REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION NO.9110 OF 2008

INCABLE NET (ANDHRA) LIMITED & ORS. .. PETITIONERS

Vs.

AP AKSH BROADBAND LTD. & ORS. .. RESPONDENTS

J U D G M E N T

ALTAMAS KABIR, J.

1. The Petitioners herein filed Company Petition No.69 of 2006 before the Additional Principal Bench of the Company Law Board at Chennai under Sections 397, 398, 402 and 403 of the Companies Act, 1956, alleging mismanagement and oppression by the majority shareholders of the first respondent

Company. Various reliefs, including reconstitution of the Board of Directors of the said Company, were prayed for. By its order dated 17th December, 2007, the Company Law Board, hereinafter referred to as "CLB", dismissed the Company Petition against which the above-mentioned Company Appeal was filed before the High Court under Section 10F of the aforesaid Act. The said appeal was dismissed by the High Court as being misconceived upon the finding that the CLB had considered all the materials, applied the law and recorded its findings correctly and no question of law arose from the said order. This Special Leave Petition arises out of the said order of the High Court.

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2. In order to appreciate the submissions made on behalf of the respective parties, the facts leading to the filing of the Company Petition before the CLB are set out hereinbelow.

3. With the intention of providing broadband network connectivity to all Government offices across the State of Andhra Pradesh, to connect the State capital with the Districts, Mandals, Blocks and Gram Panchayats, the State Government with the help of Andhra Pradesh Technology Services, hereinafter referred to as "APTS", identified a consortium of Companies, led by the Respondent No.5 to form a Joint Venture Company under the name of M/s AP AKSH Broadband Limited, the Respondent No.1 herein. M/s AP AKSH Broadband Limited, hereinafter referred to as "APAKSH", was contemplated as a Special Purpose Vehicle to undertake and complete the project.

4. The Petitioner No.1 was one of the companies forming the consortium which entered into a Share Holders Agreement with the Respondent No.5, Aksh Broadband Ltd. (since merged with

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Aksh Optifibre Limited), hereinafter referred to as 'AKSH'. The Petitioner No.1 is the Company and the Petitioner No.2 is its Managing Director. The Respondents Nos. 2 to 4 are Directors of APAKSH. The Respondent No.5 holds 57% of the fully paid up equity shares and in addition it was allotted 12,41,62,500 partly paid shares, giving the said Company a complete majority control over the affairs of the Respondent No.1 Company.

5. In terms of the Share Holders Agreement the Petitioner No.1 was to acquire 21.10% of equity capital, AKSH was to acquire 64.80% equity capital and the balance 14.30% was to be allotted to APTS. On 29.5.2006 the Board of Directors of APAKSH passed a Resolution to call upon the share-holders of the partly paid shares to pay the balance of the call money of Rs.2/- per share on or before 28.2.2006 (Date

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to be confirmed). A second and final notice was issued by the Respondent No.1 for payment of the call money, but on the request of the Petitioner No.2 the time was extended. Ultimately, on 25.11.2006, yet another notice was issued by the Respondent No.1 for payment of the balance call money of Rs.2/- per share on the partly paid shares.

6. The overall estimated cost of the project was Rs.395 crores, out of which equity participation by the three constituent partners was Rs.175 crores. The balance Rs.220 crores was to be mobilized as loan by the Respondent No.1 Company, and, in the event the Respondent No.1 failed to do so, the deficiency was to be met by further equity contribution by the partners.

7. As mentioned hereinbefore, APAKSH was established as a Special Purpose Vehicle with

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the sole object of implementing the connectivity project in accordance with the contract awarded by APTS on 21st April, 2003, apart from which no other business was to be undertaken by it. On 10th May, 2005, the Respondent No.1 gave a turnkey contract to the Respondent No.5 which is one of the principal shareholders having a controlling interest in the Respondent No.1 Company. The said Engineering, Procurement and Construction contract, hereinafter referred to as the 'EPC' contract, envisaged the completion of the infrastructural facilities within a period of 65 weeks at a fixed cost of Rs.370 crores upto the stage of commission and implementation of the project.

8. Appearing for the Petitioners, Mr. Jaideep Gupta, learned Senior Advocate, submitted that the Schedule of work in the Agreement entered

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into between APTS and APAKSH provided that the project was to be completed and commissioned within 65 weeks, which was to end on 31st December, 2006. It also stipulated that connectivity upto the district and all mandal levels was to be completed in a phased manner within a period of seven months from the date of execution of the contract. Mr. Gupta submitted that towards that end the Respondent No.1 placed orders for supply of optic fibre cables on its sister concern, AKSH Broadband Limited, the Respondent No.5, which subsequently merged with AKSH Optifibre Limited, the substituted Respondent No.5, represented by the Respondents Nos. 2 to 4, for completion of the project. Mr. Gupta submitted that despite the fact that over a crore of rupees had been contributed by the Respondent No.1 to the Respondent No.5 towards the execution of the EPC contract, it had not

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achieved connectivity in any of the 23 districts of the State in terms of the Agreement dated 21st April, 2005, executed by APTS. Mr. Gupta submitted that AKSH Broadband Limited had used its sister concern, AKSH Optifibre Limited, prior to its merger, to dump useless and defective cable and to store them as part of the stores of AKSH Broadband Limited and siphoned out the monies from APAKSH Broadband Limited, purportedly for execution of the EPC contract, but without any tangible benefit to the Respondent No.1.

9. Mr. Gupta urged that the Petitioner had been lured by the Respondents Nos. 2 to 4 to procure finance for the purpose of investment in the Respondent No.1 Company from Elegant Capitals Private Limited, the Respondent No.6 herein, which had promised to advance a loan of Rs.33 crores to the Petitioners towards capital

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contribution in the Respondent No.1 Company. Mr. Gupta submitted that taking advantage of their stranglehold over the Company and its officers, the Respondent Nos. 2 to 5 had by a series of acts mismanaged the affairs of the Respondent No.1 Company and rendered the Petitioners completely ineffective inspite of their investment, thereby attracting the provisions of Sections 402 and 403 of the Companies Act, 1956.

10. Mr. Gupta urged that the Respondent No.5 was involved with the turnkey project in two capacities. On the one hand, it is the principal shareholder of the Respondent No.1 Company, holding and controlling more than 64% equity of the Respondent No.1 and, on the other, it is the EPC contractor who is responsible for delivering goods and services in accordance with the Agreement executed

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between itself and the Respondent No.1 Company on 10th May, 2005. Mr. Gupta submitted that it was in this context that it was necessary for the Company Law Board and the High Court to have inquired into the conduct of the Respondent No.5 in the matter of execution of the turnkey project. Mr. Gupta submitted that such omission has resulted in grave miscarriage of justice in so far as the Petitioners were concerned.

11. Mr. Gupta submitted that since the Petitioners had not been permitted to adduce oral evidence involving events which had occurred during the pendency of the appeal, the only course left open to rectify the injustice caused to the Petitioners was to remit the matter to the Company Law Board for a proper inquiry into the various allegations made by the Petitioners regarding the gross misconduct of the

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Respondent No.5 in executing the turnkey project which was the very substratum of the existence of APAKSH Broadband Limited, the Respondent No.1 company. Mr. Gupta submitted that the aforesaid acts of the Respondent No.1 Company through the Respondent No.5 herein, taking advantage of its complete control over the management and affairs of the Respondent No.1 already established that the Company's affairs are being conducted in a manner oppressive to the Petitioners and the facts justified the making of a winding-up order on the ground that it was just and equitable that the Company be wound up.

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12. Mr. Gupta also submitted that after holding that they lacked jurisdiction under Sections 397 and 398 and 10-F of the Companies Act, neither the Company Law Board nor the High Court should have commented on the merits of

the matter which has prejudiced the interests of the Petitioners. It was urged that it is in this context that the complaint made about the failure of the principles of natural justice before the Company Law Board assumes significance. Referring to the decision of this Court in Needle Industries (India) Ltd. & Ors. vs. Needle Industries Newey (India) Holding Ltd. & Ors. [(1981) 3 SCC 333], Mr. Gupta submitted that in the said decision it had been held as follows :-

> "**63.** We appreciate that it is generally unsatisfactory to record a finding involving grave consequences to a person on the basis of affidavits and documents without asking that person to submit to cross-examination. It is true that men may lie but documents will not and often, documents speak louder than words. But a total reliance on the written word, when probity and fairness of conduct are in issue, involves the risk that the person accused of wrongful conduct is denied an opportunity to controvert the inferences said to arise from the documents……..".

In the said judgment, this Court also observed that many decisions had been cited in support of

the contention that issues of mala fides and abuse of fiduciary powers are almost always decided not on the basis of facts but on oral evidence.

13. Mr. Gupta also referred to the decision of this Court in Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad [(2005) 11 SCC 314], in which the question of oppression for the purposes of Section 397 and 398 of the Companies Act has been dealt with in some detail. Their Lordships held that the remedy under Section 397 of the Companies Act is not an ordinary one. The cause of oppression had to be burdensome, harsh and wrongful and an isolated incident may not be enough for grant of relief and continuous course of oppressive conduct on the part of majority shareholders was, therefore, necessary to be proved. It was also observed that the jurisdiction of the Court to grant appropriate relief under Section 397 was of wide aptitude and in exercise of its powers the

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Court was not bound by the directions contained in Section 402 of the Companies Act if in a particular fact situation further relief or reliefs were warranted. At the same time, a word of caution was introduced and it was also held that it had to be borne in mind that when a complaint is made as regards violation of statutory or contractual rights, the shareholders may initiate proceedings in a Civil Court or in a proceeding under Section 397 of the Act which would be maintainable only when an extra-ordinary situation is brought to the notice of the Court keeping in view the wide and far reaching power of the Court in relation to the affairs of the Company.

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14. Mr. Gupta pointed out that several letters had been written on behalf of the Petitioner-Company objecting to the manner in which the funds of the Company were being siphoned off by the Engineering Procurement and Construction Contractor,

hereinafter referred to as "the EPC Contractor", without any progress in the project work. In the first of such letters dated 22nd August, 2006, addressed by Shri R.V.R. Chowdary, Chairman and Managing Director of the Petitioner Company, to the Chairman of the Respondent No.1 Company, the financial indiscipline on account of payment of commission to the EPC contractor was objected to as the same ought to have been spent in proportion to the funds earmarked for each category of expenditure. The next letter referred to by Mr. Gupta was the one dated 1st November, 2006, addressed by the Vice-Chairman of the Respondent No.1 Company to the Respondent No.5 complaining of the fact that despite all the support received by the Respondent No.5 as the EPC contractor and payment of about Rs.100 crores, connectivity had not been completed even in one district nor in the State Secretariat which was the central hub of the project. Various other shortcomings of the

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Respondent No.5 were also pointed out and it was also stated that A.P. Broadband Project had been used by the Respondent No.5 to enrich itself using the free right of way granted by the Government of Andhra Pradesh. It was also mentioned that no further infusion of funds was necessary and the EPC contractor would have to make immediate measures to make triple play completely operational in at least 4 to 5 districts.

15. Yet another letter dated 29th September, 2006, addressed to Mr. V.K. Dhir, the Chief Executive Officer of the Respondent No.5 was referred to by Mr. Gupta from which it would be evident that the work had not been completed nor had the timelines indicated been followed. A letter on similar lines addressed by the Department of Information Technology and Communication, Government of Andhra Pradesh, to Dr. Kailash Chowdary, Managing Director of the Respondent No.5, expressing serious concern

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with regard to the progress made, was also brought to the notice of the Court.

16. Mr. Gupta submitted that it is only too obvious that the Respondent No.5 had misused its control over the Respondent No.1 Company in not only securing the contract for the project which was nothing but the modus operandi of the Respondent No.5 in collusion with Respondent No.1 to siphon off the funds of the Company, after having induced the Petitioners to invest large sums of money in the Respondent No.1 Company and rendering the holding of the petitioners in the Respondent No.1 Company of little or no value. As against the investment of Rs.112 crores by the Petitioner Company, no connectivity had been achieved even in Hyderabad, let alone in the 23 districts and all the mandals and villages of the State or even in at least one district.

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17. Mr. Gupta submitted that this was a classic example of oppression by majority shareholders having a controlling interest, confined to unjust enrichment at the expense of minority shareholders of the Company. Mr. Gupta submitted that unless appropriate orders were passed on the Petitioners' application under Sections 397, 398, 402 and 403 of the Companies Act, 1956, the Petitioner Company would completely lose its investment in the Respondent No.1 Company and would also be made to face continuous litigation and harassment at the hands of the Respondents Nos.2 to 6.

18. Appearing for the Respondent Nos.1, 3, 4 and 5, Mr. K.G. Raghavan, learned Senior Advocate, submitted that the conduct of the Respondent No.5 as EPC contractor and a shareholder in Incable Net has been cited by the Petitioners in their application under Sections 397 and 398 of the Companies Act, as acts of oppression on the

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Petitioner Company. Referring to the various allegations made against the Respondent No.5 and its purported control of the Respondent No.1, Mr. Raghavan pointed out that the Petitioners had deliberately suppressed the fact that the payments made to the Respondent No.5 had been done under the signature of the Petitioner No.2. Mr. Raghavan submitted that having himself participated in the Board meetings as Director of the Respondent No.1 Company and having chaired eight Board Meetings between 14.2.2005 and 4.3.2006 and having been a signatory to the minutes of the meeting dated 21st April, 2005, in which the EPC contract had been awarded in favour of the Respondent No.5, it did not lie in the mouth of the Petitioner No.2 to attribute acts of oppression by the Respondent No.1 as far as the Petitioners are concerned. Mr. Raghavan submitted that apart from the above, the Petitioner No.2 was also a member of the Managing Committee and Audit Committee of the Respondent

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No.1 Company and had also signed the Audit Report and its Balance Sheet for the year 2005-06.

19. Mr. Raghavan submitted that during this period, when the Petitioner No.2 was not only participating in the affairs of the Company, but was taking an active role in its management, no allegation as to oppression or even mis-management was raised. It was only after the call money for the balance price of the partly paid shares was repeatedly demanded from the Petitioners and the Petitioners failed to pay the said amount, that all these allegations began to surface for the first time after 1st November, 2006. Mr. Raghavan submitted that between 2003 and 2006, ten Board Meetings were chaired by the Petitioner No.2 as Chairman. Special reference was made to the meeting held on 21st April, 2005, which was chaired by the Petitioner No.2, and wherein the EPC contract to be given to the Respondent No.5, was approved. Mr.

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Raghavan submitted that at no point of time was any demand made for cancellation of the EPC Agreement and even in the Company Petition before the CLB no such prayer was made.

20. Mr. Raghavan submitted that the Director of the Company stands in a fiduciary capacity to the Company, but the same cannot be equated with his duties towards the shareholders which stood on a different footing and in case of conflict between the two interests, the Company's interests had to be protected. A Director has to act in the paramount interest of the Company. He has no statutory obligation as far as individual shareholders are concerned. Accordingly, the duty of the Petitioner No.2 as a Director of the Respondent No.1 Company was to the Company before his combined interest as a Director in the Petitioner No.1 Company, which was a shareholder in the Respondent No.1 Company. Mr. Raghavan urged

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that the Company Law Board had quite correctly disallowed the claims of the Petitioners and left it to the collective wisdom of the Directors of the Respondent No.1 Company to take such action as was deemed fit and proper in the course of management of the day-to-day affairs of the Company, particularly with reference to evaluation of the quantum of work completed by AKSH and the investments made by it towards the share capital of the Company, realization of the final call money from the shareholders, recovery of the security deposits from the Petitioner No.1,, settlement of the pending bills of the Directors, audit of the accounts of the Company, etc. which were within the lawful domain of the Board of Directors.

21. In this regard, Mr. Raghavan referred to the decision of this Court in Sangramsinh P. Gaekwad (supra), which had also been referred to by Mr. Gupta, in support of his contention that the duties

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of a Director to the Company and to the shareholders stand on different levels, but while a Director stands in a fiduciary capacity to the Company, he does not have such a duty towards shareholders.

22. As far as denial by the CLB as well as the High Court to the adducing of oral evidence is concerned, Mr. Raghavan submitted that Section 10E(5) of the Companies Act, 1956, indicates the manner in which the Company Law Board has to exercise its powers and to discharge its functions under the Act.

For the sake of reference, Section 10E(5) is set out hereinbelow :

> **"10E. Constitution of Board of Company Law Administration.-**
> (1) ……
> (2) ……
> (3) ……
> (4) ……
> (5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law Board shall in the exercise of its powers and the discharge of its functions

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> under this Act or any other law be guided by the principles of natural justice and shall act in its discretion."

23. Mr. Raghavan submitted that there was no compulsion on the Company Law Board to record oral evidence, when all that the Petitioners had to say had already been said by them on affidavit. The Company Law Board, therefore, did not commit any illegality in disallowing the Petitioners' prayer for adducing oral evidence. Mr. Raghavan also referred to the relevant portions of the decision of this Court in Needle Industries (India) Ltd. (supra), where an argument had been advanced that under the Company Court Rules framed by this Court, the provisions of the Civil Procedure Code were made applicable to proceedings before the Company Law Board under Section 397 of the Act. Mr. Raghavan pointed out that in paragraph 63 of the judgment this Court had observed that, although, it had to be appreciated that it is generally

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unsatisfactory to record a finding involving grave consequences towards a person on the basis of affidavits and documents, without asking that person to submit to cross-examination, but a total reliance on the written word, when probity and fairness of conduct are in issue, involved the risk that the person accused of wrongful conduct is denied an opportunity to controvert the inferences said to have arisen from the documents. The said submission was ultimately not acted upon on the ground that such a submission was a belated attempt to avoid an inquiry into the conduct and motives of one of the Directors of the Company.

24. Mr. Raghavan reiterated his submissions that where there was a conflicting interest between the Company and the shareholders, the Director's duties would at first always be for the benefit of the Company and that in the context of Sections 397 and 398 of the Companies Act, the Legislature in its

wisdom had left the procedure to be adopted in these matters to the Company Law Board itself, with special emphasis on due compliance with the principles of natural justice.

25. Mr. Raghavan placed reliance on the decision of this Court in V.S. Krishnan & Ors. vs. Westfort Hi-Tech Hospital Ltd. & Ors. [(2008) 3 SCC 363], wherein, while considering the scope of the expression "oppression" within the meaning of Sections 397, 398 and 402 of the Companies Act, it was held that in order to establish "oppression" it would have to be shown that the conduct of the majority shareholders towards the majority shareholders was harsh, burdensome and wrong and that such conduct was mala fide and was for a collateral purpose where although the ultimate objective might be in the interest of the Company, the immediate purpose would result in an advantage for some shareholders over others. It was also

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observed that the action of the majority shareholders was against probity and good conduct. Once the conduct was found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put to an end such an oppression, is very wide.

26. Mr. Raghavan submitted that even in the decision of this Court in Dale & Carrington Invt. (P) Ltd.& Anr. vs. P.K. Prathapan & Ors. [(2005) 1 SCC 212], this Court had held that when a majority shareholder was reduced to a minority shareholder by a mala fide act of the Company or its Board of Directors, such act would amount to "oppression" against the minority shareholders.

It was also submitted that it is only in such circumstances that a decision was taken by the Respondent No.1 Company to consider the question of forfeiture of the partly paid shares held by the

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Petitioner No.1. He also submitted that the call money amounting to Rs.24,83,25,000/- had already been deposited by the Respondent Nos.3 to 5.

27. Except to submit that the project had been undertaken by the State Government to abridge the digital divide which existed within the State, Dr. Manish Singhvi, learned Advocate appearing for the Respondent No.2, had little else to add.

28. In reply to the submissions made on behalf of the respondents, Mr. Jaideep Gupta submitted that the High Court had not decided the question of jurisdiction under Sections 397 and 398 of the Companies Act. The findings of misconduct by the High Court against the Petitioners was not only on the question of contractual obligation between the Respondent No.1 and Respondent No.6, but also with regard to the mala fide manner in which the Petitioners were placed on account of the close proximity between the Respondent No.1 and the

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Respondent No.5. Mr. Gupta also submitted that the participation of the Petitioner No.2 as a Director in the affairs of the respondent No.1 Company was prior to the implementation of the project.

29. It was lastly urged that "oppression" is a mixed question of law and fact as was held in the Needle Industries (India) Ltd.'s case (supra) and the views expressed by this Court in the said case, in fact, applies to the case of the Petitioners necessitating the setting aside of the orders of the Company Law Board as well as the High Court.

30. On the allegations contained in the Company Petition filed by the Petitioners under Sections 397, 398, 402 and 403 of the Companies Act, 1956, the reliefs prayed for are as follows :-

"(i) To direct the 1st respondent company to incorporate the Shareholders Agreement dated 04.06.2005 in the Memorandum and Articles of Association of the 1st respondent company;

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(ii) To reconstitute the Board of Directors of the 1st respondent company and provide that all policy decisions, and all decisions on key matters be decided by a Board of directors at a meeting where at only one nominee from each of the groups viz., 5th respondent, 1st petitioner apart from APTS nominee are present;

(iii) Appoint a Chartered Accountant to investigate into the investments made by the 5th respondent towards the share capital especially keeping in mind the source of funds for investments in share capital of the 1st respondent company;

(iv) Appoint a team of Chartered Accountants/ Chartered Engineers to evaluate the quantum of work done by the 5th respondent company, and declare that the investment of the 5th respondent company over and above the said quantum of work to have been issued without consideration and consequently annul the said shares and direct the modification of the shareholding of the 1st respondent company;

(v) Vest the day-to-day administration of the 1st respondent company in a Committee of Directors comprising of a nominee from each group viz., petitioners, APTS and 5th respondent; and pass such other order(s) as the Hon'ble Board deems fit and proper in the circumstances of the case."

31. The allegation on the basis of which such reliefs have been prayed for basically is that the

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EPC Contractor AKSH, the Respondent No.5, which is also the majority shareholder in the Respondent No.1 Company, had mismanaged the funds and operations of the Company and the work on the project was delayed on account of the various acts of omission and commission on the part of AKSH. The reliefs prayed for have been opposed on behalf of the Respondents contending that the contractual obligations under the EPC Contract did not fall within the scope of Sections 397 and 398 of the above Act and the right of the Petitioners as shareholders was in no way affected, particularly, when the Petitioner No.2 was a Director and Vice-Chairman and a member of the Managing Committee constituted to monitor the implementation of work of the project and at no point of time had he made any grievance with regard to the EPC Contract. That apart, he had chaired the meetings of the Board and operated the bank accounts and payments made to AKSH by the Respondent No.1 Company had in

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most cases been done by him on behalf of the Company.

32. It is on the said foundation that a case of oppression and mismanagement has been attempted to be made out by the Petitioners. However, in the facts of the case it becomes difficult to take a different view as has been expressed both by the CLB as also by the High Court.

33. Admittedly, the Respondent No.5 is a majority shareholder in the Respondent No.1 Company and at the same time the EPC Contract has also been given by the Respondent No.1 Company to the Respondent No.5, to which transaction the Petitioner No.2, Shri R.V.R. Chowdary, was also a party in his capacity as Vice-Chairman of the Respondent No.1 Company. Besides being a party to the decision to give the EPC Contract to the Respondent No.5, the Petitioner No.2 was also instrumental in payment of large sums of money being made to the Respondent

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No.5 which estops him from alleging that the Respondent No.2 Company had been siphoning off the funds of the Respondent No.1 Company without diligently performing its part of the contract. There is substance in Mr. Raghavan's submissions that the EPC Contract given to the Respondent No.5 by the Respondent No.1 was a commercial contract and stands outside the ambit of Sections 397 and 398 of the Companies Act. Failure to act in terms of the contract cannot be said to have amounted to either oppression or mismanagement by the Respondent No.1. At best it can be said that the Respondent No.1 had been used as a tool or mechanism by the Respondent No.5 to acquire benefits for itself, which in the instant case, does not appear to be so, having regard to the fact that one of the Petitioners in the Company Petition was himself responsible for such payments being made.

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34. Both the parties have placed reliance on the decision of this Court in Needle Industries (India) Ltd. (supra). Mr. Gupta relied on the said decision in support of his submission that by denying an opportunity to the Petitioners to adduce oral evidence, the CLB had shut out vital evidence which would have strengthened the case of the Petitioners. The views expressed in paragraph 63 of the said decision is the expression of a general principle of law and only confirms the principle of adducing evidence, but does not lay down a hard and fast rule that in all cases the Court or the CLB is bound to allow oral evidence to be led as otherwise there is a risk that the person accused of wrongful conduct is denied an opportunity to controvert the inference said to have been arrived at from the evidence produced before the Court alone. As a proposition of law there can be no disagreement with the same, but the question is as to whether

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the same is required to be applied in the facts of the instant case.

35. From the submissions made on behalf of the respective parties and the materials on record, the point which falls for consideration in this appeal is as to whether a case of oppression and mismanagement by the majority shareholders against the minority shareholders had been established or not.

36. Whether there is any truth in Mr. Gupta's submissions as to the siphoning of funds by the Respondent No.5 Company from the Respondent No.1 Company, which had been set up as a Special Purpose Vehicle and in which the Respondent No.5 was a majority shareholder, holding about 60% of the equity shares has not been properly established. On the other hand, the materials on record indicate that the Petitioner No.2, who is a Director of the Petitioner No.1 Company, which is also a

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shareholder in the Respondent No.1 Company, had functioned as a Vice President of the Respondent No.1 Company and had also chaired 8 of its Meetings including the Meeting held on 21st April, 2005, in which the decision was taken to award the EPC Contract to the Respondent No.5 Company. Further more, the Petitioner No.2 had signed most of the cheques by which payments were made to the Respondent No.5 Company for supply of materials under the EPC contract. It does not lie in the mouth of the Petitioner to now contend that the funds of the Respondent No.1 Company had been siphoned by the Respondent No.5.

37. From the facts as revealed, the only conclusion that can be arrived at is that the Respondent No.5 had committed a breach of contract in regard to supply of materials to the Respondent No.1 Company in terms of the EPC contract. Such lapse, in our view, would not constitute the ingredients of a

complaint under Section 397, 398, 402 and 403 of the Companies Act, 1956. Such breach could give rise to an action of breach of contract under Section 73 of the Indian Contract Act, 1872.

38. The decisions cited on behalf of the respective parties and in particular, the decision in Needle Industries (India) Ltd. (supra), in support of the claim of the Petitioners for being allowed to lead oral evidence, does not really come to the aid of the Petitioners, since from the materials on record itself it has been established that at best the Respondent No.5 had failed to abide by its commitments in the EPC contract executed in its favour by the Respondent No.1 Company.

39. We are unable to understand as to how the decisions in the above case are of any help to the Petitioners, since nothing concrete has been established by them in regard to either oppression or mismanagement by the Respondent No.5 as far as

the Petitioners are concerned. On the other hand, the conduct of the Petitioner No.2 provides a different picture since at the relevant point of time he was at the helm of affairs of the Respondent No.1 Company, despite being a Director on the Board of the Petitioner No.1 Company. The decision in V.S. Krishnan's case (supra) is more apposite to the facts of the case. Quoting Halsbury, this Court observed that the expression "oppression" within the meaning of the Sections 398, 399 and 402 of the Companies Act had been interpreted to mean that the conduct of the majority shareholders towards the minority shareholders was harsh, burdensome and wrong and that such conduct was mala fide and was for a collateral purpose which would result in an advantage for some shareholders over others, although, the ultimate object might be in the interest of the Company. However, the facts disclosed in this case do not establish such

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conduct on the part of the Respondent No.5. Until the conduct of the majority shareholders was found to be oppressive in terms of the above description, under Sections 397 and 398 of the Companies Act, 1956, the Company Law Board was not competent to invoke its jurisdiction under Section 402 of the said Act to set right, or put an end to such oppression.

40. On an overall analysis of the facts involved and the part played by the Petitioner No.2 in the affairs of the Company at the relevant time, we are not inclined to interfere with the orders of the High Court or the Company Law Board, since we are not satisfied that any act of oppression or mismanagement within the meaning of Sections 397, 398, 402 and 403 of the Companies Act, 1956, has been made out by the Petitioners against the majority shareholders of the Respondent No.1 Company which would justify the making of a winding

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up order on the ground that it would be just and equitable to do so and to pass appropriate orders to bring to an end the matters complained of.

41. The Special Leave Petition is, accordingly, dismissed.

42. There will, however, be no order as to costs.

SUPREME COURT OF INDIA

……**J.**
(ALTAMAS KABIR)

……**J.**
(CYRIAC JOSEPH)

New Delhi
Dated:07.05.2010

JUDGMENT