Ragunath Prasad Jhunjhunwala and anr. Vs. Hind Overseas Private Ltd.

Overruled by : Hind Overseas Private Limited Vs. Raghunath Prasad Jhunjhunwalla and Anr.

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Court : Kolkata

Decided On : Sep-25-1969

Reported in : [1971]41CompCas308(Cal)

Judge : D.N. Sinha, C.J. and ;Arun K. Mukherjea, J.

Acts : Companies Act, 1862 - Sections 79(5) and 129; ;Partnership Act, 1819 - Section 35; ;Companies (Amendment) Act, 1948 - Sections 210 and 222; ;Companies (Amendment) Act, 1956 - Section 169

Appeal No. : A.O.O. Nos. 146 and 147 of 1967

Appellant : Ragunath Prasad Jhunjhunwala and anr.

Respondent : Hind Overseas Private Ltd.

Advocate for Pet/Ap. : A.K. Sen, ;S.C. Sen and ;R.C. Nag, Advs.

Judgement :

Mukherjea, J.

1. These two appeals are directed against a judgment and order dated 6th July, 1967, by which the learned trial judge disposed of two applications. In the first application, namely, Company Application No. 183 of 1966, which was an application praying for stay of winding-up proceedings of a company, the learned trial judge ordered such stay and at the same time dismissed the connected winding-up petition, namely, Company Petition No. 123 of 1966, which had been filed by the appellants herein. The second application, viz., Company Application No. 136 of 1966, which was one for appointment of a provisional liquidator and also for an order of injunction restraining the respondents Nos. 2, 3 and 4 herein from acting or holding themselves out as directors of the company, was dismissed by the learned trial judge. These two appeals were by agreement of parties heard together and we are disposing of these two appeals by one judgment.

2. On or about 9th August, 1966, the Hind Overseas Private Ltd. (hereinafter referred to as 'the company') was incorporated with a share capital of Rs. 5,00,000 consisting of 5,000 shares of Rs. 100 each. Though there is no dispute as to who were the shareholders at the inception, there is some dispute regarding the basis on which the division of shares had been made. According to the appellants, the company was at its very inception constituted more or less on the lines of a partnership firm. Indeed, it is

said that the original idea of the promoters was to have a partnership and not a limited company on the basis of 10 annas and 6 annas shares. The 10 annas shares were to be held by a group led by the respondent, V.D. Jhunjhunwala, and 6 annas shares were to be held by a group led by the appellant, R.P. Jhunjhunwala. Later on, the promoters changed their minds and formed a private limited company instead of a partnership firm. It has been stated by the appellants that, prior to the incorporation of the company, a partnership account had been opened in the books of Chimonram Motiram, a firm belonging to the group of V.D. Jhunjhunwala. The appellants also say that, when the company came to be set up, it was agreed between the parties that the group led by V.D. Jhunjhunwala would be the financiers and the group led by R.P. Jhunjunwala would manage the company. We would refer to these two groups hereinafter as the ' V. D. J. Group ' and ' K. P. J. Group ', respectively. The story about the original idea of forming a partnership and subsequent change of mind and formation of a company instead is not accepted by the respondents. In any case, both the parties admit that the first directors of the company were R.P. Jhunjhunwala, one of the appellants in this appeal, and Anil Chandra Dutt, who was a typist of V.D. Jhunjhunwala. The respondents say thatboth R. P. Jhunjhunwala and Anil Chandra Dutt were employees of V.D. Jhunjhunwala at one time or the other.

3. On 23rd August, 1956, V.D. Jhunjhunwala and M.P. Jhunjhunwala were co-opted as directors. The respondents suggest that they went to the board to represent the interest of the V.D.J. Group. Thereafter, on 23rd November, 1957, Anil Chandra Dutt resigned and P.C. Jhunjhunwala, son of R.P. Jhunjhunwala, became a director and R.P. Jhunjhunwala was made the director-in-charge. On this day, therefore, the board of directors consisted of R.P. Jhunjhunwala, P.C. Jhunjhunwala, V.D. Jhunjhunwala and M.P. Jhunjhunwala. It may be pointed out in passing that on this date there was a declaration that V.D. Jhunjhunwala had vacated office as director for not having attended three consecutive meetings of the board but that he was reappointed. According to the appellants, the key posts of the company were always held by the nominees of V.D. Jhunjhunwala, who used to be very often living outside Calcutta. It is stated that daily reports and copies of all correspondence used to be sent to V.D. Jhunjhunwala, who exercised complete financial control and who also supervised the policy of the company. On 31st January, 1959, M.P. Jhunjhunwala vacated his office as director and the board came to consist of R.P. Jhunjhunwala, P.C. Jhunjhunwala and V.D. Jhunjhunwala. About this time M.P. Jhunjhunwala ceased to have any interest in the company and all the shares in the company originally issued in his name or in the names of the members of his family were transferred to and in the name of V.D. Jhunjhunwala's wife. The company started producing railway sleepers from its factory some time about 1959 and by all accounts started making profits.

4. On 2nd September, 1963, a resolution was passed at an extraordinary general meeting of the company to the effect that V.K. Jhunjhunwala, son of B.D. Jhunjhunwala, should be sent to the United States for studies in chemical engineering. P.C. Jhunjhunwala himself seems to have proposed the resolution and as far as one can see the two groups who are now fighting were in agreement at that time about the company bearing all the expenses of V.K. Jhunjhunwala's education in the United States. The appellants now contend that the resolution was not a special resolution.

5. Troubles apparently started brewing some time about 1964. In April that year, R.P. Jhunjhunwala is said to have appointed his brother-in-law, Hariram Modi, to an office or place of profit of the company. It is not known if V.D. Jhunjhunwala knew about this

at the material time but now, of course, the respondents are complaining that this appointment was a violation of Section 314 of the Companies Act and R.P. Jhunjhunwala must be deemed to have vacated his office as director in April, 1964.

6. On 30th August, 1964, R.P. Jhunjhunwala's remuneration was increased to Rs. 2,000 per month and the remuneration of P.C. Jhunjhunwalawas also increased to Rs. 1,500 per month. The respondents complain that this was done without proposing or passing a special resolution. On 11th October, 1965, V.K. Jhunjhunwala came back from the United States of America as a qualified chemical engineer and was appointed a technical director of the company at a salary of Rs. 1,500-200-2,500 with effect from 1st October, 1965. The appellants now complain that this was done without passing a special resolution in terms of Section 314. The respondents, of course, point out, first, that both the appellants were themselves present at the meeting and participated in the decision and, secondly, that, in any event, V.K. Jhunjhunwala has not yet drawn any salary. On 26th February, 1966, the company's factory was closed. It appears that, after the Indo-Pakistan hostilities, the Government of India suspended all orders for railway sleepers and also stopped the expansion of railway tracks. As a result of this, all 'sleeper factories' in common with the factory of the company faced serious difficulties and had to close down. According to the appellants the only business of the company was the manufacture of sleepers and the factory is capable only of manufacturing sleepers. As a result of the closure of the factory, the company had to pay heavy retrenchment compensation to its labourers.

7. Towards the end of May, 1966, serious troubles erupted and the two groups in the company definitely came to a parting of ways. Books of accounts and papers were taken possession of by V.D. Jhunjhunwala. The appellants say that one Kishon Gopal, who is an employee of V.D. Jhunjhunwala, assaulted P.C. Jhunjhunwala, son of R.P. Jhunjhunwala, and started criminal proceedings against P.C. Jhunjhunwala. It is further alleged that the members of the group of R.P. Jhunjhunwala were physically thrown out of the company's office and that V.D. Jhunjhunwala posted armed guards in the registered office of the company which is situated in a building belonging to V.D. Jhunjhunwala in order that R.P. Jhunjhunwala and his men are kept out of the office premises.

8. On 23rd May, 1966, V.D. Jhunjhunwala and three others served a requisition on the company for calling an extraordinary general meeting with the purpose of removing P.C. Jhunjhunwala and R.P. Jhunjhunwala from their respective office of a director of the company 'with immediate effect' and for appointment of Prakash Chandra Jhunjhunwala and Biswanath Purohit in their place and stead and also for appointing a committee for investigating into the affairs of the company in connection with certain losses alleged to have been suffered by the company. Added to this requisition notice there is an explanatory note, the first paragraph of which is important for our purpose and is set out verbatim hereunder :

' The requisitionists feel that the company has been mismanaged by Shri Raghunath Prasad Jhunjhunwala and Sri Phoolchand Jhunjhunwalawho were in charge of the day-to-day working bf the company and have lost confidence in them and their any further association with the management of the company is considered very detrimental to the interest of the company. Hence resolutions Nos. 1 and 2 are being proposed to be passed. The third resolution is for the purpose of ascertaining the ways and means adopted by the said directors in bringing the company to the

disastrous condition.'

9. On 24th May, 1966, a notice was issued for convening a meeting of the board of directors on 27th May, 1966, and for the purpose of considering the requisition notice mentioned just now and also for cancellation of the authority of the petitioners to operate the bank accounts and for rescission of several other resolutions by which the company had conferred certain powers and authorities on the petitioners. The meeting was to be held at the registered office of the company which, according to the appellants, was situated in a building where the respondent, V.D. Jhunjhunwala, had posted armed people. On 27th May, 1966, Messrs. Khaitan & Co., solicitors, wrote a letter on behalf of R.P. Jhunjhunwala's group to the company asking them not to hold the meeting called as aforesaid and not to pass the resolutions suggested in the notice dated 24th May, 1965. In reply the company told M/s Khaitan & Co. that their letter was to be placed at the next meeting of the board of directors which was to take place on 4th June, 1966. Subsequently, however, another reply dated 3rd June, 1966, was sent to Messrs. Khaitan & Co., which they apparently received on 4th June, 1966, at about 9-50 a.m. in which V.D. Jhunjhunwala deals with various allegations made by Khaitan & Co. in their letter of 27th May, 1966. It is not necessary for us to deal with the contents of this correspondence in detail. The board meeting called by the notice of 24th May is stated to have been held on 27th May, 1956, and all the powers of the directors belonging to the group of R.P. Jhunjhunwala were taken away by certain resolutions passed at the meeting. A letter was subsequently written on 28th May, 1966, by V.D. Jhunjhunwala to the petitioners by which he informed them on behalf of the company that at the meeting held on 27th May, 1966, the board of directors of the company had passed certain resolutions by which they had cancelled all powers previously conferred upon the petitioners to operate the company's banking accounts with the Punjab National Bank Ltd. and the State Bank of India and certain other powers which the company had given to them from time to time. The last paragraph of the letter is in the following terms :

' Please take note of the fact that all the powers and authorities whatsoever given to you from time to time have been cancelled and for all the acts if done by you henceforth for and on behalf of the company, you shallbe personally liable for any loss or damage which may be caused to the company.'

10. On 28th May, 1966, a notice was issued for the holding of an extraordinary general meeting on 22nd June, 1966, for removal of the directors belonging to the group of R.P. Jhunjhunwala. Advertisements were also published in Biswamitra by which a general notice was given to the public that powers and authorities given to Raghunath Prasad Jhunjhunwala and Phoolchand Jhunjhunwala including the power to operate banking accounts of the company had been cancelled ; on 30th May, 1956, a notice was issued by V.D. Jhunjhunwala calling a meeting to be held on 4th June, 1966. The petitioners requested V.D. Jhunjhunwala not to hold this meeting as well, but that request was rejected. On 4th June, 1966, a meeting was held and the letter dated 27th May, 1966, of Messrs. Khaitan & Co. placed and considered at the meeting. It is stated that there was a resolution that no reply was necessary to that letter as the reply that had already been sent, by which presumably reference was made to V.D. Jhunjhunwala's letter, covered all the points raised in the letter.

11. On 7th June, 1966, the appellants made an application for winding-up of the company and also for appointment of a provisional liquidator. Mitra J., who heard the application, passed an ad-interim order on that day appointing a receiver of the books

and papers of the company and also restraining the directors of the company from alienating, dealing with or disposing of the assets of the company, including its raw materials and machinery except in the usual course of business. The application for appointment of a provisional liquidator was made returnable on 30th June, 1966. On 13th June, 1966, and 20th June, 1966, Mitra J. slightly modified the previous ad-interim order and gave certain directions, one of which was to the effect that the extraordinary general meeting of the company which had been called could be held but no resolution if passed at the meeting should be given effect to. Thereafter, on 22nd June, 1966, an extraordinary general meeting of the company is alleged to have been held and it is further alleged that both the appellants were removed from their office of directors at that meeting. The appellants complain of various incidents after 22nd June, 1966, merely in support of their allegations that the respondents have been utilising their control over the affairs of the company for their own dishonest ends. They complain, for instance, that on 6th June, 1966, the V.D.J. group passed a resolution converting the unsecured creditors of the company to secured creditors and the unsecured creditors in question were really the V.D.J. group. They further complain that V.D.J. group were selling raw materials and were trying to embark upon a different kind of business in violation of the court order dated 7th June, 1966. There are various contempt applications in connection with these alleged violations. On 22ndJuly, 1966, the respondents made an application for stay of winding up. Ray J. allowed the stay application and dismissed the petition for winding up as well as the application for appointment of a provisional liquidator and injunction.

12. The case made out by Mr. A.K. Sen who opened the appeal for the appellants was that the company though formed to all appearances as a private limited company was really in the nature of a partnership and, therefore, since ouster of a group of partners has unquestionably taken place and the two groups cannot carry on business together again, the company ought to be wound up on the same principle on which partnerships are dissolved when the partners fall out between themselves. Mr. Sen relied no doubt on the celebrated judgment of Lord Cozens-Hardy, Master of the Rolls, in the case of In re Yenidje Tobacco Company Ltd., [1916] 2 Ch. D. 426 where the learned Master of the Rolls had held that the principle which operates in the case of dissolution of a partnership firm can also be invoked in regard to an organisation which, though in the guise of a private company, is, in substance, a partnership. Mr. Sen made this principle the cornerstone of his arguments and, at one stage when he was challenged by Mr. S.D. Mukherjee on this point, he conceded that if he fails on this point his case is bound to fail. Mr. R.C. Nag who gave the reply on behalf of the appellants also relied on this principle, though it must be said his enunciation of the principle was slightly different to that of Mr. Sen. We shall deal with this aspect in its proper time.

13. Mr. Sen, as I understood him, placed his argument on the following lines : When the company in the instant case was incorporated it was in fact an association of two families in a business venture, an association that was based on mutual confidence, trust and co-operation. Now that there has been complete loss of confidence, of one group in the other and the mutual trust and confidence on which the company had been founded has disappeared, further association in management would be detrimental to the interests of the company and it is just and equitable that the company should be wound up. Ray J, rejected this argument and held that the principle of partnership is not applicable in winding up a company unless there is a complete deadlock. Mr. Sen objected to this by saying that deadlock is an entirely separate ground in the matter of winding-up of a company. Mr. Sen contended that

even in cases where one group is in majority and can function by excluding the other group from any share in the management of the affairs of a company, there can be and should be winding up when it is found that the company had come into existence on the basis of mutual confidence and trust between the parties in the same way in which a partnership is formed and that the mutual trust and confidence have disappeared since then. The two grounds, namely, the ground of deadlockand the ground of disruption of mutual confidence and trust between two groups may sometimes co-exist but they need not necessarily do so to justify an order of winding up.

14. The principal controversy between the parties, therefore, centred round the exact scope of the rule of law laid down in the Yenidje Company's case, and also round the question as to whether that principle has been modified in later case-law. It would be convenient, however, if before embarking on these legal questions we deal with some of the evidence to which Mr. Sen. drew our attention in support of his contention that the company with which we are concerned was really in substance a partnership. We have been told that in May, 1956, there was a partnership venture between R.P. Jhunjhunwala and V.D. Jhunjhunwala. Our attention has been drawn to an account that was opened in the name of ' Raghunath Prasad Jhunjhunwala Ke Sir Khata' in the books of ' Chimanram Motiram ' under which name and style V.D. Jhunjhunwala used to carry on business with his cousin, Mahabir Prasad Jhunjhunwala. ' Sir Khata ' admittedly means ' Partnership account '. Mr. Sen says that the reference to this partnership was really a reference to the partnership venture between R.P. Jhunjhunwala and V.D. Jhunjhunwala. The account was, according to Mr. Sen, opened specifically for the purpose of a proposed partnership business. Mr. Sen strongly relied on the statement of account, a translation of which has been reproduced as annexure ' A ' to the joint affidavit of R.P. Jhunjhunwala and P.C. Jhunjhunwala affirmed on 8th June, 1966. The account shows a sum of Rs. 11,000 on the credit side. This sum, Mr. Sen argued, had been deposited by R.P. Jhunjhunwala on 19th February, 1956, and was credited to the ' Sir Khata ' account. Two several sums of Rs. 1,000 and Rs. 10,000 aggregating Rs. 11,000 were paid to R.P. Jhunjhunwala on 20th June, 1956, and 1st August, 1956, respectively. The balance sum of Rs. 8,680 was advanced by V.D. Jhunjhunwala and the ' Sir Khata' account was credited with the said balance sum by debiting Rs. 500 against R.P. Jhunjhunwala's personal account, after the company's incorporation. The remaining balance of Rs. 8,180-2-0 was debited against the company, Mr. Sen argues that these credits and debits appearing in the 'Sir Khata Account' prove conclusively that at the inception at least the parties did want to enter into a partnership venture. Later on, the parties changed their mind and thought of floating a private limited company. The idea then was that the shares should be respectively held in the proportion of 6 annas and 10 annas by R.P. Jhunjhunwala on the one hand and by V.D. Jhunjhunwala and M.P. Jhunjhunwala on the other. They were to hold the shares either personally or in the names of the members of their respective families. According to Mr. Sen, the share capital in the company has always been held by the groups mentioned above in the proportion stated. Mr. Sen, of course, admitted that Anil Chandra Dutta was not a member of any of the two families but Mr. Sen says that he was an employee and/or nominee of V.D. Jhunjhunwala. R.P. Jhunjhunwala and the members of his family held 1,875 shares while the remaining 3,125 shares were held by V.D. Jhunjhunwala and the members of his family. Even the entire share capital was not issued at a time and in the beginning only shares to the extent of Rs. 1,00,000 were issued. Later on, in 1958, when there was a family partition between V.D. Jhunjnunwala and M.P. Jhunjhunwala, the shares originally issued in the name of M.P. Jhunjhunwala and the members of his family

were transferred to the name of V.D. Jhunjhunwala and the members of his family. Our attention was drawn to the fact that, though in the joint affidvait of R.P. Jhunjhunwala and P.C. Jhunjhunwala there was a categorical assertion in paragraph 48 thereof that the company was in substance a partnership, there is no denial of that fact in their affidavit affirmed and filed by V.D. Jhunjhunwala in reply to their joint affidavit. This, according to Mr. Sen, shows clearly that V.D. Jhunjhunwala admits that the company is in substance a partnership. It is also pointed out to us that V.D. Jhunjhunwala admitted that the shares of M.P. Jhunjhunwala and S. S. Jhunjhunwala (who were brothers and who were also the partners of Chimanram Motiram) and of their wives were sold to and bought by the wife of V.D. Jhunjhunwala, namely, Shrimati Satyabhama Devi Jhunjhunwala. In a letter dated 29th October, 1962, addressed by V.D. Jhunjhunwala to P. B. Mishra, a copy of which was endorsed to R.P. Jhunjhunwala, V.D. Jhunjhunwala admitted with reference to the foundry of the company that he was running the foundry in partnership with Raghunath Babu, i.e., R.P. Jhunjhunwala. The letter is to be found at page 8 of a supplementary paper book filed by the appellants. Mr. Sen argued that if the share registers of the company were to be examined it would be found that the entire shareholding of the company was confined to the members of the respective families of R.P. Jhunjhunwala and V.D. Jhunjhunwala. Further, even the original allotment and subsequent issue of the shares were held by the members of these two families in such a manner that the ratio of 6 and 10 annas between the holdings of these two families was always maintained. Moneys were advanced by V.D. Jhunjhunwala to P.C. Jhunjhunwala, son of R.P. Jhunjhunwala, in order to enable him to buy the subsequently issued shares in order that the parity of the holding of 6 annas and 10 annas shares in the capital of the company could be sustained. This has been clearly stated by R.P. Jhunjhunwala in an affidavit affirmed on 24th June, 1966. He says that V.D. Jhunjhunwala advanced certain sums of money to Phool Chand Jhunjhunwala for the purpose of purchase of the newshares in the said company that were issued in or about the year 1960 so that the shares in the said company may be held by the parties in the same agreed proportion in which the shares were originally held by the shareholders at the time of its incorporation. Mr. Sen filed a chart in court showing the holding of the share capital at different periods, namely, 1956, 1958, 1960, 1965 and 1966, and sought to prove with reference to the chart that the shares are all held by and between the two families of V.D. Jhunjhunwala and R.P. Jhunjhunwala. According to Mr. Sen the shareholders belonging to the group of R.P. Jhunjhunwala in 1965-66 are the following :

NamesRelation to R. P. JhunjhunwalaNo. of shares

1.R. P. Jhunjhunwala...4502.P. C. JhunjhunwalaSon3253.Birma Devi JhunjhunwalaWife4004.Birma Devi JhunjhunwalaDaughter-in-law2005.Ashok Kumar JhunjhunwalaSon1006.Pradeep Kumar JhunjhunwalaSon1007.Binod Kumar JhunjhunwalaSon1008.Arbind Kumar JhunjhunwalaGrandson1009.Arun Kumar JhuujhunwalaGrandson100

Total1,875

15. The shareholders belonging to the V.D. Jhunjhunwala's group during the same period are as follows :

NamesRelation to V.D.JhunjhunwalaNo. of shares

1.V. D. Jhunjhunwala...602.Satyabhama Devi JhuajhunwalaWife2103.P. C. JhunjhunwalaBrother404.L. K. JhunjhunwalaBrother4005.N. K. JhunjhunwalaSon3156.K. K. JhunjhunwalaSon5007.V. K. JhunjbunwalaSon5008.Nami Devi JhunjhunwalaBrother's wife7319.Arati Devi JhunjhunwalaDo.2110.Lalita Rani KediaSister350

Total3,125

16. The relationship between the parties was sought to be established by reference to various affidavits in the proceedings. As this position was not seriously contested by the other side, I am not referring in detail to the various paragraphs of the affidavit from which the relationship will appear. Mr. S.B. Mukherjee appearing for the respondents argued that there never was a definite agreement to start a partnership. All that happened was this that at one stage there had been a proposal to form a partnership.

17. But nothing materialised out of that proposal. He pointed out that if the affidavits of R.P. Jhunjhunwala and Phool Chand Jhunjhunwala dated 8th June, 1966, were to be the grounds of the appellant's application for appointment of a provisional liquidator of the company, there is a clear admission in paragraph 11 to the effect that V.D. Jhunjhunwala changed his mind even 'before the said proposed business could be started', that is to say, before the partnership could be formed. V.D. Jhunjhunwala in his affidavit of 16th June, 1966, states emphatically that no deed of partnership was ever executed. He says that :

'All that was agreed to was to float a limited company in which the shares were to be subscribed according to the convenience of the subscribers and the amounts intended to be invested by them in the shares of the company.'

18. V.D. Jhunjhunwala denies that there was any suggestion at any stage that there would be a group formed for this purpose. In regard to the 'Sir Khata Account', on which Mr. Sen relied heavily, Mr. Mukherjee argued that the 'Sir Khata Account' does not make any mention of shares or any mention of iron and steel business. There is only a mention of a credit item of Rs. 8,680-2-0. All the debit items except the last three relate to a period before the incorporation of the company. Therefore, Mr. Mukherjee argued that it is not possible to connect this account with the company which was started on 9th August, 1956. Mr. Mukherjee referred to V.D. Jhunjhunwala's affidavit dated 16th June, 1966, in which he has affirmed that the account does not show that any business was carried on in partnership or that there has been any profit or loss. Nor does the account show the proportion of the shares held by the appellants. With regard to the letter of V.D. Jhunjhunwala dated 29th October, 1962, Mr. Mukherjee contended that, since this letter had not been referred to in any of the petitions or affidavits and since the respondents had no opportunity to deal with that letter, no reference should be allowed at this stage to that letter. The letter he pointed out, came into the picture at the time of the hearing of certain contempt proceedings and was included in the supplementary paper book. Mr. Mukherjee, however, admitted that the shareholding of R.P. Jhunjhunwala's group was in the ratio of 6 annas to 10 annas.

19. We have very carefully considered the various affidavits in the paper book and we are satisfied that the company at its inception and for a number of years afterwards was really in substance a partnership. This does not, of course, mean that all the legal

features of a partnership will be found in the company. In the nature of things that cannot be, for, we are, after all, dealing with a company incorporated under the Companies Act. It is just impossible to expect that if we dissect a company, we will find the anatomy of a partnership. When one says that a company is in substancea partnership, what is really meant is this that a company should be in the image of a partnership. The three most important indicia of partnership, viz., equal status of the partners (though not necessarily equal interest), equal participation in management and mutual confidence, are the basis of association. A private limited company which is an association of persons in a joint-stock company who have agreed to keep the membership amongst themselves and who have divided the participation more or less equally should, thereforey be ordinarily treated as analogous to partnership. From this point of view the company in this case does resemble a partnership. There are, however, several important features which strengthen the contention that the company was constituted in the image of a partnership. There is considerable evidence to show that the parties did treat the company as if it was a partnership. I have already briefly referred to the evidence on this point but I may as well summarise some of the features and also some of the evidence which to my mind prove that the company is in substance a partnership venture :

(i) The original idea was to start a partnership venture. Later on, however, the form that was given to the venture was the form of a private company. The respondents do not contest that a partnership was, in fact, proposed to be set up. Indeed, the correspondence and the affidavits prove this fact conclusively. Mr. Mukherjee's contention that the partnership that was at first contemplated did not materialise makes no difference to the position. In fact, the petitioners are also saying the same thing. What started with the idea of partnership was ultimately given the shape of a private company and this seems to us to be the agreed version of the transactions between the parties at the time of the incorporation of the company.

(ii) The 'Sir Khata Account' also shows that starting upon a partnership venture the parties ultimately ended by setting up a private company. The account is admitted by the respondents : vide paragraph 6 of V.D. Jhunjhunwala's affidavit dated 16th June, 1966. It is true that there is some controversy about the exact meaning and intent of the account. But since it appears in the books of Chimanram Motiram, a firm of which V.D. Jhunjhunwala is admittedly'a partner, it was for V.D. Jhun-jhunwala to offer an explanation. He has given no such explanation. He admits further that the last item on the credit side has been debited to Hind Overseas Private Ltd. 'to square up the account'. He does not explain why and what account has been squared up. I have, no doubt, in my mind, that an account had been opened in this book in regard to the proposed partnership which was later on transformed into a private company and the account of the partnership was then closed by transferring the debit balance to the company's account. I find no explanation whatsoever why the debit balance of a firm should be wiped out by debiting aprivate limited company to the extent of the debit balance unless it was a clear intention of the parties that the company would step into the shoes of the firm. Any way, it is quite clear that there must have been an account of Hind Overseas Private Ltd., in the same ' Sir Khata Account' of Chimanram Motiram. If only V.D. Jhunjhunwala had produced the ' Sir Khata Account ' that would have resolved many problems concerning this account. Since he has not done so, I think it is legitimate to presume that the account would go against him and would support the contention of the appellant.

(iii) The shareholding shows clearly that the company's shares are divided amongst

two groups. It is impossible to resist the impression after reading all the correspondence and affidavits that the share of the company was really divided amongst the members of the families of R.P. Jhunjhunwala, V.D. Jhunjhunwala and M.P. Jhunjhunwala. It is clear also that the petitioner and the members of his family hold 1,875 shares while V.D. Jhunjhunwala and his family hold the remaining 3,125 shares. The distribution of the shares is precisely in the ratio of 6 annas to 10 annas in which, according to the petitioners, the parties had originally contemplated their interest in the partnership venture to be divided. Paragraph 7 of the petition for appointment of provisional liquidator and for injunction contains the specific allegation that the shareholding of the company has been distributed between the members of the family of R.P. Jhunjhunwala and V.D. Jhunjhunwala. V.D. Jhunjhunwala has not denied these allegations. All that he says is that he has no interest in the shares held by the other members of his family. The averment that V.D. Jhunjhunwala has no beneficial interest in all the shares held by his group does not, in my opinion, alter the position.

(iv) It is admitted by V.D. Jhunjhunwala that the shares which were originally held by M.P. Jhunjhunwala and his brother, S. S. Jhunjhunwala, and their wives were sold to and bought by the wife of V.D. Jhunjhunwala. (v) The specific averment of the petitioners in paragraph 48 of their petition for provisional liquidator that the company was in substance a partnership is not denied by V.D. Jhunjhunwala at all.

(vi) I take no notice of the so-called admission by V.D. Jhunjhunwala in his letter dated 29th October, 1960, addressed to B.B. Mishra with a copy to R.P. Jhunjhunwala that ' he is running the foundry of the company in partnership with R.P. J. ', because there is some controversy about this letter and it was produced at a very late stage.

(vii) From the' recital of facts in the various affidavits it is clear that the petitioners were all along functioning as the working partners and V.D. Jhunjhunwala was the financial partner. It is only recently sinceOctober, 1965, that there has been a gradual erosion of the rights and powers of the appellants' group in regard to the management of the company.

20. As I have already said the decision of this case will really turn round one question of law and that is whether the principle enunciated in the Yenidje Company's case, [1916] 2 Ch. D. 426 (C.A.) requires the dissolution of a private limited company as such when any member of the private limited company asks for such dissolution by the application of the principle which ordinarily operates in the case of dissolution of a partnership. The learned trial judge has held that, unless there is a deadlock, the application of the partnership principle does not arise Mr. Sen canvassed the extreme view that the principle of dissolution of partnership firm is extended to the case of a private limited company without any modification or abatement and that as soon as the mutual confidence, trust and co-operation between the members forming a private limited company have disappeared the company must be wound up without considering any other fact. As regards the learned judge's decision that the principle of partnership applies only when there is a deadlock, Mr. Sen argued that deadlock is an entirely separate ground and the learned judge was in error in mixing up these two distinct grounds of winding up of a company. Mr. S.B, Mookherjee appearing for the respondents contended, on the other hand, that the principle of partnership applied in two classes of cases, namely, (i) in the case of deadlock and (ii) in those cases where the company concerned is a family or domestic company. In the second class of cases, winding-up is allowed if there is justifiable lack of confidence and lack

of probity. Mr. Mookherjee laid great emphasis on the point that even in the case of a domestic company it is not enough to say that there is a breakdown of confidence. It would have to be shown that there are justifiable grounds for such breakdown. Mr. Nag, in reply, slightly went beyond the case that was originally made out by Mr. A.K. Sen and sought to argue that under two conditions any member or a group of members of a private limited company can ask for the winding-up of a company as a matter of right. If those two conditions are satisfied, the court must make a winding-up order merely upon the asking of it. The conditions, Mr. Nag said, are as follows:--

(1) When the bond of amity which was the basis of the original association has come to an end, and

(2) when one partner has been excluded from management though, in fact, he had been associated with the management with or without an agreement. So far as the second condition is concerned Mr. Nag admitted three exceptions, namely, (i) if the private limited company is of a nature when outsiders are members and are in no way concerned with the dispute between the persons who are associated with the management, (ii) if the private limited company happens to be an investment company holding shares in a public limited company so that public interest is involved, and (iii) if public interest is involved for any reason whatsoever.

21. Since the entire legal battle between the parties is one which centres round the scope of Yenidje Company's case and the stream of case-law starting from that case, it is impossible to come to a decision in this case without analysing the ratio decidendi of all these cases. It is apparent that there has been varying emphasis on different aspects of the Yenidje case, from time to time and whenever the principle of that case has been invoked, different parties have sought to take advantage of these differences in emphasis in the case-law. This has led to a confusing array of cases which are all supposed to be based on the partnership analogy formulated in Yenidje Company's case and yet pull in altogether different directions.

22. Though the Yenidje Tobacco Company's case is usually the starting point, there is a slightly earlier case dealing with the same principle. I speak of the case of In re Furrier's Alliance Ltd., [1907] 51 Sol. J. 172. The judgment in this case was given by Warrington J., who was also one of the judges in the Yenidje Tobacco Company's case. Besides, the case was referred to and cited at the time of arguments in the latter case. Therefore, we may, as well, start with that case. A petition was presented by a shareholder for a winding-up order of Furrier's Alliance Ltd., on the ground that it was just and equitable within the meaning of Section 79, Sub-section (5), of the Companies Act, 1862. Out of 12,005 ordinary shares which where issued and subscribed in that company 6,000 shares were held by the petitioner or by persons who were either his trustees or his agents and 6,000 shares were held by one Mr. Friedeberg. They were the first directors of the company. The remaining 5 shares were held by five persons holding one share each. Two of these five persons supported the petitioner. The articles of association required that every share should form one vote and the number of directors should be not less than two nor more than three. The petitioner and Mr. Friedeberg were to be the first directors and to retain office as long as they held the necessary qualifications. The two directors started disagreeing in the matter of carrying on all the business of the company whereupon the petition for winding-up was presented. The petitioner contended that it was a case of absolute deadlock as the directors could not agree with each other on any single subject. Warrington J., who heard the application, found on facts that the two

directors were unable or unwilling to get on together in managing the affairs of the company. To that extent there was a deadlock between the two directors. His Lordship did not say anything about the relative merits of the deadlock but proceeded on the basis that it was impossible for the directors to manage the company satisfactorily unless they adopted a more reasonable frame of mind. The question was whether, under these circumstances, there was ground under the ' just and equitable ' clause for winding-up the company. His Lordship found that the clause had been given a wider meaning ' in recent years ' and that a winding-up order be granted as being ' just and equitable ' on grounds which were not ejusdem generis with the grounds mentioned in the four preceding sub-sections of Section 9.

' For example, a winding-up order could be made under that clause if the substratum of the company had disappeared, or if it could be shown that it was not reasonably practicable to carry on the business of the company upon the terms in which it was intended it should be carried on, just as in cases under a similar clause in the partnership Act, when it was not reasonably practicable for the business of a private partnership to be carried on in accordance with the terms on which the partnership was constituted, the partnership might be dissolved. ' (Underlining mine).

23. Warrington J. then considered whether, on the facts of that case, he could bring the case within these limits. The question that his Lordship posed before himself was whether, having regard to the constitution of the company, it was not reasonably practicable for the business of the company to be carried on. His Lordship observed :

' In the case of a partnership, if there were an absolute deadlock between the two partners it might be said that the business could not be carried on ; but in the case of a company it was different. In the case of a partnership there was no means by which one partner was able to control the other. In the case of a company where two directors could not agree, there was an authority which could be invoked, namely, the authority of the majority of the shareholders of the company. And when one director held substantially one-half and his co-director the other half of the shares (though that was not an exactly accurate statement in the present case, for there was one vote over, which might be a casting vote) there was an authority to which both had agreed by the constitution of the company to submit, namely, the authority of the majority, which might only be one vote. It seemed, therefore, to him that the deadlock to which he had referred was not a deadlock at all, it was only a temporary deadlock. It was possible under the articles to appoint an additional director, and then there might be no deadlock at all and the business of the company could go on. '

24. On these grounds his Lordship held that, the case was one which did not come within the limits of the just and equitable clause and dismissed the petition.

25. After this, in point of time, comes the Yenidje Tobacco Company's case, which is always regarded as the locus classicus on the subject. In 1914 one Winderg and one Rothman who used to carry on two separate businesses as tobacconists and cigaratte manufacturers agreed to amalgamate their business. They formed a private limited company in which they arranged to have equal rights of management and voting powers. They were the only two shareholders and directors. The articles of association were so drawn that neither party was in a position to outvote the other or to carry any resolution in opposition to the other. One director was to form a quorum and the first directors, namely, W. and R., were to hold office so long as they lived. If any dispute or difference were to arise consequent whereon it became impossible to

pass a director's resolution the matter in dispute was , to be referred to arbitration and the award was to be entered in the company's minute book as a resolution duly passed by the board. Company's business was successfully carried on until June, 1915, when differences arose between W. and R. One of such differences was referred to arbitration which resulted in an award. But R. declined to give effect to the award. R. brought an action against W. for fraudulent misrepresentation and ultimately the parties became so hostile that they were not on speaking terms and any communication that has to be passed between them was conveyed through the secretary of the company. In spite of all this the company continued to transact business and to make large profits. It was under these circumstances that W. presented a petition alleging that a complete deadlock had arisen and the substratum of the company was gone, and that it was ' just and equitable ' within the meaning of Section 129 of the Companies Consolidation Act, 1908, that a winding-up order should be made. Astbury J., who heard the application ordered that the company be compulsorily wound up. It came on appeal to the Court of Appeal presided over by Lord Cozens-Hardy M.R. The learned Master of the Rolls starts his judgment with an enquiry as to the precise position of a private company like the Yenidje Tobacco Company and in what respect it could be fairly called ' a partnership in the guise of a private company '. After reciting the various circumstances showing complete deadlock between the two directors his Lordship asks himself this question :

' Supposing it had been a private partnership an ordinary partnership between two people having equal shares and there being no other provision to terminate it, what would have been the position '

26. His Lordship answers this question in this way :

' I think it is quite clear under the law of partnership, as has been asserted in this court for many years and is now laid down by the partnership Act, that that state of things might be a ground for dissolution of the partnership for the reasons which are stated by Lord Lindley in his book On Partnership, at page 657 in the passage which I will read, and which, I think, is quite justified by the authorities to which he refers.'

27. His Lordship thereafter quotes a passage of Lindley's book which reads :

'Refusal to meet on matters of business, continued quarrelling, and such a state of animosity as precludes all reasonable hope of reconciliation and friendly co-operation have been held sufficient to justify a dissolution... All that is necessary is to satisfy the court that it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it. '

28. Thereafter, the learned Master of the Rolls again discusses the conduct of the two directors which showed that it was not possible for them to work together in the manner in which they ought to work in the conduct of the partnership business. His Lordship then goes on to observe :

' Is it possible to say that it is not just and equitable that that state of things should not be allowed to continue, and that the court should not intervene and say this is not what the parties contemplated by the arrangements into which they entered. They assumed, and it is the foundation of the whole of the agreement that was made, that the two would act as reasonable men with reasonable courtesy and reasonable

conduct in every way towards each other, and arbitration was only to be resorted to with regard to some particular dispute between the directors which could not be determined in any other way. Certainly, having regard to the fact that the only two directors will not speak to each other, and no business which deserves the name of business in the affairs of the company can be carried on, I think the company should not be allowed to continue. '

29. His Lordship held that, though the company was not strictly a partnership, still precisely the same principles were to apply to a case like this where in substance it is a partnership in the form or the guise of a private company. Referring to the argument that the 'just and equitable' clause was not to apply except where the substratum of the company has gone or where there is a complete deadlock, his Lordship says :

' I should be very sorry, so far as my individual opinion goes, to hold that they are strictly the limits of the 'just and equitable' clause as found in the Companies Act. I think that in a case like this we are bound to say that circumstances which would justify the winding up of a partnership between these two by action are circumstances which should induce the court to exercise its jurisdiction under the just and equitable clause and to wind up the company.'

30. There is another observation of the learned Master of the Rolls which is very significant and which I must set out in extenso :

'If ever there was a case of deadlock I think it exists here ; but, whether it exists or not, I think the circumstances are such that we ought to apply, if necessary, the analogy of the partnership law and to say that this company is now in a state which could not have been contemplated by the parties when the company was formed and which ought to be terminated as soon as possible ... It is contrary to the good faith and essence of the agreement between the parties that the state of things which we find here should be allowed to continue.'

31. Warrington L.J., in a supporting judgment, held that in substance W. and R. were really partners though they were carrying on the business by means of a limited company. His Lordship treated the litigation to be in substance a ground for dissolution of the partnership and considered that if the relations between W. and R. were treated as other than that of partners or the litigation as other than that of action brought by one for the dissolution of the partnership against the other it would be giving too much importance to matters of form. His Lordship found that had the company been an ordinary partnership and an action brought for dissolution the petitioner would have had sufficient grounds for a dissolution of partnership according to the ordinary principle by which the court is guided in such matters.

32. All the parties in this case tried to invoke before us the principles enunciated in the Yenidje Tobacco Company's case in support of their contentions. That is one reason why I have dealt with the case in so much detail and have quoted from the judgments of Lord Cozens-Hardy M.R. in extenso. I have very carefully read and re-read the judgment of Lord Cozens-Hardy M.R. on this occasion. I have not the slightest doubt in my mind about the real ratio of his Lordship's judgment and I find it difficult to understand how the leading trends of his Lordship's argument may be lost in or overlaid by other ancillary considerations. His Lordship has stated not once but several times that if a private company is in substance a partnership, then the

principles of partnership would apply and the circumstances which would justify a dissolution of a private partnership would justify a compulsory winding up of the company. His Lordship does not qualify this ratio anywhere in his judgment. With regard to the question whether this principle ought to operate only where there is a deadlock in the company, his Lordship has not left the least room for doubt or confusion. His Lordship specifically says that an attempt was made before him to show that the 'just and equitable' clause, though not strictly confined to the ejusdem generis principle, was still limited to two cases, namely, (i) where the substratum of the company had gone and (ii) where there was complete deadlock. The learned Master of the Rolls emphatically and unambiguously rejected this suggestion by saying expressly :

'I should be very sorry, so far as my individual opinion goes, to hold that they are strictly the limits of the ' just and equitable ' clause. '

33. His Lordship goes further and says :

' But if there was a case of deadlock I think it exists here ; but, whether it exists or not, I think the circumstances are such that we ought to apply, if necessary, the analogy of the partnerships. ' (Underlining mine).

34. After this, to my mind, it is impossible to hold that so far as this particular decision is concerned there is any room for qualifying the partnership principle and for saying that it applies only in the case of a deadlock. I might only add that the principle of partnership which ought to be applied have been indicated by his Lordship at page 430 where his Lordship has quoted from Lord Lindley's book On Partnership. I have already quoted the relevant passage in this judgment and shall return to this point again later.

35. To the extent I have indicated above there is no doubt that Mr. A.K. Sen is right when he argues that on the authority of the Yenidje Company's case if a private limited company is in substance a partnership then the circumstances which would justify the dissolution of a partnership would also justify a winding-up order in regard to a private limited company. Whether this principle has been watered down or modified or reversed in course of development of the later case law on this subject is a matter to which I shall presently address myself.

36. The case of In re American Pioneer Leather Company Ltd., [1918] 1 Ch. 556 which was cited before us in this connection was decided on a slightly different principle and, in my opinion, is not of much help for deciding the instant case. The case concerned a private company consisting of three shareholders who held all the issued shares in equal proportions. Of them one was a resident of America and the other two, namely, Traeger and Luben, were the directors of the company at the time when the winding-up application was made. The articles of association of the company provided that any shareholder who was desirous of withdrawing from the company was to offer his shares to the other two shareholders and in the event of neither of them purchasing the same, the shareholder desirous of withdrawing should be entitled to have the company wound up. The affairs of the company came to a deadlock as a result of dissensions between the shareholders. One of the directors offered his shares to the two other shareholders respectively. But neither of them agreed to purchase his shares. Thereupon, in terms of the articles of association of the company he presented a petition for the compulsory winding up of the company.

The petition was opposed by the two other shareholders. Counsel appearing for the petitioner relied on the decision in the Yenidje Tobacco Company's case. It was argued that there was a complete deadlock in the conduct of the business of the company. Such a deadlock would clearly be the ground for a dissolution in the case of a partnership and, since the company in this case was in substance a partnership, the same principle ought to apply. The respondents, however, resisted this submission by pointing that in the Yenidje Tobacco Company's case it was the petitioner who was the innocent party, whereas in the present case the cause of the dissension lay with the petitioner himself and that it is not open to a partner to take advantage of his own wrong and claim a dissolution of the partnership on that ground. Reliance was placed on a passage of Lindley on Partnership, 8th edition, page 658 ; Partnership Act, 1819, Section 35. Naval J., who heard the petition, made an order for the compulsory winding up of the company. In doing this his Lordship gave importance to the articles of association which provided that, if one of the shareholders wanted to withdraw from the company and offered his shares to the two other shareholders and the latter would refuse to buy him out, then a winding up order would follow as a matter of course. His Lordship does not say that the articles of association were in any way binding on the court. His Lordship, however, took the articles into consideration in deciding whether it was 'just and equitable ' within the meaning of Section 129 of the Companies (Consolidation) Act, 1908. His Lordship held that things had apparently reached a position of complete deadlock and the difficulty could be overcome only by the intervention of the third shareholder. The articles of association of the company had foreseen a contingency when two shareholders could combine against the third and had provided that the two should, on proper notice being given, take over the interest in the company of the third, or if that was not done, the company should come to an end. This, his Lordship thought, should be taken into consideration in a winding-up petition. His Lordship found that, since it was the intention of the shareholders from the first that, in such circumstances, the shareholder who was left in the cold should be entitled to put an end to the company, it was just and equitable to make an order for the compulsory winding up of this company. It is abundantly clear that his Lordship did not come to the decision either on the ground that there was a deadlock or on the ground that the company was in substance a partnership and the principles of partnership would operate in the matter of its dissolution. Except giving us another example of how the ' just and equitable ' clause is extended much beyond the ejusdem generis principle, this case, to my mind, does not furnish any guidance in regard to the case before us.

37. The case of Loch v. Blackwood (John) Ltd., [1924] A.C. 783 is a Privy Council decision which was also decided under the ' just and equitable ' clause. The decision was under an analogous provision of the Companies Act, 1910, of Barbados. Lord Shaw, who delivered the judgment of the Judicial Committee of the Privy Council, expressly negatived the proposition that the ' just and equitable ' clause was restricted to cases ejusdem generis with those enumerated in other sub-sections of the Act. After elaborate discussion of the case law on this subject his Lordship sets out an observation of Lord Clyde in Baird v. Lees, [1924] S.C. 83 where the learned President of the Scottish Court of Sessions sets out the various circumstances which would bring a case within the scope of the ' just and equitable ' clause. Lord Shaw expresses his concurrence in this view of Lord Clyde. It is not really necessary for me in this case either to set out Lord Clyde's observations or to summarise them. This case is not, strictly speaking, a direct authority on the question which we are investigating. The Judicial Committee, however, refers to the decision of Yenidje Tobacco Company's case with approval.

38. In re Davis and Collett Ltd., [1935] Ch. 693, 5 Comp. Cas. 467 (Ch.D.) was a case where the principles of Yenidje Tobacco Company's case were considered and applied. Crossman J., who decided the case, sought to consider ' in the widest possible terms what justice and equity require '. His Lordship found that the company before him was a private company. Following the principle laid down in Yenidje Tobacco Company's case his Lordship felt bound

' to consider the position in the same way as one would consider it if the question arose as to the right of one of two partners in a private partnership to have the partnership dissolved. '

39. His Lordship found, on the facts of the case, that the petitioner had been turned out substantially from anything to do with the management of the company and was prevented really from taking part in it, and that he had no remedy at all. After discussing the facts his Lordship finds that :

' this is a case where, if it were a case between two partners, I should be bound to come to the conclusion that there ought to be a dissolution of the partnership.'

40. On this basis his Lordship made an order for the winding up of the company. This case is clearly a case on the point which we are called upon to decide and Crossman J., who passed the order of winding up, applied without reservation the principles that apply to the dissolution of a partnership. It remains for me only to point out that Crossman J. made it quite clear during the arguments of the counsel that his Lordship was not deciding the case on the question of deadlock (vide his Lordship's observation set out within parentheses at page

41. In re Cuthbert Cooper and Sons Ltd., [l937] Ch. 392 ; (1938) 8 Comp. Cas. 131 (Ch D.) is another case where also the question that came to be decided was whether the principles that would be applied in an action for dissolution of a partnership would also apply in the case of a private company. Simonds J. indicated clearly in his judgment that he proposed faithfully to follow the injunction laid down by the Court of Appeal in In re Yenidje Tobacco Company Ltd. and followed in In re Dams and Collett Ltd. by Crossman J. On the facts, however, his Lordship found that no grounds have been shown in the petition on which it would be just and equitable within the meaning of Section 168 of the Companies Act, 1929, to make a winding-up order. This, it is clear, is an affirmation of the partnership principle though, on facts, the principle could not be applied.

42. In re Anglo-Continental Produce Company Ltd., [1939] 1 All E.R. 99 (Ch.D.) which has been cited before us and also before the learned trial judge, is not a case where the question of applying the partnership principle arose. The petition in that case was based upon the ground that it was just and equitable that the company should be wound up. The Yenidje Tobacco Company's case was neither cited nor considered by Benett J., who dismissed the petition.

43. The case of In re Davis Investments (East Ham) Ltd., [1961] 3 All E.R. 926, 929; [1961] 1 W.L.R. 1396 (C.A.) was cited before us briefly. The Yenidje Tobacco Company's case was cited and considered by the Court of Appeal in this case. The case was, however, really decided on a demurrer. Plowman J., who heard the petition, dismissed it on the ground that the articles of association of the company not being before him, his Lordship could not understand the legal rights of the parties. There

was an appeal from that order and the appellant claimed that the position was similar to that of partners in a partnership business and that, if the partners could not agree, that would be sufficient ground in the case of a partnership for dissolution. The appeal was dismissed by the Court of Appeal. Danckwerts L. J. was of the opinion that the position of the contending parties in the case would well be decided by the terms of the articles of association and the apparent differences could be overcome through the operation of these articles. This, however, the judges were not in a position to ascertain. His Lordship observed :

' It may be there could be a meeting of the company and the shareholders would be evenly divided and the chairman might have a casting vote which would enable the company to pass a resolution removing one of the contending parties from the position of director and appointing a new director, and so, consequently, the organisation and administration of the company could proceed thereafter perfectly efficiently. That would be a result which, if it was not done dishonestly, would be in accordance with the constitution of the company. Thus, it would be something in accordance with the terms which both shareholders had entered into on the formation of the company, and which were binding on them. None of that can we tell, and it seems to me, therefore, that in the absence of evidence of that kind, if there are material matters of that sort, they must be found in the petition itself.'

44. Since the evidence was not to be found in the petition, his Lordship upheld the decision of the trial judge in dismissing the appeal. Donovan L.J., who agreed with the decision of Danckwerts L.J., went more or less on a technical ground that, since there was no evidence at all about the rights of the petitioner and the respondent and since Plowman J. had in his discretion dismissed the petition on that ground, the appeal should be dismissed,

45. Charles Forte Investments Ltd. v Amanda, [1964] Ch. 240 ; 34 Comp. Cas. 233, 236 (C. A.) was cited before us and relied on by the counsel for the respondents. Charles Forte Investments'Limited (hereinafter briefly referred to as C.F.I. Limited) was incorporated as a private limited company in 1962 with an authorised share capital of 750,000 divided into 750,000 shares of 1 pound each. The object of the company was to acquire for payment in shares the whole of the issued share capital of a public company 'Forte's (Holdings) Limited'. The Directors of Forte's (Holdings) Limited and the directors of the plaintiff company were the same persons. The articles of the private company incorporated Regulation 3 of Part 2 of Table ' A ' which gave to the directors an absolute discretion to decline without assigning any reason therefor to register any transfer of any shares. The defendant, Amanda, held 10,000 shares in the private company which he acquired while he was employed by the public company. In March, 1963, the defendant, Amanda, submitted to the board of directors of the private company three transfers together covering the whole of his holding of 10,000 shares. The board of directors refused to register the transfers and in the correspondence that ensued declined to say in what circumstances they would be prepared to register them. The defendant then sent a letter through his solicitor to the company's solicitor threatening a petition for winding up of the company by the court on the ground that the director's refusal to register the transfers was not based upon any interest of the company and constituted an abuse of the director's fiduciary powers. The company then sought an injunction restraining the defendant from presenting the petition on the ground that his action was an abuse of the process of the court and an interim injunction was obtained ex parte. But Pennycuick J. refused to make any order on the company's motion and discharged the earlier ex parte order

of injunction on the ground that where

' a member of a private company sought to transfer his shares to outsiders and the directors refused to sanction such a transfer a petition for winding up the company might, in certain circumstances, be a possible and effective remedy.'

46. The plaintiffs then appealed. During the arguments before the Court of Appeal the question arose whether the petition for winding up if presented must necessarily fail. It was sought to be argued on behalf of the defendant that he was entitled to invoke the principle laid down in Yenidje Tobacco Company's case that a winding-up order may be justified on the same grounds as would justify a dissolution of a partnership. It was argued that a private company and a partnership had been treated as 'on all fours' in the judgment of Lord Cozens-Hardy M.R. The Court of Appeal allowed the appeal. Willmer L.J. held that this was a proper case for the exercise of the inherent jurisdiction of the court to restrain the assertion of doubtful rights in a manner productive of irreparable damage, provided, of course, the plaintiffs could otherwise make good their claim that the winding up petition was bound to fail and amounted, in the circumstances of the case, to an abuse of the process of the court. After making these observations, his Lordship considered whether the petition was bound to fail. In that connection his Lordship had to discuss not only the scope of the directors' authority to refuse to register a transfer under Regulation 3 of Part 2 of Table A but also whether by applying the principle of the Yenidje Tobacco Company's case a winding-up order could be justified in the present case on the same grounds as would justify a dissolution of a partnership. His Lordship refused to apply the principles of Yenidje Tobacco Company's case or the case of In re Davis and Collett Ltd. by saying [1964] 34 Comp. Cas. 233, 244-45 that those two cases, -

' are utterly remote from the question that has to be dealt with in this case. Yenidje's case, for instance, was a case of a two-man company, and it so happened that the two men fell out with each other and could not get on, with the result that deadlock ensued and the business of the company could not be carried on. It was in that context that it was held that a winding-up order ought to be made on the same basis as an order might be made for a dissolution of partnership.'

47. Willmer L.J. described the defendant as a very small shareholder with practically no part in the running of the company and then observed :

' There is nothing, as I see it, in his relationship to the company which remotely resembles that of a partnership such as there was in the Yenidje Tobacco Company's case. I do not think that there is any room for the application of that principle in the circumstances of the present case.'

48. It is on these grounds that Willmer L.J. allowed the appeal.

49. On a careful analysis of this case I find that Willmer L.J. refused to apply the principle of Yenidje Tobacco Company's case on two grounds. Firstly,' his Lordship thought that the principle of Yenidje's case was laid down in the context of a deadlock and a situation where the business of the company could not be carried on. Secondly, his Lordship also seems to have been of the opinion that the shareholders' relationship to the company in this case did not resemble that of a partnership. It is to bring out clearly these two different streams of thought in the mind of Willmer L.J. that I have underlined certain portions of his Lordship's judgment.

50. Danckwerts L.J. agreed with Willmer L.J. on the question as to how far the principles of partnership may be relied on by the defendant. His Lordship observes, [1964] 34 Comp. Cas. 233, 245 :

' The court has treated the situation of a private limited company with only a few shareholders as resembling a partnership but Mr. Instone has attempted to extend the principle of such cases as In re Yenidje Tobacco Company to such a degree that the principles of the Companies Act, 1948, could no longer be operated.'

51. His Lordship, it will be noted, has here introduced a condition for qualifying the principle laid down by Lord Cozens-Hardy M.R. His Lordship wants to restrict the application of the principle of partnership only to a private limited company with a few shareholders.

52. While there is no doubt that this case of Charles Forte Investments Ltd.introduces some modifications in the principles laid down by Yenidje TobaccoCompany case it is important to remember that the case itself was peculiarin so far as it concerned a private company which was holding shares in apublic company. Any repercussion of the private company was bound tohave repercussion on the public company as both companies were beingmanaged by the same directors and there were outsiders who though theywere concerned in the dispute of the private company, for example, anadvertisement in the newspapers would have affected the public companyand would have further affected outsiders who were members of the publiccompany.

53. The next case, namely, the case of In re Lundie Brothers Ltd., [1965J2 All E.R. 692; [1965] 1 W.L R. 1051 ; 35 Comp. Cas. 827 (Ch. D.) seems to take us back to the line laid down by Lord Cozens-Hardy M.R. The petitioner in this case was a director and a contributory of Lundie Brothers Ltd., which was a private company. The petition was for relief under Section 210 of the Companies Act, 1948, alternatively for an order under Section 222 for the winding up of the company. The petitioner was one of three directors and shareholders of the company. The company had been formed to take over a business started by Mr. C.R. Lundie and Mr. R.W. Lundie after the war. In 1958 the capital of the company was 100 pounds divided into 15,000 shares of I shilling each designated ' A shares which carried full voting and dividend rights and 5,000 shares of I shilling each designated ' B' shares which ranked pari passu with the ' A' shares so far as voting rights were concerned but carried no rights to dividend. C.R. Lundie and R.W. Lundie, who were brothers, and the petitioner each held 5,000 of the ' A ' shares. But the petitioner held all 5,000 ' B ' shares. The chairman had a casting vote. By a resolution passed at a meeting of the directors in November, 1959, the petitioner was ousted and R.W. Lundie was appointed chairman. In December, 1962, a resolution was passed terminating the employment of the petitioner as a working director. It was further resolved that instructions should be given to the company's bankers to honour the joint signatures of any two out of the three directors of the company. The petitioner voted against both these two resolutions. At an annual general meeting of the company which followed the said meeting of directors the resolution to terminate the petitioner's employment as working director was confirmed. Both the two Lundie brothers voted in favour of the confirmation and the petitioner voted against it. The voting being equal R.W. Lundie as chairman exercised his casting vote in favour of upholding the resolution of the directors. Thereafter, beginning from January, 1963, the petitioner was excluded from any share in the management of the company's business. In November, 1964, it was decided that all directors' fees should be 2 weekly. In 1961 R. Lundie, wife of C.R.

Lundie, acquired control of the business of a company called S. Limited who were the customers of Lundie Brothers Limited and the petitioner was excluded from the business of S. Limited though it was in substance amalgamated with Lundie Brothers Limited. Since the purchase of S. Limited C.R. Lundie devoted himself all his time to the business of S. Limited. The petitioner's main complaints were that he had been ousted from his position as working director of the company and that he had also been kept out of the business of S. Limited. The petitioner asked for various reliefs under Section 210 of the Companies Act, 1948, and also made an alternative prayer that the company should be wound up by the court.

54. Section 210 of the Companies Act, 1948, which in terms is practically the same as Sections 397 and 398 of the Companies Act, (1956, required consideration of the question whether the facts of any particular case would justify the making up of a winding up order on the ground that it was just and equitable that the company should be wound up. Plowman J., who heard the petition applied himself to this consideration first because that was a matter common both to the claim under Section 210 and to the claim under Section 222. His Lordship says that in his Lordship's judgment the company was in substance a partnership. His Lordship observes that ' the principles to be applied to a case of this sort are well settled.' His Lordship refers to the judgment of Lord Cozens-Hardy M.R. in Yenidje TobaccoCompany's case and, after quoting a passage which I have also quoted, comments :

' As I understand those last words, they mean that such impossibility has not been caused exclusively by the person seeking to take advantage of it. In that case, the Court of Appeal decided that in a case where in substance a partnership existed between the persons who were carrying on the business of the company, any ground which would justify an order for the dissolution of a partnership, had it been a partnership, would justify an order for the winding up of the company.'

55. His Lordship also refers to the decision of Crossman J. in In re Davis and Colleti Ltd., [1935] Ch. 693 ; 5 Comp. Cas. 467 (Ch.D.) and sums up the ratio of that decision in the following language :

' In that case it was held that where the capital of a private company is so held as to make the company in substance a partnership and one director has purported by means of his irregularities to acquire complete control of the company and to exclude the other director or directors from the management of it, it may be ' just and equitable' within the meaning of Section 222 that the company should be wound up,'

56. After quoting extensively from the judgment of Crossman J. in In re Davis and Collett Ltd., Plowman J. observes :

' Bearing in mind those principles, if this were a partnership and not a company I should have no hesitation in concluding that Mr. Blackmoor is entitled to an order for dissolution on the ground that the termination of his employment as a working partner was an unjustified exclusion of him from the partnership business. The trouble, I think, was that the Lundie Brothers were too inclined to regard the business as their business, in a way perhaps not unnaturally. They started the business. They were responsible for the formation of the company, and the company bore their name. In law, however, Mr. Blackmoor had an equal right in the business as being in substance a partner in it. '

57. Plowman J. then goes on to consider what would be the additional circumstances which would enable the petitioner to succeed in so far as his claim rested on Section 210 and then after weighing the law and analysing the facts of the case comes to a finding that the petitioner ' has failed to make out a case for relief under Section 210 although he has succeeded in making out a case for winding up under Section 222. '

58. On a careful reading of this case I find that what influenced the decision of Plowman J. was the following facts :--(a) in substance a partnership existed between R. Lundie, C. Lundie and Blackmoor, (b) they were all working directors although Blackmoor was part-time, (c) they all had an equal financial strength in the company and (d) Blackmoor was forced out of his position as a working director,

59. In re Expanded Plugs Ltd., [1966] 1 All E.R. 877; [1966] 1 W.L.R. 514 ; 36 Comp. Cas. 497, 505 (Ch. D.) was another case in which Plowman J. was called upon to deal with the applicability of the principle of Yenidje Tobacco Company. In the petition there were other grounds of winding up, namely, deadlock, oppression of the petitioner as a member of the company and the disappearance of the substratum of the company. On facts, Plowman J. found that there was no deadlock at all because of the existence of the chairman's casting vote. As for oppression of the petitioner, his Lordship found that that was more appropriately an element to be considered in a petition under Section 210 of the Companies Act. The case for substratum was abandoned before his Lordship. Therefore, the only other question that remained for consideration was that of applying the partnership principle. Indeed, both parties proceeded on the basis that this was a partnership. The petition, however, was decided only on two issues, namely, (i) whether in view of the fact that the company was insolvent the petitioner had any locus standi to present a petition as a contributory, and (ii) if the petitioner had such locus standi whether he had made out a case for a winding-up order on the facts. On the first issue, Plowman J. found that the petitioner had no locus standi to present a petition. It is of interest to know that in deciding this issue his Lordship did not consider the partnership analogy. His Lordship held that the partnership analogy may be of assistance for considering in certain circumstances whether it is just and equitable to wind up a company. His Lordship, however, did not feel that the analogy should be pressed too far. His Lordship refused to allow the analogy to be invoked for the purpose of giving a locus standi to the petitioner who by company law had no locus standi. His Lordship thought that the analogy broke down in connection with this action in at least two important aspects :

' In the first place, the liability of an ordinary partner is unlimited so that he has a financial interest in bringing the partnership to an end, whereas in the case of a limited company, a fully paid member's liability cannot be increased by further trading. Secondly, an insolvent partnership cannot be dissolved at the instance of creditors, whereas they have the right to petition for the winding-up of an insolvent company and, indeed, are the only persons with a financial interest in doing so since, if a winding-up order is made, the property of the company will be exhausted in meeting their claims.'

60. Strictly speaking, having come to this finding, Plowman J. would have dismissed the petition on the technical ground. His Lordship, however, considered also the second issue, as his Lordship thought that the matter might go further. His Lordship treated the case as one which falls in the category of partnership cases. But, his Lordship holds, on the same principle that in a partnership action the rights of the

parties have to be determined in the light of their partnership articles, so also in the case of a company whose members were really in the position of quasi-partners, the rights of such quasi-partners should be determined in the light of the regulations which governed their relationship. Plowman J. quoted with approval from the judgment of Simonds J. in In re Cuthbert Cooper and Sons Ltd., [1937] Ch. 392 ; [1937] 2 All E.R.. 466, 468; [1938] 8 Comp. Cas. 131, 133 (Ch.D.) the following words :

' It has been pressed upon me that I am to be guided by the principles laid down by the Court of Appeal in In re Yenidje Tobacco Company Ltd. and followed recently by Crossman J. in In re Davis and Collett Ltd. But whether it be a matter of articles of association or articles of partnership the rights of the parties are determined by those articles, and the question whether it is right for me to apply the principles of partnership to the question of dissolution depends upon what are the contractual rights of the parties as determined by the articles of association in this case. Accordingly, when I come to consider the allegations in the petition, I must have regard to the rights of the parties as determined by the bargain into which they have entered. '

61. From this point of view, Plowman J. considered the framework of the articles of the company and found that the petitioner had failed to establish that the matters of which he complained, all of which were carried out within the framework of the articles, were not carried out bona fide in the interest of the company. His Lordship says :

' Once it is accepted, as I consider it must be that the constitution of the company is not one of which the petitioner is entitled to complain, then, in the absence of any proof of what Lord Shaw in the well-known case of Lock v. John Blackwood. Ltd., [1924] A.C. 783 (P.C.) referred to 'as a lack of probity in the conduct of the company's affairs,' the petition must, in my judgment, fail.'

62. In this view of the matter, Plowman J. dismissed the petition on both the grounds.

63. The important thing to note about this case is that, since Plowman J. found against the petitioner on the first issue and held that he had no locus standi, it was unnecessary for him to consider the second issue as to whether the petitioner succeeded in making out a case for winding-up. Therefore, Plowman J.'s finding on the second issue is completely obiter.

64. I have so far dealt with the leading English decisions on the question of law which we are investigating. In India all the High Courts have so far mostly relied, appropriately enough, on English decisions in the matter of deciding any question of company law. Unfortunately, no Supreme Court decision is available to guide us in this matter. It is, however, proper that I should refer to some of the more important Indian cases covering this question. All these cases were cited and discussed at length before us as well as before the learned trial judge.

65. The case of Muralidhar Roy v. Bengal Steamship Company Ltd., [1920] I.L.R. 47 Cal. 654; 59 I.C. 542 was cited before us. But I find no relevance of that case for deciding the present appeal. In this particular case, winding up ' was applied for on entirely different grounds, namely, that the company had suspended its business for a whole year and that there had been a deadlock and finally that the substratum of the

company was gone. The case of Yenidje Tobacco Company was cited but their Lordships refused to apply the Yenidje doctrine and said that the circumstances of Yenidje case were very peculiar.

66. In the case of Janbazar Manna Estate Ltd., In re, [1931] 1 Comp. Cas. 243 ; I.L.R. 58 Cal. 716; A.I.R, 1931 Cal. 692 Panckridge J. found that this company had been formed by the members of a family for the purpose of paying off the family debts. His Lordship dealt with the Yenidje Tobacco Company case but did not follow the doctrine on the ground that the Yenidje Tobacco Company was a trading company of two members and the company before his Lordship was a non-trading company of several members. His Lordship ignored the partnership doctrine.

67. Veeramachineni Seethiah v. Venkatasubbiah, [1949] 19 Comp. Cas. 107 ; A.I.R. 1949 Mad. 675 was a case decided by a Division Bench of the Madras High Court. The Yenidje Tobacco Company case was relied upon by the petitioner for showing that where there is an irreconcilable faction among the directors of a company it is always just and equitable that the company should be wound up. Their Lordships of the Madras High Court refused to follow this principle on the ground that in the case before their Lordships 9 or 10 directors were solidly taking one view as against 3 directors only of the other group and that, in their Lordships' opinion, the majority view should prevail ordinarily. It does not appear from the judgment that the extreme doctrine of the Yenidje case was pressed before their Lordships. Their Lordships only considered the question whether, in the circumstances of the case, it could be said that it was just and equitable to wind up the company. Their Lordships also preferred to follow the principle that the mere fact of one shareholder in a company having a preponderating influence in its affairs by reason of owning or controlling a large block of shares is by itself no reason for its winding-up. For this principle their Lordships derived inspiration from the observations of the Judicial Committee of the Privy Council in Ripon Press and Sugar Mills Co. v. Gopal Chetty .

68. The appellants also relied on an unreported judgment which I delivered, sitting singly, in the case of In re John Herbert and Company (P.) Ltd. (unreported). In that case, it was not necessary for me to examine the Yenidje doctrine as closely as I have done in the instant case. Therefore, I do not consider it necessary to refer to this judgment of mine. I may, however, say that I followed the Yenidje doctrine in that case.

69. In re Bilas Roy Juharmal, [1962] 32 Comp. Cas. 215; 63 Bom. L.R. 815 ; A.I.R. 1962 Bora. 133 was a case in which winding up of a private company was asked for. Reliance was placed on the Yenidje Tobacco Company case. Naik J. refused to apply the Yenidje doctrine, firstly, by saying that Lord Cozens-Hardy did not intend to lay down as a proposition of law that in all cases of the private company the principles relating to the dissolution of a partnership firm are necessarily applicable. According to Naik J. partnership principles were applied because of the peculiar circumstances and the facts prevailing in that case. Naik J.' was of the opinion that the position of a partner of a firm stands entirely on a different footing from the position of a shareholder of a company. In this Bombay case the learned judge has, in my opinion, completely ignored the Yenidje doctrine though his Lordship does not expressly say so. The same question was again considered by the Madras High Court in S.S. Rajakumar v. Perfect Castings Private Ltd., [1968] 38 Comp. Cas. 187, 194 (Mad.) Ramaprasada Rao J. of the Madras High Court did not follow the Yenidje doctrine. His Lordship says :

' Existence of factions amongst shareholders, bickerings as between one group and another group of members, vague allegations against the quality of management by the person in charge of the company, and mere exclusion from management, as in the instant case, cannot by themselves be a ground for winding up of a company. Proved malversation and conversion of funds, deliberate and wanton oppression by the management in power, of the minority shareholders with a view to make personal illegal gains, indulging in subversive activities so as to jeopardise the substratum of the company, a ustifiable lack of confidence in the conduct and management of the company's affairs due to lack of probity on the part of those in management, where there is open mismanagement and there is no panacea to remedy the evil, such are instances, though not exhaustive, when the courts exercise their jurisdiction under the just and equitable ' rule to wind up companies. '

70. It is interesting to note that Rao J. considers the doctrine of the Yenidje Tobacco Company case as having been considerably whittled down in later years. In support of this observation his Lordship relies on the observations of Plowman J. in Expanded Plugs Ltd. case, [1966] I All E.R. 877 ; 36 Comp. Cas. 497 (Ch.D.).

71. I shall now briefly refer to two other Division Bench decisions of this High Court on which reliance was placed by the counsel for the appellants before us. One was a judgment of Harries C.J. in which the learned Chief Justice sitting with Mr. Justice Das heard an appeal from an order of Banerjee J. directing the winding up of a private limited company. In Great Indian Motor Works Ltd. v. Chandi Das Nundy, [1953] 23 Comp. Cas. 287, 293 Harries C. J. in his judgment refers with approval to what Banerjee J. stated as a good ground for winding-up of the company :

' Banerjee J. has pointed out that where a company is a private company and particularly where it is nothing more than a partnership converted into a company, the court in winding up will apply to a very great extent the rules applicable to winding up a partnership. Where two partners cannot agree and cannot carry on business the court will always wind up the partnership. The court will wind up a partnership also if one partner was acting dishonestly towards the other or acting unfairly.'

72. The learned Chief Justice then refers to various facts of the case indicating that two members of the company were acting unfairly towards the petitioner and were prepared to deprive the petitioner of all powers and influence and also that their conduct was such that it appeared they were ' more concerned with the position of the company '. His Lordship observes :

' If such a state of affairs was disclosed in a partnership, the court would clearly wind up the partnership and it appears to me that this private company should, on the same grounds, be wound up.'

73. This judgment, therefore, clearly follows the Yenidje doctrine of applying partnership principles in the matter of winding up of a private limited company.

74. The second decision to which I have just made reference above is an unreported judgment in the case of Shrimati Ananda Sundari Roy v. Harendra Lal Roy Estates Ltd. (unreported) in which a Division Bench of the High Court dealt with a private limited company, the shares of which were distributed between members of a family. Several applications had been made in connection with this company which was

known as Harendra Lal Roy Estates Ltd. One of these applications was for the winding up of the company. One was for the stay of winding up and another was for the stay of winding up on the special ground that there was an arbitration clause contained in the articles of association while there was yet another application for rectification of the register. Banerjee J. by a judgment ordered rectification and refused to pass any order in the other applications. An appeal was made from that judgment by these persons who were pressing for the winding-up of the company. In the appeal before the court of appeal of this High Court one of the contentions was that the company in question being a private limited company the principles of partnership which applied in the matter of dissolution of a partnership should be applied also in this case. At the same time, the respondents argued that, so long as there was the possibility of removing the deadlock and so long as it was possible to manage the affairs of the company according to the wishes of the majority of the shareholders, the court could not direct a winding up of the company. Chief Justice Chakravarti relied upon certain observations made by Lord Clyde in the case of Baird v. Lees, [1924] S.C. 83 and quoted by Lord Shaw in the well-known case of Lock v. John Black-wood Ltd., in which a statement has been made regarding the various circumstances which would bring a case within the scope of the just and equitable clause. After referring to the propositions laid down by Lord Clyde, Chakravarty C.J. observed :

' The wider principles underlying those propositions put the duty of the court beyond doubt although the limited principle applicable to a private limited company as laid down in Yenidje Tobacco Company's case would quite suffice.'

75. From this observation it is quite clear that Chief Justice Chakravarti accepted and was relying on the Yenidje doctrine.

76. Now that I have discussed both the English and the Indian decisions on the question of winding up a private limited company on the partnership analogy, I am in a position to indicate what, to my mind, seems to be the effect of these decisions. In particular, it is essential for me to determine precisely the scope and effect of the English decisions, for, as I have already said, the Yenidje doctrine, though not overruled or expressly disavowed, has been overlaid with various other principles which do not strictly follow from the judgment in Yenidje's case. This is the task to which I now apply myself.

77. I have already found that the Yenidje Tobacco Company case laid down the principle that if a private company was in substance a partnership, the partnership principle should apply if a member of the company applies for winding up of the company and this should be the case whether there is or is not a deadlock in the management of the company. The case of In re Furriers Alliance Ltd., which was a case earlier than the Yenidje Tobacco Company case, apparently went also on the partnership principle. But there-is a real difference. In that decision, Warrington J. gave some importance to deadlock and also to the constitution of the company. If business was impossible in accordance with the constitution of the company then only the partnership principle was held to apply. It is clear, therefore, that the ratio of the Furriers Alliance Ltd., [1906] 51 Sol. J. 172 was not the same as was propounded later in the case of Yenidje Tobacco Company Ltd. The case of the American Pioneer Leather Company Ltd., [1918] 1 Ch. 556 (Ch. D.) was not decided against either on the question of deadlock or on the partnership analogy. The case of Loch v. John Blackwood Ltd. has no relevancy to the point that we are now trying to decide. The

Privy Council, however, refers with approval to the Yenidje doctrine in In re Dams and Collett Ltd., [1935].Ch. 693 ; 5 Comp. Cas. 467 and followed the principle of Yenidje Tobacco Company case without any reservation. Crossraan J. expressly stated that he was not deciding the case on the question of deadlock. In the case of Cuthbert Cooper and Sons Ltd. the partnership principle was affirmed. On facts, however, the principle could not be applied. The case of Davits Investments (East Ham) Ltd., though decided on a demurrer, throws some light on the manner in which the partnership principle is to be applied according to the Court of Appeal. This does not really appear on the surface. But a little analysis brings out the point. Before the Court of Appeal it was contended on behalf of the appellants that mere disagreement among the partners could be sufficient to justify a winding-up order. Therefore, the absence of the articles of association of the company on the records should not matter and the ground of demurrer on which Plowman J. had dismissed the petition did not arise at all. Danckwerts L.J. rejected this contention. By implication, therefore, Danckwerts L.J. thought that the application of the partnership principle was not automatic in the case of a private limited company. Donovan L.J. also, by implication, seemed to be of the opinion that evidence regarding the rights of the petitioner and the respondents, i. e., to say the nature of the constitution of the company, had some importance in such matters. This case, therefore, seems to me to be a slight departure from the Yenidje Tobacco Company case. The case of Charles Forte's Investments Ltd., in my opinion, does not interpret the decisions in Yenidje Tobacco Company case and the Dams and Collett Ltd. case which were decided in the context of a deadlock. This is factually wrong because both Lord Cozens-Hardy in the earlier case and Crossman J. in the later case categorically and expressly stated that the question of deadlock did not affect their decisions. Besides, Wilmer L. J. thought that in this case the company did not resemble a partnership. In my opinion, one should not look to this case for any guidance in regard to the application of Yenidje principle. Lundie Brothers Ltd., [1965] 2 All E.R. 692 ; [1965] 1 W.L.R. 1051 : 35 Comp. Cas. 827 is a case where Plowman J. sought to apply the Yenidje principle without reservation. But, incidentally, Plowman J. seemed to attach some weight to the fact that if a working director is ousted from a company in a private limited company resembling a partnership that would be a case within the 'just and equitable' clause. It is difficult from Plowman J.'s judgment to say whether his Lordship wanted to make any addition to the Yenidje doctrine. In In re Expanded Plugs Ltd., another case decided by Plowman J., various issues were raised, but Plowman J, considered two issues. By his decision on one of these, he dismissed the petition on a technical ground. It will be remembered, however, that he decided also the issue as to the partnership principle. In that connection his Lordship lays a lot of stress on the constitution of the company. His Lordship recognises the applicability of the partnership principle. But since in a partnership action the partnership articles would have to be looked into to determine the rights of the parties, in the case of a company resembling a partnership, the articles of association are likewise important. From this point of view, Plowman J. refused to grant a winding up of the company. In this, in my opinion, Plowman J. really made a substantial addition to what was laid down in the Yenidje Tobacco Company case. Indeed, his Lordship went back a little further and has very closely followed the judgment of Warrington J. in the case of Furriers' Alliance Ltd., [1906] 51 Sol. J. 172.

78. In the light of the foregoing analysis I ask myself the following questions :

(1) What exactly was the ratio of Yenidje's case ?

(2) Has the Yenidje doctrine been always followed

79. Before giving my own answers to these questions I would like, however, to examine the answers which the counsel appearing on both sides gave to us in court. I have already made a brief reference to their arguments. They were all without exception relying on the Yenidje Tobacco Company case. They were all trying to use the doctrine of Yenidje Tobacco Company in support of their respective cases and each formulated certain principles which, they suggested, emerged from the subsequent decisions following that case.

80. Mr. A.K. Sen, who opened the appeal for the appellant, argued that Yenidje's case left no room for qualification of the partnership principle and as soon as a private limited company was found to be in substance a partnership firm there was no escape from the proposition that any member of that company could have the company wound up by invoking the partnership principle. If we confine our attention to Yenidje Tobacco Company's case , there is no doubt at all that this was the precise ratio of Lord Cozens-Hardy's judgment. While canvassing all the time for a strict application of the Yenidje doctrine, Mr. Sen, of course, tried to formulate the reasons lying at the root of the Yenidje doctrine. He said that the principle of partnership has been projected into the law regarding private companies, because the essence of the constitution of a private company lies in the personal tie and mutual confidence among its members very much in the same way in which the basis of association in a partnership firm was mutual confidence restricted to a close group from which others are excluded. Therefore, he said as soon as the basis disappears a private limited company should be wound up just as much as a partnership firm should be dissolved. This explanation sounds very plausible and rational and might well have been the fundamental principle underlying the Yenidje doctrine. But I have not found the genesis or basis of the Yenidje doctrine enunciated clearly in these specific terms in any case. But whether this explanation is right or wrong it has to be recognised that Mr. A.K. Sen is correct in stating what was the precise ratio of the Yenidje case.

81. Mr. Nag, who also appeared for the appellant with Mr. Sen and who gave the reply to Mr. S.B. Mookerjee's argument on behalf of the respondents, made a slight departure. Considering the difficulty of the legal question involved we did not want to put any restriction on the argument either of Mr. Nag or of Mr. Mookerjee. We allowed them to present their case freely. The way Mr. Nag summed up the effect of the Yenidje doctrine and the later cases on this subject is as follows. The conditions under which one member or a group of members of a private limited company can ask for winding up of the company as a matter of right are as follows :

(a) When the bond of amity which was the basis of the original association has come to an end ;

(b) When one member has been excluded from management though, in fact, he had all along been associated with the management with or without an agreement.

82. The second condition, according to Mr. Nag, admitted of three exceptions, namely, (i) if the private limited company is of such a nature that there are outsiders who, though members, are in no way concerned with the dispute between the persons who are associated with the management of the company, (ii) when public interest is involved and (iii) if the private company happens to be an investment company holding shares in a public limited company. Strictly speaking, exception (iii) is really

included within exception (ii).

83. It is clear that Mr. Nag has modified Mr. A.K. Sen's enunciation of the principle considerably. For Mr. A.K. Sen, the first rule of Mr. Nag would have been enough. In fact, that seems to me to be the undiluted doctrine of Yenidje case, though in the judgments in Yenidje's case there was no clear and direct reference to ' amity as the basis of the original association' as soon as Mr. Nag found it necessary to provide for a second rule, it became clear that he recognised that the Yenidje doctrine has been slightly modified or qualified by later decisions. It appears to me that Mr. Nag formulated the second rule in order to make room for certain observations of Crossman J. in Davis and Collett Ltd. as well as certain observations of Plowman J. in Lundie Brothers Ltd. The exceptions that Mr. Nag suggests to his second rule are obviously concessions made in view of the decision in Charles Forte Investments Ltd. v. Amanda.

84. While speaking of the rules that he formulated, Mr. Nag, at one stage, contended that there was not a single decision either in England or in India where winding up has been refused even though a person who has been associated with the management is later on ousted from participating in the management and has come up and asked for winding up. This, in my opinion, is a claim which cannot be justified in view of the case, In re Davis Investments (East Ham) Ltd., or the case of Charles Forte Investments Ltd. v. Amanda and finally the case of In re Expanded Plugs Ltd.

85. Mr. S.B. Mookerjee appearing for the respondents also made an attempt to formulate certain principles which, according to him, have now crystallised from the case-law on this subject. He contended that the principle of partnership applies only in two classes of cases, namely, (i) in case of deadlock and (ii) in the case of a family or a domestic company, and unless the case is brought under either of these two heads, the question of applying the principle does not arise at all. With regard to the second class of cases, however, Mr. Mookerjee made a reservation. He said that the principle would apply to those cases only if there is justifiable lack of confidence and lack of probity in the members who are in the management of the company. In the first group of cases Mr. Mookerjee places the cases of Furrier's Company Ltd., Yenidje Tobacco Company, American Pioneer Leather Company, Davis and Collett Ltd., Cuthbert Cooper Sons Ltd., [1937] Ch.D. 392 [1937] 2 All E.R. 466 ; [1938] 8 Comp. Cas. 131 (Ch.D.) Anglo-Con-tinental Produce Company Ltd., [1939] 1 All E.R. 99 Charles Forte Investments Ltd., Lundi Brothers Ltd. and Expanded Plugs Ltd. Mr. Mookerjee did not name any English case as an illustration of the second principle though he cited the case of Loch v. Blackwood, in support of his contention. Mr. Mookerjee cited some Indian cases under this classification. In my opinion, this classification is artificial and does not proceed on any sound principle. The clearest proof of this is in the fact that Mr. Mookerjee found no English case to come under the second class. But even taking the classification at its face value I do not think that all the cases which he sought to bring under the first head are really ' deadlock ' cases. It is not permissible to bring a case under this first group merely because of the fact that there was actually a deadlock in that case. The real point is: was the partnership principle applied in the context of a deadlock Applying this test, it is difficult to justify Mr. Mookerjee's classification. The case of Furrier's Alliance Ltd. has been correctly described as a deadlock case. The Yenidje Tobacco Company case, however, was definitely not a case where the partnership principle was applied on the ground of deadlock. The case of American Pioneer Leather Company Ltd. was a case in which the decision was neither on the basis of a deadlock nor on the ground that

the company was in substance a partnership. The case of Cuthbert Cooper & Sons Ltd. was not decided on the ground that there was a deadlock. The Anglo-Continental Produce Company Ltd. is not a case where the question of applying the partnership principle arose at all. Therefore, there is no point in bringing this case under either class. The case of Charles Forte Investments v. Amanda is correctly placed in this group of cases. Lundie Brothers Ltd. does not fall within this group. The case of Expanded Plugs Ltd. is also a case where the decision was not placed on considerations of deadlock. In the light of the foregoing analysis I have no hesitation in rejecting Mr. Mookerjee's classification.

86. I shall now attempt to record my own answers to the two questions which I have framed just now. My answers are as follows :

87. As regards the ratio of Yenidje doctrine it is safer to go back to the judgment of Lord Cozens-Hardy than to rely on what other decisions say about the ratio of the Yenidje case for, as I have been shown, some of the later cases have attributed to Lord Cozens-Hardy's judgment propositions which directly contradict certain express statements made by the learned Master of the Rolls. At the risk of repetition, it is well worth saying what seems to me to be the true ratio of Yenidje Tobacco Company case '. The ratio is as follows :

(1) (i) If a private company could be fairly called a partnership in the guise of a private company then the things which might be a ground for dissolution of a partnership will apply also in the case of a private company; (ii) In this connection deadlock is not material.

(2) The answer to the question whether the Yenidje doctrine has always been followed cannot be given by a simple ' yes ' or ' no'. The answer, rather, should be apparently ' yes', but, in reality, not always. I classify the cases into four groups, viz.:

(a) the group of cases where the doctrine has been followed practically without reservation ;

(b) the group of cases where though, the doctrine has been followed only in name of the principle that has been invoked and really followed is something not to be found in Yenidje's case;

(c) the group of cases where the judges have not applied the Yenidje doctrine on the ground that the case before them fell oustide the scope of Yenidje's case and while doing this the judges have, it seems to me, enunciated principles which are often clearly contrary to what was said in the Yenidje's case ;

(d) there is still another group of cases where the doctrine of Yenidje has been so mixed up and overlaid with other principles that it is difficult to say whether these cases can be properly cited as applying the Yenidje doctrine at all.

88. We have now, in my opinion, sufficiently cleared the grounds for consideration of the present case in the light of what have been our findings so far. Since we have already found on facts that the company with which we are dealing can be described as a partnership in the guise of a private company, I see no escape from the proposition that the Yenidje doctrine ought to be followed. As I have said already this case was argued at length and with vigour by eminent counsel appearing for both

parties to the dispute. None of them even suggested that the principles laid down in the Yenidje case are 'not sound. I have also further said that I have not come across a single English case where there has been a clear disavowal of the Yenidje doctrine. Therefore, since we are satisfied that this company is in the nature of a partnership, though its outward trappings may be those of a private company, we must work out the logical consequence by applying the partnership principle in accordance with the Yenidje doctrine. But what is the partnership principle That also should be stated clearly in order that no room is left for doubt or confusion. It will be remembered that Lord Cozens-Hardy has himself stated the principle of partnership law in the Yenidje Tobacco Company's case. His Lordships refers to 'the principles enunciated by Lindley in his celebrated treatise on partnership. The relevant passage occurs in the 8th edition of Lindley's, A Treatise on the Law of Partnership, at page 657, and is as follows :

' The court may dissolve a partnership on the ground that a partner fully or persistently commits a breach of the partnership agreement, or so conducts himself in matters relating to the partnership business that it is not reasonably practicable for his co-partners to carry- on business in partnership with him. But it is not considered to be the duty of the court to enter into partnership squabbles, and it will not dissolve a partnership on the ground of the ill temper or misconduct of one or more of the partners, unless the others are in effect excluded from the concern ; or unless the misconduct is of such a nature as to destroy the mutual confidence which must subsist between partners if they are to continue to carry on their business together. Where a dissolution is sought on this latter ground, it would seem that the misconduct must be such as to affect the business, not merely by shaking its credit in the eyes of the world, but by rendering it impossible for the partners to conduct their business together according to the agreement into which they have entered. Most of the cases on this subject have come before the court on a motion for an injunction to restrain a partner from acting improperly, and have been alluded to when the remedy by injunction was considered. It may, however, be usefully observed here that keeping erroneous accounts and not entering receipts, refusal to meet on matters of business, continued quarrelling, and such a state of animosity as precludes all reasonable hope of reconciliation and friendly co-operation, have been held sufficient to justify a dissolution. It is not necessary, in order to induce the court to interfere, to show personal rudeness on the part of one partner to the other or even any gross misconduct as a partner. All that is necessary is to satisfy the court that it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it. '

89. I have already referred in brief to this quotation from Lindley's treatise by Lord Cozens-Hardy M.R. It appears to me that in the case of a partnership firm, the following circumstances will, according to Lindley, justify the dissolution of the partnership :

(1) If the partnership agreement is wilfully or persistently violated.

(2) If one partner so behaves in matters relating to the partnership business that the other partners find it impossible to carry on business in partnership with him.

(3) If some partners are in effect excluded from the concern.

(4) If the misconduct of one or more partners is such that the mutual confidence which must subsist in a partnership is destroyed.

(5) If there is a state of animosity which precludes all reasonable hope of reconciliation and friendly co-operation.

(6) If it is impossible for the partners to place that confidence in each other which each has a right to expect, provided that the impossibility has not been caused by the persons seeking to take advantage of it.

90. If the judgment of Lord Cozens-Hardy in the Yenidje Tobacco Company's case is carefully read along with this passage from Lindley, I believe that most (though not perhaps all) of the English decisions can be reconciled by the application of the Yendije Tobacco Company's case.

91. In the particular circumstances of this case, I have no doubt that', of the conditions which I have enumerated above, conditions 2, 3 and 4 are unquestionably fulfilled in this case. Even the admitted facts leave no room for doubt on this matter.

92. Reference to the notice under Section 169 of the Companies Act, 1956, dated 23rd May, 1966, and issued by V.D. Jhunjhunwala, Krishna Kumar Jhunjhunwala, a minor by the hands of V.D. Jhunjhunwala, Nirmal Kumar Jhunjhunwala and Satyabhama Devi Jhunjhunwala and served on the company will remove the last vestige of any doubt on this point. We have already referred to this notice and we have also referred, in particular, to the explanatory note contained in that notice. The notice and the explanatory note make it abundantly clear that the group of V.D. Jhunjhunwala are not in a mood to permit R.P. Jhunjhunwala and P.C. Jhunjhunwala to be associated with them in the management of the company. The facts which I have summarised at the very outset show conclusively that over the last few years a state of animosity between these two groups has steadily grown and developed until it has reached a stage which certainly precludes all reasonable hope of reconcilation and friendly co-operation. It is also very clear now that the group of shareholders and directors belonging to the camp of P.C. Jhunjhunwala and R.P. Jhunjhunwala will, in fact, be excluded from any participation in the management of the company in the future, though, admittedly, they have had a very large share if not a preponderating share of such management in the past. The group of V.D. Jhunjhunwala have lost complete confidence in the group of R.P. Jhunjhunwala and they at least have been openly declaring that any further association of R.P. Jhunjhunwala and P.C. Jhunjhunwala with the management of the company would be detrimental to the interests of the company. If such circumstances had existed in a partnership, the partnership firm in question would no doubt have been dissolved. In this view of the matter, it is, in our opinion, just and equitable that this private limited company should also be wound up.

93. We now come to the consideration of the appropriate order in this appeal. As the judgment and order under appeal disposed of several applications it is necessary that we have to give appropriate directions in all these matters. We, therefore, pass the following order :

Both the appeals are allowed. The judgment and order, dated 6th July, 1967, passed by Ray J. are set aside. The application for stay of winding up proceedings is dismissed. Since the final hearing of the winding up application did not at all take

place we remand the application for winding up (viz., Company Petition No. 123 of 1966) as well as the application for appointment of provisional liquidator and injunction (i.e., Application No. 136 of 1966) for re-hearing according to the usual procedure. The costs of thesetwo appeals as well as the costs of the hearing before Ray. J. will be costs in the winding up proceedings. Certified for two counsel.

94. Before parting with this case I should make one observation. It is necessary that the applications should be dealt with by the appropriate court with some amount of expedition. Due to unavoidable reasons, disposal of the applications at the trial stage as well as at the appeal stage has been delayed. The judgment under appeal was delayed because of certain unfortunate circumstances stated by the learned trial judge in his judgment. In the court of appeal also these matters had no better fate. During the hearing of the appeals there was a break, first, due to intervention of a very urgent matter which demanded some amount of priority to all other matters, and, secondly, because this Bench had to break up on account of the absence of one of us. After the hearing had been resumed and completed there was another break because one of us had to leave the High Court on the call of important State duties so that the judgment could not be delivered for a very long time. Now that we have re-assembled and have delivered this judgment sending the matter back for completion of the winding up proceedings with appropriate formalities, we feel it is desirable that these applications should be dealt with the utmost possible expedition.

95. There will be a stay of operation of this order until three weeks after the long vacation and in the meantime all interim orders passed by this court in connection with these appeals will remain subsisting. Any application that the parties want to make in connection with the winding up petition or with the application for the appointment of a provisional liquidator will be made before the appropriate court having jurisdiction in company matters.

96. Mr. S.C. Sen, appearing for the respondents, gives an undertaking to the court on behalf of the company and the other respondents in Appeal No. 174 of 1967 that the company will not, in the meantime, increase its existing share capital.