CHAPTER IV

NATURE AND MEANING OF MISMANAGEMENT IN COMPANY

"Mismanagement" in a company means that its affairs are being managed wrongly or incompletely. And "manage" means: direct, control, govern, administer or oversee. As already discussed in Chapter I, "mismanagement" provisions in the Indian Companies (Amendment) Act, 1951 and Companies Act, 1956 have been purely Indian innovations and there is no parallel provision in the U.K. legislation. The Indian statute does not define "mismanagement" with respect to the Company’s affairs. S. 153-C of the Indian Companies Act, 1913 inserted by the Companies (Amendment) Act, 1951, was headed as "Alternative remedy to winding up in cases of mismanagement or oppression", and it contained the following provision as to "mismanagement" in its subsection (1) (a): “Any member of a company who complains that the affairs of the company are being conducted – (a) in a manner prejudicial to the interests of the company”, S. 398 of the Companies Act, 1956 dealing with “Application to Tribunal for relief in cases of mismanagement” refers to mismanagement in its sub-sections (1) (a) and (b) as : “that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company” or that by reason of a material change in the management/control of the company, “the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company”. Similarly, s. 408 which deals with “powers of government to prevent oppression or mismanagement” refers to mismanagement in its subsection (1) as: “in a manner which is prejudicial to the interests of the company or to public interest.” It is thus clear that the statutory concept of “mismanagement” in companies is that mismanagement occurs when the affairs of the company “are being conducted in a manner prejudicial to the interests of the company or to public interest.”

394 As per Webster’s 3rd New Int’l Dictionary, unabridged, 1976 ed.
395 As per Bouvier’s Law Dictionary, 12th Reprint (1975).
396 See page 34-35.
397 See. 153-C; see page 33, note, 141, ante, for text of sec. 153-C.
398 See sec. 398; see page 38, ante, for text of sec. 398.
399 See page 148, post, for gist of sec. 408.
400 "Public interest" concept was inserted in the Companies Act, 1956 by the companies (Amendment) Act, 1963, w.e.f. from 1.1.1964.
Therefore, s. 409\textsuperscript{401} which deals with “Power of Central Government to prevent change in Board of directors likely to affect company prejudicially” means that it deals with “mismanagement’ only.

It may, however, be of interest to know that the Bhabha committee in the proposed draft of section 153-D which became section 398 of the companies Act, 1956, used the heading “Alternative remedy to winding up in cases of gross mismanagement of the affairs of the company” and referred to such gross mismanagement of the affairs of the company” as taking place when (a) the management of the affairs of the company is being conducted in a manner prejudicial to the interests of the company, or (b) by reason of a material change in the control or composition of the company, the interests of the company have been, or are, or are likely to be, unfairly and materially prejudiced.\textsuperscript{402} The history of s. 398 therefore shows that it was contemplated to cover acts of gross mismanagement and not of causal mismanagement.

The nature and meaning of mismanagement with respect to section 153C of the 1913 Act and section 398 of the 1956 Act dealing with the power of court to prevent mismanagement will be revealed from the judicial trend in the Indian cases, for it is purely an Indian phenomenon. As has already been discussed under the statutory provisions\textsuperscript{403}, the first ever Indian statutory remedy in s. 153C of the 1913 Act for mismanagement was composited with that for oppression and that both oppression and mismanagement were linked with the requirement for winding up on the “just and equitable” ground. S. 398 of the 1956 Act enacted on the recommendations of the Bhabha Committee\textsuperscript{404} delinked this remedy for “mismanagement” from winding up. Mostly, the facts alleged constituting oppression to the minority overlap with those constituting injury to the company as a whole, i.e., mismanagement. Therefore, almost every Indian case since 195\textsuperscript{5}: alleging oppression u/s 153C or 397 of the 1913 or 1956 Act respectively, also alleged mismanagement u/s 153C or 398. And so, mostly, the leading

\textsuperscript{401} See page 154, post, for gist of sec. 409.
\textsuperscript{402} See item no. 25 at page 429 in the Addendum to the Bhabha Committee report; See Chapter I(iii) page 36, note 153, ante.
\textsuperscript{403} See page 35, ante.
\textsuperscript{404} See page 36, note 153 ante.
Indian decisions of "oppression" discussed in the previous two Chapters contain pronouncements on the allegations of "mismanagement" too.

That most of the leading Indian cases are common to both oppression and mismanagement under the companies Act should not drive us to the conclusion that oppression is synonymous with mismanagement or that there is little difference between the two terms. The two are definitely distinct and are covered by separate statutory provisions. Although the facts of the case may be such that one may be inferred from the other or one may give rise to the other. It is usual that where oppression is established, those wrongful, oppressive acts of a group of shareholders (usually a majority) may also be a cause for an injury to the company as a whole, i.e., give rise to a conduct prejudicial to the company as a whole and not only to the other group of shareholders (usually a minority). This injury to the company may be due to misconduct, fraud or breach of fiduciary or other duties of care and skill or ultra vires or illegal acts on the part of the directors towards the company. Sometimes acts of mismanagement may itself give rise to oppression, and the case mainly founded on mismanagement may be held by the court as the one amounting to "oppression", it is this aspect of oppression turning into mismanagement or vice versa which sometimes makes us think that where there is oppression there must also be mismanagement or vice-versa. But it is not necessarily always so. The petitioner will always allege that since there is oppression there is also mismanagement and hence almost every case u/s 397 is also filed u/s 398 of the Companies Act, 1956. But the courts/CLB are hard put to distinguish the two and thereby deduce the separate and distinct elements as to the nature and meaning of what would constitute "mismanagement" in companies within the meaning of s. 398 warranting court/CLB's intervention for preventing such "mismanagement". We shall presently see this hard judicial task in the cases that follow. But it may be clarified here that the analysis of the cases that follow could deal with only one aspect of mismanagement, namely, where the affairs of the company are being conducted (or by reason of a material change in the management or control of the company, it is likely that the affairs of the company will be conducted) in a manner prejudicial to the interests of the company, as under s. 398 (1) (a) and (b). The second aspect of mismanagement, introduced by the Companies (Amendment) Act, 1963, w.e.f. from 1.1.1964 in section 398, namely, where
the affairs are or will be conducted in a manner prejudicial to "public interest", shall be dealt with in Chapter VII at page 153, along with oppression which u/s 397 was also simultaneously made to have this second aspect founded on "public interest". Even section 408 had at the same time been injected with "public interest", and we shall deal with this aspect of oppression and mismanagement with respect to Central Government's power regarding their prevention u/s 408 in Chapter VI.

In Rajahmundry Electric Supply Corporation Ltd. v. A. Nageshwara Rao a shareholder petitioned under s. 162 (v) & (vi) and s. 153-C of the Indian Companies Act, 1913 for winding up the company or, in the alternative, for taking action u/s 153C to end the alleged oppression to the minority and mismanagement of the company's affairs. As to mismanagement, he alleged that the Vice Chairman of the company grossly mismanaged the affairs of the company and had drawn considerable amounts for his personal purposes. There were substantial arrears due to Government for supply of electric energy and large collections had to be made. The machinery was in a state of disrepair and by reason of death and other causes the directorate had become greatly attenuated and "a powerful local junta was ruling the roost" and the shareholders outside the group of the Chairman were apathetic and powerless to set matters right. The trial Judge appointed a commission whose investigation into the affairs of the company revealed the following facts:

1. Arrears of more than Rs. 3 lacks were due to Government.
2. Arrears of more than Rs. 2 lacks were not collected from the customers;
3. Though the corporation was purchasing annually about 21,00,000 units of energy at three annas per unit for general consumption and sold it at more than 7 annas per unit, a dividend of only 3 per cent was declared and there were no surplus funds;
4. The expenditure had risen when it should have gone down after the corporation had practically given up generating energy and was purchasing the same from Government.

405 A.I.R. 1956 S.C. 213; see also pages 19-21 and 64-65, ante.
5. The machinery of the corporation was left in disrepair and whatever repairs were shown in the account-books to have been effected, it was found on enquiry that most of them were non-existent; and

6. The cash-book for 1951-1952 contained visible alterations and several pages from the ledger appeared to have been removed. There was expenditure without proper and valid vouchers for the years 1951 to 1954. There was practically no internal check. There were many other defects in the account-books, particulars whereof were given in the report of the commission.406

Although both oppression and mismanagement had been alleged in the petition, the trial Judge held that the facts of the case amounted to mismanagement. He was of the view that the affairs of the company were in a muddle and that they should be remedied by a drastic action to end the “mismanagement” because the general body was either apathetic or being deliberately misled and there was little doubt that a powerful local “junta was ruling the roost”.407 And since remedy u/s 153C to end mismanagement was linked with winding up on the “just and equitable” ground, the learned Judge held that the facts alleged were sufficient to wind up the company put that to do so would unfairly prejudice the interests of the company. Having thus satisfied these pre-requisites of section 153C, he made an order u/s 153C to end mismanagement in the company by which he appointed 2 administrators for a period of 6 months tentatively giving them all the powers of management which vested in the board of directors under the articles of association. His Lordship directed these administrators to call a general body meeting before the expiry of 6 months to record its opinion whether the administration should continue or whether they would elect a new board of directors for the management of the affairs of the corporation.408

This decision of the trial judge was upheld in appeal409 by a division bench of the A.P. High Court and was on second appeal further upheld by the Supreme Court.410

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407 Ibid., at p. 58.
408 Ibid., at p. 58-59.
410 A.I.R. 1956 S.C. 213; (1956) 26 Comp. Cas. 91 (S.C.)
S.C. held that u/s 162 (vi), the clause “just and equitable” was not to be construed ejusdem generis with the preceding cls. of s. 162 and, therefore, “mismanagement” in this case was rightly held by the lower courts to be aground for winding up u/s 162(vi)\(^{411}\) but that such winding up would unfairly prejudice the company. In the Supreme Court one of the contentions of the appellants was also that the appointment of the administrators in super session of the directorate and vesting power in them to manage the company was an interference with the internal management of the company, which the court had no power to do. The S.C. rejected this contention observing that:

> “If a liquidator can be appointed to manage the affairs of a company when an order for winding up is made under section 162, administrators could also be appointed to manage its affairs, when action is taken under section 153C\(^{412}\)

But this reasoning founded on “winding up” is no longer available u/s 398 of the 1956 Act because mismanagement is no longer linked with winding up. Section 153-C and new section 398 being exceptions to the common law rule in Foss v. Harbottle, the Court/CLB’s power to interfere in the internal affairs of the company under these sections is statutory and very wide.\(^{413}\)

In Re Hindustan Corporative Insurance Society Ltd.\(^{414}\) Discussed in the Chapter II\(^{415}\) allegations of mismanagement were also made and relief u/s 398 was also prayed for vide the composite petition u/s 397 and 398. Justice U.C. Law who tried this petition held that the case for mismanagement u/s 398 (1) (a) was also proved. He was convinced of the following facts giving rise to mis-management.

> “The consolidated balance sheets showed that the company did no business since 19\(^{th}\) of January, 1956, and yet a sum of well over Rs. 30,000/- was wrongly spent or withdrawn as Director’s fees and other expenses during the years 1957 and 1958 by the so-called Directors out of the funds of the company. The original minute-Book which was produced

\[^{411}\text{See Pages 20-21, ante, Chapter I.}\]
\[^{412}\text{(1956) 26 Comp.Cas. 91 (S.C.), at p. 98.}\]
\[^{413}\text{See also P.S. Sangal, National and Multinational Companies- Some Legal Issues, 1981 ed., p. 284.}\]
\[^{414}\text{A.I.R. 1961 Cal. 443.}\]
\[^{415}\text{See page 66, note 264 ante.}\]
at the hearing showed that Rs. 16000/- was sanctioned to be spent subsequently in law charges and it further appeared, and it was not denied at the hearing, that a sum of over Rs. 850000/- out of the compensation money was kept uninvested for well over ten months when it could earn at least 4 per cent interest in short deposit account like the rest of the compensation money."

As a result of this, his Lordship thought that the company and the shareholders undoubtedly suffered considerable loss.\textsuperscript{416} It was further contended for the petitioners that a material change had taken place in the management or control of the company by alternation in its Board of Directors and thus it was a fit and proper case where powers given under s. 398 should be justly invoked and relief granted to the petitioners. Justice Law held:

"Upon the facts as I have outlined them, I consider that the acts complained of, all refer to the continuous conduct of the affairs of the company... I further consider that the affairs of the company have also been conducted in a manner prejudicial to the interest of the company and lastly I find that a material change has taken place in the management or control of the company by alteration in its board of directors (which in fact is now non-existent) with the result that the affairs of the company are being conducted in a manner prejudicial to the interest of the company."\textsuperscript{417}

And further:

"I have no hesitation in holding that the facts and circumstances of this case have fully established that the relief under this section (i.e., section 398) should be justly available to the applicants."\textsuperscript{418}

Accordingly his Lordship passed orders u/s 398 to end mismanagement.\textsuperscript{419}

\textsuperscript{416}A.I.R. 1961 Cal 443 at p. 452.
\textsuperscript{417}Ibid., at p. 452, para 51.
\textsuperscript{418}Ibid., at p. 453, para 54.
\textsuperscript{419}Ibid., at p. 453-454; see page 113, post, for details of the orders.
In *Life Insurance Corporation of India v. Haridas Mundhra*, the L.I.C. of India filed a petition under ss. 397, 398 and 453 (Sch. XI) regarding the affairs of the British India Corporation Ltd. (B.I.C.). The L.I.C. was a shareholder of the B.I.C. and had been authorized by the Central Government u/s 399 (4) of the Act, to present a petition to the court u/ss.397 and 398, alleging oppression and mismanagement.

The trial Judge held that:

a) The affairs of the Corporation were conducted in a manner prejudicial to the best interests of the Corporation and its shareholders. Having regard to all the facts and circumstances, it was necessary that the court should settle a scheme for its management under s. 398 of the Act.

b) No relief could be granted under section 543 (Sch. XI) of the Act.

On appeal, the D.B. (consisting of Justice Dwivedi with whom Justice Oak agreed) upheld the findings of the trial judge observing:

“This resume is sufficient to show that the affairs of the Corporation were being conducted in a manner prejudicial to its interests. Removal of the Directors is therefore just and proper.”

With respect to the findings (b) of the trial judge, Justice Dwivedi rejected the reasons advanced by the trial Judge and held that relief could also be granted for misfeasance u/s 543 (Sch. XI) along with that for mismanagement u/s 398. As such Haridas Mundhra was held liable to compensate the B.I.C. for the loss caused by his misconduct and breach of trust in his capacity as a director thereof.

In *Shanti Prasad Jain v. Kalinga Tubes Ltd.*, which has been discussed in the previous Chapter regarding “Oppression”, the appellant S had also alleged “mismanagement” and sought relief u/s 398 too in his composite application u/s 397, 398, 402 and 403 of the Companies Act, 1956. The trial judge, Justice Barman, had held

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420 (1963) I.L.R. 1 All. 447 (All) (D.B.)
421 Ibid., at p. 500.
422 (1965) 1 Comp. L.J. 193 (S.C.).
423 See page 85-89, ante.
that in addition to "oppression" u/s 397, the conduct of the two groups, P and L, also amounted to mismanagement likely to be prejudicial to the affairs of the company and therefore he passed order\textsuperscript{424} u/s 398 granting elaborate and far-reaching reliefs to end mismanagement. The Division Bench of the Orissa High Court reversed\textsuperscript{425} this order u/s 398 holding that "the petitioner has failed to make out even a prima facie case u/s 398".\textsuperscript{426} On further appeal, the Supreme Court upheld the decision of the Division Bench and set aside the order of the Justice Barman, observing, that:

"The appellant relies on the following three circumstances to show that the affairs of the company were being conducted in a manner prejudicial to its interests:

i) that when the new shares worth Rs. 39 lacs were issued in July 1958, only a small part of the share money was received in the beginning;

ii) that the Patnaik and Loganathan groups removed Rs. 7 lacks from the coffers of the company;

iii) that the company lost the support of the appellant\textsuperscript{427}

Regarding these 3 issues, the Supreme Court held that

(i) the slight delay in the payment of the full value of the shares cannot therefore in the circumstances be said to be so prejudicial to the interests of the company as to call for any action under section 398 of the Act.

(ii) The withdrawal of Rs. 7 lacks which was due from the company to Kalinga Industrial Dev. Corpn. cannot be said to amount to conducting the affairs of the company prejudicially to its interests, whatever may be the rights of the appellant in the matter of getting one third of this amount from the Loganathan and Patnaik groups.

\textsuperscript{424} A.I.R. 1962 Orissa 202, at p. 231.
\textsuperscript{425} A.I.R. 1963 Orissa 189; (1964) 1 Comp. L.J. 117.
\textsuperscript{426} (1964) 1 Comp. L.J. 117 at p. 152.
\textsuperscript{427} (1965) 1 Comp. L.J. 193 (S.C.) at p. 211.
(iii) If the company was able to carry on without this support as it apparently was in 1958, it cannot be said that the action which resulted in the loss of the appellant’s support to the company was necessarily prejudicial to it.

Finally the Supreme Court concluded that: “We therefore agree with the High Court that no case has been made out for action u/s 398 on the ground that the affairs of the company were being conducted in a manner prejudicial to its interest.” This case shows that where the respondents were deliberately acting in a manner by which an easily reducible liability of the company is not reduced and were apparently acting in a manner prejudicial to the interests of the company, the case was quite falling u/s 398, and yet the Division Bench of the High Court and latter the Supreme Court refused relief not only u/s 397 where it was stronger but also for mismanagement u/s 398. Thus the remedy for mismanagement is not to be easily granted u/s 398 of the companies Act, 1956.

The case of A.M. Varkey v. J.R. Motishaw fall u/s 398 alone. An application was made u/s 398 by a shareholder of the company alleging mismanagement arising out of the insistence of the respondent that the estate which was the sole undertaking of the company, should be sold for a price of not less than Rs. 8 lacs. The respondent, who was himself the holder of a large number of shares, also had influence over some other shareholders and thus commanded a majority of the votes. The petitioner and the Managing Agents of the Company opposed this sale of the sole undertaking of the company saying that it was a profitable undertaking and the sale would be greatly prejudicial to its interests. The trial judge held that unless the respondent and his supporters were stopped, it was obvious that they would effect a change in the management of the company and would see to it that, for legitimate reasons, the sole undertaking of the company was sold at a price which on the face of it, seemed inadequate. He passed an order u/s 398 to prevent this conduct of the company’s affairs which was held to be highly detrimental to the interests of the company.

The foregoing cases show that the Indian Courts/CLB gradually got used to exercising their vast power given to them by the statute for curbing abuse of majority’s

428 Ibid., at p. 212.
authority which hits the company as a whole\textsuperscript{430} i.e. curbing mismanagement in the company's affairs.

However, the courts/CLB in exercising their powers u/s 397 and 398 have not always confined to the reliefs prayed for. In \textit{Mrs. Gajarbai M. Patny and others v. M/s Patny Transport (P) Ltd.}\textsuperscript{431}, the petitioners had asked for so many reliefs u/ss 397 and 398 including the appointment of a committee of shareholders to manage the affairs of the company. However, Jaganmohan Reddy J. passed order u/s 398 only directing the directors of the company to transfer the shares to the petitioners as per the terms of a will. His Lordship observed\textsuperscript{432} that ss. 397 and 398:

"are designed to confer upon the court powers to pass suitable orders where the circumstances justify, to remove the oppressiveness or the matters complained of, without the necessity of winding up of the company where such winding up would unfairly and materially prejudice the interest of the company or any part of its members."

Thus the courts/CLB has wide powers to prevent mismanagement which falls within the meaning of s. 398.

But the courts/CLB has rightly been using these vast powers with caution and refusing relief where the case does not properly fall under section 398\textsuperscript{433}. For instance in \textit{Raghunath Swarup Mathur v. H.S. Mathur}\textsuperscript{434}, the petitioners alleging mismanagement and oppression file a petition u/s 398 and 397. The Company Judge, M.H. Beg, J., observed that the petition in substance was little more than a catalogue of charges of the past alleged misdeeds of the respondents, and held that, mismanagement u/s 398 must be present and continuous, and the past charges of mismanagement must be sufficient to establish the continuance of an existing injury to the interest of the company giving rise to a mismanagement at the date of the petition, and furthermore, relief for

\textsuperscript{431} (1965) 2 Comp. L.J. 234.
\textsuperscript{432} Ibid., at p. 241.
\textsuperscript{433} P.S. Sangal, Mismanagement in a Company, 10 Jaipur Law Journal (1970) 38, at p. 76.
\textsuperscript{434} (1970) 1 Comp. L.J. 35 (All).
mismanagement u/s 398 would be refused if an alternate remedy for any existing act of mismanagement was available. And so relief u/s 398 was refused.

In Mohta Bors (Pv.) Ltd. And others v. Calcutta Landing and Shipping Co. Ltd. and others, the appellants sought relief u/s 397, 398 and 402 of the Companies Act 1956 alleging mismanagement, manipulation of divided misfeasance and oppression. The appeal was dismissed by the Division Bench, which held that the petition being the result of rivalry between the two groups of shareholders in the matter of administration of the company's affairs, "relief under section 397 and 398 cannot be granted to a group of shareholders merely because it has been outvoted in the matter of the business policy or management of the company's affairs."

The foregoing cases reveal that the nature and meaning of mismanagement u/s 398 which arises out of an abuse of authority that hits the company as a whole are quite akin to those of oppression u/s 397 which hits the shareholders. But the meaning and scope of mismanagement, unlike oppression, is not dependent on the "winding up" law. The scope of mismanagement u/s 398 is much wider than that of oppression u/s 397. The facts of a given case may not amount to oppression u/s 397 due to the restrictive meaning given to it by the case law u/s 210 of the English Companies Act, 1948, and yet the same facts may easily constitute mismanagement u/s 398 and attract relief from the CLB for preventing such mismanagement in a company may, unlike s/397, amount to mismanagement u/s 398(1) (b). Such change may arise from "oppression" and give rise to "mismanagement".

WHETHER THE REMEDY FOR 'MISMANAGEMENT' UNDER S. 398 IS AVAILABLE TO THE MAJORITY? THAT IS, WHETHER 'MISMANAGEMENT' (ABUSE OF AUTHORITY WHICH THIS THE COMPANY AS A WHOLE) CAN ALSO BE BY THE MINORITY?

In the detailed discussion on "whether oppression can also be by the minority?" in the preceding Chapter it has been submitted that the Needle Industries (India) Ltd. v.

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436 Ibid., at p. 128.
437 See Pages 74 to 83, ante, which also apply to mismanagement u/s 398.
Needle Industries Newey (India) holding Ltd.\textsuperscript{438} Has laid down by implication that both sections 397 and 398 are available both to the minority as well as majority of the Company. In Suresh Kumar Sanghi v. Supreme Motors Ltd.\textsuperscript{439}, B.N. Kirpal J. of the Delhi H.C. while holding that S. 397 is available only in cases of oppression of the minority by the majority and thereby denying the remedy u/s 397 to the petitioner and his group which was in the majority, he actually allowed the remedy u/s 398 to the same petitioner and his group and passed a far-reaching order u/s 398 to end mismanagement in the company.

Thus, 'normally, a majority controls a company and, therefore generally, it is abuse of authority by a majority which is sought to be curbed under section 398. But, though exceptionally, cases do arise in which a minority controls and conducts the affairs of a company, in a manner which is prejudicial to the company's interest and it is gratifying to note that the Indian judges interpret section 398 in a manner so as to cope successfully with these exceptional cases also.'\textsuperscript{440}

\textsuperscript{438} (1981) 51 Comp. Cas. 743 (S.C)
\textsuperscript{439} (1983) 54Comp. Cas. 235 (Del.).
PREVENTION OF MISMANAGEMENT BY THE NATIONAL COMPANY LAW TRIBUNAL

In the forgoing discussion we have dealt with the elements that constitute mismanagement. Almost every case alleging oppression u/s 153c and 397 also alleged mismanagement u/s 153c or 398 and hence the cases previously discussed are mostly common to "mismanagement". That such composite petitions could be filed was never doubted by the courts. However in Sorab Dinshaji Dastoor v. D.P.R. Cassad, a contrary view was taken by the single judge, Justice Tambe, that a Composite application under section 397 and 398 was not maintainable. On appeal, the D.B. of the Bombay H.C. held that the fact that ss. 397 and 398 are separate items under Rule 11 of the Companies (Court) Rules, 1959, or that separate forms under Rule 88 of the same Rules are prescribed for petitions u/ss. 397 and 398 does not mean that a composite application cannot be filed. Order 2, r. 3 of C.P.C. permits that several causes can be united in the same suit. Since this decision, there is no controversy now that a composite application can be filed u/ss. 397 and 398. All the procedural provisions and the reliefs pertaining to prevention of oppression and mismanagement by the court u/ss. 397 to 407 are common. Only the elements of the nature and meaning of "mismanagement" giving rise to a cause of action u/s 398 are distinct from those of "oppression" u/s 397. The common case law u/ss.398 and 397 need not be repeated here, except some portions thereof which are being discussed below to see how the courts end or prevent mismanagement in companies u/s 398 of the Companies Act, 1956.

In Rajahmundry Electric Supply Corpn. v. A. Nageshwara Rao, a shareholder had petitioned for "winding up" u/s 162 (v) & (vi) or reliefs u/s 153c of the 1913 Act to end oppression and mismanagement in the company. The trial judge held that this was a case of mismanagement only u/s 153C. After satisfying the pre-requisites

441 Subs. By Act 11 of 2003, sec. 44, for "Company law Board". Earlier the words "company law Board" were substituted by Act 31 of 1988, sec 67, for the word "Court" (w.e.f. 1-1-1964). But the Tribunal is not established yet and the power is still exercised by the Company Law Board.
443 A.I.R. 1963 Bomb. 173 (D.B.)
444 See Chapter IV, ante.
445 See Chapter III, ante.
446 See page 39, ante for text of section 398.
u/s 153C, he made an order u/s 153C whereby he appointed two administrators for the management of the company for a period of 6 months vesting in them all the powers of board of directors and authorizing them to take necessary steps for recovering the amounts due to the company, paying the debts and for convening a meeting of the shareholders for the purpose of ascertaining their wishes whether the administrators should continue or whether a new board of directors be constituted for the management of the company. This order was upheld by the D.B. of the High Court and then by the Supreme Court.

In Re Hindustan Cooperative Insurance Society Ltd., Justice U.C. Law held that it was a case of mismanagement u/s 398 and, therefore, he passed the following orders u/s 398 to end mismanagement:

"(1) For removing respondents nos. 1 to 4 form the Board of Directors of the company, and restraining them from acting or representing themselves as directors of the company or dealing with the assets of the company including the compensation money, the accrued interest thereon and also the money lying in company’s banking accounts;

(2) For restraining two persons, who were not elected as directors from acting or representing themselves as such directors any more; and

(3) For the appointment of a Special Officer to take charge of the management and affairs of the company and directing the special officer to purchase on behalf of the company the shares of the complaining minority at a valuation arrived at according to a formula indicated by the court."

In Life Insurance Corpn. of India v. Haridas Mundhra, the single company judge had held that: (a) the affairs of the company were conducted in a manner prejudicial to the best interests of the Corporation and its shareholders, and (b) No relief could be granted for misfeasance u/s 543 (Sch. XI) by combining an application u/s 397

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\(^{448}\) A.I.R. 1961 Cal. 443, See page 66, note 264 ante.

\(^{449}\) Ibid., at p. 453 and 454.

and 398 with that u/s 543 (Sch. XI) of the Companies Act, 1956. As such he passed orders u/s 398 and appointed an interim Committee of Management for about 4 years to end the prevailing mismanagement in the company. However on appeal, the D.B. of the Allahabad High Court while upholding findings (a) of the single Judge, reversed his finding as to (b) above and held that remedy for misfeasance could also be granted u/s 398 and held Haridas Mundhra as guilty of breach of trust and thus liable to compensate the Corporation for the loss cause by his misconduct.

In Shanti Prasad Jain v. Kalinga Tubes Ltd.\textsuperscript{451}, Justice Barman had held that in addition in the company within the meaning of s. 398, and so he granted elaborate and far-reaching relief.\textsuperscript{452} But the Division Bench of the High Court reversed this holding saying that no case had been made out u/s 398.\textsuperscript{453} The Supreme Court upheld this decision of the D.B. by a detailed reasoning.

A.M. Varkey v. J.R. Motishaw\textsuperscript{454} was a case falling u/s 398 alone. The Company Judge made the following order u/s 398 to prevent mismanagement:

“For a period of five years from this day the estate, which is the sole undertaking of the company, will not be sold unless the company by special resolution resolves that it be sold. This only adds to the restriction imposed on the powers of the Board by Section 293 (!) (a) of the Companies Act by requiring that the consent of the company in general meeting shall be by special resolution; it does not mean that by a special resolution the members can compel the Board to effect a sale. If any such special resolution, moved within six votes required for an ordinary resolution than, on request made within a fort night thereof by any member of the company, the managing agents will, as agreed to any them and by the company, arrange for the purchase of the shares held by that member at a price of Rs. 10/- per preference share and Rs. 2485 per equity share within a period of three months there after... If default is made, it

\textsuperscript{451} (1965) I Comp. L.J. 193 (S.C.) see page 85, ante for details of this case.
\textsuperscript{452} See P.S. Sangal, National and Multinational Companies, some legal issues, 1981 ed. P. 299, note 129.
\textsuperscript{454} A.I.R. 1964 Ker. 114.
will be open to the member concerned to come to court, and ask for appropriate directions which might include the rescission of the direction that a sale shall be affected only on the strength of a special resolution.455

However, in Suresh Chandra Marwaha v. Lauls Private Ltd.456 The single Judge had refused relief u/s 398 as the alleged change in the management of the company was brought about by and in the interests of a creditor of the company within the meaning of s. 398 (1) (b). On appeal, the D.B. of the High Court upheld this decision of the single Judge because it fell within the exception in s/398 (1) (b), viz. “a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company.”

In Rai Saheb Vishwamitra v. Amar Nath Mehrotra457 the petitioners had been themselves in actual management of the affairs of the company and they filed an application u/ss. 397 and 398 on 21.12.1982 alleging oppression and mismanagement and praying that a meeting requisitioned by one of the aspiring directors and other shareholders to be held at a place other than the registered office of the company for the appointment of directors, etc., should be stayed. The court passed orders u/s 397 and 398 on 23.12.1982 that the meeting may be held but the resolution passed therein shall not be affected until further orders of the court. By a resolution passed at the said meeting of 30.12.1982, the petitioners were to be removed as directors and new directors appointed in their places. The petitioners then filed another application on 8.3.1983 again u/ss 397 and 398 for quashing the proceedings of the meeting held on 30.12.1982. By 8.3.1983, the management of the company was still in the hands of the petitioners. The Company Judge refusing orders u/s 398, on the second application dated 8.3.1983, held:-

“The new directors have not yet taken over charge of the affairs of the company. Unless the new directors take charge and they conduct the affairs of the company, it can not possibly be concluded that their conduct, in any manner, has affected the company or the conduct of the directors is

455 Ibid., at p. 118, para 119.
prejudicial to the public interest or the interest of the company. It is only when the directors take over the affairs of the company, they carry on the affairs of the company and then alone it can be judged as to whether an application under section 398 of the Companies Act should be entertained and a relief granted to the petitioners. In my opinion, so far as section 398 is concerned, the petition is not maintainable at this stage. It is wholly premature."

Thus, orders u/s 398 are passed only to prevent or end mismanagement in the affairs of the company, and unless there is such actual mismanagement or likelihood of mismanagement by reason of an actual prejudicial effect on the company’s interests or the public interest or of an actual change in the management or control of the company, there is nothing which can be prevented or ended. The remedy for mismanagement u/s 398 is to be lightly granted merely for the asking of it.