Unit Trust was holding 12.50 per cent, of the Equity shares and the Banks and the Life Insurance Corporation of India were holding 17 per cent, of the Equity shares, while Kapadias were holding only 80 per cent. Equity shares and Chinais 2.30 per cent. Equity shares.

152. The learned Counsel for the petitioners has further contended that the observations of the Company Law Board that "Kapadias, as ''Microscopic Minority of Equity Shareholders'', were trying to control the company on the strength of Preference shares" was not correct and was really a non-existing fact. Firstly, the said allegation concerns only Kapadias and Kapadias not having challenged it, the petitioners will not be entitled to challenge the correctness thereof. Factually as well the view of the Company Law Board about Kapadias being "Microscopic Minority of Equity Shareholders" cannot be considered to be incorrect, as, as a matter of fact, on the relevant date Kapadias were holding in their own name only thirty Equity shares, while a large number being about 27 per cent, of the total Preference shares. The said contention of the learned Counsel for the petitioners therefore cannot be accepted.

153. Further, according to the learned Counsel for the petitioners, the observation by the Company Law Board that Kapadias were against professional management

was factually wrong and therefore non-existent. That, again, as in the other case, firstly, cannot be challenged by the petitioners. Secondly, factually also, the said contention is not correct. It is not disputed that Kapadias who had opposed the appointment of Chinai as Managing Director had, after alteration of the Articles of Association tried to put up one of them, being N.C. Kapadia, for the appointment as Managing Director of the company, which proposal, however, was rejected by the Board.

154. According to the learned Counsel for the petitioners the next non-existing circumstance relied upon by the Company Law Board was that Messers. Maganlal Chhaganlal and Co. were unloading their shares in the market. Firstly, the said allegation being against Kapadias alone, the petitioners are not entitled to challenge the same. Further, the said conclusion of the Company Law Board appears to have been supported by the material on record. To the said allegation in the show cause notice Kapadias'' reply is that the allegation in the said paragraph was entirely irrelevant to the proceedings u/s 408 and that what Kapadias do with their own investment is a matter of their own concern, that Rasiklal Chinai also unloaded his shareholding in the company in 1969, but that was never dubbed as mismanagement in the affairs of the company and that the return on Preference shares of the company was a better return than the return on the market value of Equity shares of the company and there was nothing wrong in the disposal of some Equity shareholding. The said reply is not a denial of the said allegation in the show cause notice but is an implied admission thereof. When the Company Law Board was considering whether the dealings of Kapadias in respect of their shareholdings were of a speculative nature and when a specific allegation to that effect was made in paragraph 6 of the said show cause notice, on the said reply of Kapadias the Company Law Board was justified in holding the said allegation as true. The said circumstance in any event cannot be considered to be a non-existing circumstance.

155. According to the learned Counsel for the petitioners the next non-existent circumstance relied upon by the Company Law Board was that as observed by it in its order, due to the publicity given by Kapadias to the election of seven Directors the prices of the shares of the Company had gone down in the market. It appears that the said contention has substance. It is true that between March 1973 and June 1973 the price of the company''s shares had gone down from Rs. 386 per share on March 23, 1973 to Rs. 320 just before the annual general meeting on May 11, 1973 and to Rs. 313 on June 4, 1973. However, admittedly, there was no material before the Company Law Board to hold that that was due to election publicity by Kapadias.

156. However, the same cannot be said as regards the observation of the Company Law Board that "in-fighting between Kapadias and Chinais existed at the time of the second order dated June 25, 1973". It is true that as a matter of fact, at the time of passing the impugned order the fact of Chinais holding only 2 per cent, in the company''s shares could not have been able to get as against Kapadias control of

the company. However, the fact that the said Chinai and his daughter Mrs. Kunjalata S. Patel had along with other 115 shareholders made an application to the Company Law Board expressing apprehension about Kapadias coming into the management, clearly shows that Chinais were still ag much keen and interested in keeping out Kapadias from the control and management of the company as they were at the time of the first order dated June 30, 1971. The said observation of the Company Law Board therefore cannot be said to be irrelevant or based on non-existent fact. In my view therefore apart from the said one circumstance, the said other circumstances on which the Company Law Board has relied cannot be said to be non-existent circumstances.

157. Further, according to the learned Counsel for the petitioners the principal findings of the Company Law Board are based on no material at all. The main thing that has been mentioned by him under this head is that the Company Law Board had no material in holding that the Nylon Tyre Cord Project undertaken by the company would be scuttled and be in jeopardy if the members of the Kapadia group were allowed to take control of the management of the company. Firstly, the said conclusion cannot be challenged by the petitioners as Kapadias against whom the same is made have not challenged the same. However, it is not disputed that at the relevant time the company was concerned in putting up a Nylon Tyre Cord Project, which was of national importance, involving very large investments with the help of the Industrial Credit and Investment Corporation of India Ltd. and other financial institutions. The success of the said Project was vitally connected with the good management of the company and if the Company Law Board had, on the material before it, found that Kapadias, if allowed to get control of the company''s management, would mismanage the company, there was nothing wrong on the part of the Company Law Board to express in that connection an apprehension about the said Project being jeopardised if Kapadias were to come into the management of the company.

158. As discussed by me above, in respect of all the circumstances pointed out by the learned Counsel for the petitioners, as relevant which the Company Law Board ought to have taken into consideration but had not taken into consideration or irrelevant which the Company Law Board ought not to have taken into consideration but had taken into consideration or certain circumstances taken into consideration by it for which no material existed, excepting only one circumstance mentioned by me above, the petitioners'' contention as regards other circumstances cannot be accepted. The only circumstance without any material that appears to have been taken into consideration by the Company Law Board to come to the conclusion that if Kapadias were allowed to come in control of the company, they were likely to mismanage the same, was that there was a slump in prices of the company''s shares due to the publicity given by Kapadias to the election of seven Directors.

159. However, then the question is whether, apart from the said circumstance, there was no sufficient material before the Company Law Board to pass the impugned order u/s 408(1) of the Companies Act. An order under the said provision could be passed only if the Company Law Board were satisfied that the same was in the interests of the company, shareholders and the public. As it is, the Company Law Board has held, on the material before it, that there was sufficient reason to apprehend that if Kapadias came in control of the company, the company was liable to be mismanaged. The said conclusions against them have not been refuted by Kapadias. It was not disputed that at the relevant time the company was to launch a new project, viz., Nylon Tyre Cord Project, which was of national interest and wherein large investments were proposed to be made with the help of financial institutions, such as, Industrial Credit and Investment Corporation of India Ltd., The Life Insurance Corporation of India and Banks. The said institutions had expressed their view in favour of appointment of Government Directors, and the Industrial Credit and Investment Corporation of India Ltd. had expressly by its letter to the Company Law Board expressed their concern against any significant change in the Board of Directors of the company. In my view, therefore, all these circumstances were sufficient to justify the Company Law Board in passing the impugned order.

160. Relying on the expression used by the Company Law Board at the end of the order, viz. "Taking into consideration all these considerations the Company Law Board came to the conclusion that the requirements of Section 408(1) are fully met", the learned Counsel for the petitioners has contended that if even one of the circumstances taken into consideration by the Company Law Board was irrelevant or without any material, the whole order would be invalid, as, according to him, the said order of the Company Law Board was a cumulative effect of all the circumstances taken together.

161. The learned Counsel for the petitioners has supported his said contention by relying on the observations of the Supreme Court in the case of The State of Maharashtra and Another Vs. B.K. Takkamore and Others, , which was a case dealing with the order of the Government superseding the Municipal Corporation of City of Nagpur under die City of Nagpur Corporation Act, 1948. In that case the contention was that if one of the grounds on which the said order was passed was found to be irrelevant or non-existent, the whole order was liable to be quashed. After dealing with several cases cited before it, the Court observed as follows (p. 1359):

...The principle underlying these decisions appears to be this. An administrative or quasi-judicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. On the other hand, an order based on several grounds some of which are found to be non-existent or irrelevant, can be

sustained if the court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds, and the exclusion of the irrelevant and nonexistent grounds could not have affected the ultimate opinion or decision.

The aforesaid observations cannot support the petitioners, for in that very case the Supreme Court had upheld the order as it could be sustained on one of the grounds on which it was passed. In this case, in my view, inspite of the said solitary circumstance, the Company Law Board could have passed the said impugned order on the basis of the other relevant and existing grounds and the exclusion of the said solitary circumstance would not affect the ultimate opinion of the Company Law Board.

162. The learned Counsel for the Company Law Board, however, has cited before me several decisions to hold that non-existence of one ground on which the order was passed cannot vitiate the whole order. The first decision referred to is in the case of State of Orissa Vs. Bidyabhushan Mohapatra, . That was a case under Article 311 of the Constitution of India against the order of dismissal, where the Court found that some of the findings but not all were unassailable. The Court observed (p. 786):

...Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice.

163. The other decision cited by the learned Counsel for the Company Law Board is in the case of Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, . That was also a case of departmental inquiry against a railway employee. It was held in that case that in respect of the order of removal based on two charges, the order would still be lawful if it could be sustained on one of the charges. The observations at page 969 show that if an inquiry under Article 311 could be supported on any finding as substantial misdemeanour for which the punishment could lawfully be imposed, it was not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question.

164. In my view, therefore, firstly, the said expression used by the Company Law Board at the end of the order need not be strictly construed. Secondly, the said decisions show that merely because the Company Law Board has referred in its order to the said circumstances, one of them being "that because of the publicity given by Kapadias to the election of seven directors the value of the equity shares

had gone down", for which there was no material before the Company Law Board, the said order cannot be set aside because of that, if it could be sustained for several other reasons given by the Company Law Board which were substantiated by the material before it.

165. As I have pointed out above, in my view, apart from the said circumstance, there was sufficient other material before the Company Law Board to justify the passing of the said order and therefore the said order cannot be set aside on the said contention of the learned Counsel for the petitioners.

166. Lastly, it is argued by the learned Counsel for the petitioners, though not seriously, that the provisions of Section 408(1) of the Companies Act, 1956, giving powers to the Central Government to appoint Government Directors are discriminatory and therefore invalid as violative of Article 14 of the Constitution, as the Central Government under the same circumstances could get similar preventive orders by applying to the Court under Sections 397/398 of the Companies Act. This contention need not detain me any longer for a look at Sections 397/398 of the Companies Act, as compared with Section 408(1) of the said Act, would show that the purposes of the two groups of sections as well as the ambit of the powers thereunder to be exercised by the Court on the one hand and by the Government on the other are quite distinct and therefore there cannot be any question of Section 408(1) being violative of Article 14 of the Constitution and therefore invalid.

167. However, before passing orders on the question, I must mention that during the hearing of the interim application for injunction before my brother Judge Mukhi the learned Judge had by his order dated October 8, 1973 directed the Company Law Board to deal with and dispose of the petition of the company u/s 408(5) of the Companies Act for the confirmation of the newly elected Directors. I was told at the hearing that although the hearing of the said petition had completed long before the hearing of the petition started before me, the Company Law Board, for the reasons best known to it, had failed to carry out die said directions. If the Company Law Board had carried out the said directions of this Court, and given its decision on the said petition before the hearing of this petition started, a great deal of arguments advanced at the hearing of this petition and consequently public time and money would have been saved. This Court is distressed to find that a high-powered and responsible body like the Company Law Board should not have cared to carry out the said directions of this Court till this day.

168. The result, therefore, is that the petition is dismissed. The Rule stands discharged. The petitioners to pay the respondents'' costs in separate sets. Costs to be taxed on long cause basis with two counsel certified as the hearing had taken place for about sixty-six and a half hours before me. Discretion is given to the Taxing Master to allow the instruction costs exceeding Rs. 1,000. The interim order dated October 8, 1973 to continue for a period of two weeks from today.