

S. Ajit Singh Vs. Dss Enterprises (P.) Ltd.

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Court : Company Law Board CLB

Decided On : Aug-31-2001

Appellant : S. Ajit Singh

Respondent : Dss Enterprises (P.) Ltd.

Advocate for Pet/Ap. : Dr. Singhvi

Judgement :

1. Ajit Singh (Petitioner No. 1) and his wife Praveen Ajit Singh (Petitioner No. 2) shareholders of DSS Enterprises (P.) Ltd. (the company) claiming to collectively hold 50 per cent shares in the company have jointly filed this petition under section 397/398 of the Companies Act, 1956 ('the Act') alleging acts of oppression and mismanagement against the respondents and have prayed for appropriate reliefs.

2. The case of the petitioners in brief is that DSS Enterprises (P.) Ltd. (first respondent) was incorporated on 5-9-1986 under the name Daljit Singh and Sons (India) (P.) Ltd. with an authorised capital of Rs. 5 lakhs. The two sons of S. Daljit Singh namely Ajit Singh (first petitioner) and Satwant Singh (second respondent) were the promoter directors holding 25 shares each. Daljit Singh was the Chairman of the Company. On 11-12-1986 Smt. Parveen Ajit Singh (second petitioner) and Smt. Reema Satwant Singh (third respondent) wives of first petitioner and second respondent respectively were inducted as directors and were subsequently allotted 25 shares each, while S. Daljit Singh was allotted one share. On 27-3-1989 further 900 shares were allotted by the first respondent-company which were equally divided amongst the two families of the brothers with

450 shares being allotted to second petitioner and balance 450 to the second respondent. Thus on that point of time the total shareholding of the company was 1001 shares of Rs. 100 each, 500 each owned by the two families of the brothers aforesaid and one being held by the father S. Daljit Singh. On 28-3-1989 the authorised capital of the company was increased from Rs. 5 lakhs to 10 lakhs and subsequently on 25-5-1989 the name of the company was formally changed and the certificate issued in the name of DSS Enterprises (P.) Ltd. (D.S.S. in short).

3. S. Daljit Singh expired on 2-7-1990 leaving a Will, in furtherance of which a compromise was entered into between the legal heirs of S. Daljit Singh in proceeding before the Delhi High Court. It is alleged by the petitioners that in accordance with the said compromise all the shareholding of Daljit Singh was divided equally between the First petitioner and second respondent. The one share held by Daljit Singh in the first respondent- company was transmitted to the second respondent to be held in Trust for both families without exercising any voting or other rights in respect thereof. Sometimes in the year 1992 the Board resolved to invest in a joint venture company namely Skycell Communications (P.) Ltd. ('Skycell'). Consequently in the EGM dated 20-3-1995 the share capital of the company was increased from Rs. 10 lakhs to Rs. 2 crores and the company also declared bonus shares in the ratio of 150 bonus shares against each totally paid up equity shares.

Accordingly bonus shares were issued to the parties and against the one equity share transmitted in favour of second respondent Satwant Singh 150 shares were issued which subsequently was divided between the parties of 75 shares each. Thus, according to the petitioners it was a family company in the nature of partnership and the family of the petitioners and the respondent No. 2 had equal shareholding of 75575 share each and the equality of the shareholding was not disturbed. The parties were in joint management and when some overdraft limits were taken by the respondent-company from Citi Bank shares of the petitioners and respondents 2 and 3 were given as security. Similarly, in July 1995 loan of Rs. 1 crore was taken from the Deutsche Bank for the respondent-company and the First petitioner gave personal guarantee to the Bank for repayment of the loan.

4. However, according to the petitioners the conspiracy to wrest control over the company by the respondents 2 and 3 gained momentum in May 1996 when the First Petitioner had gone abroad in connection with the business of the respondent-company and taking advantage of the same the Second Respondent removed the statutory books and other relevant records from the Head Office and kept them in his personal custody on the pretext of maintaining secrecy.

5. The case of the petitioners further is that on 21-8-1996 the second respondent who was the Managing Director is alleged to have called a meeting of Board of Directors showing that the same were attended by the petitioners the second respondent and his wife in which the following alleged resolutions and matters have been shown-- (a) The petitioners reiterated an earlier suggestion that the shares held by the DSS in Skycell Communications should be sold as they were not interested in infusing any funds in the company.

(b) The petitioners were not willing to give any personal guarantee under any circumstances whatsoever, and wanted their earlier guarantees given to Deutsche Bank to be released.

(c) That petitioners tendered their resignations from directorship of the Board but the same were returned.

(d) That petitioners offered to sell their shares in DSS to Second Respondent at par to be paid for within a period of two years with interest at the rate of 15 per cent from August 21, 1996 till the date of payment.

(e) That a decision was taken to increase the authorized capital of the company from Rs. 2 crores to Rs. 9 crores to meet the financial requirements of the company and the same be put up in the next AGM for ratification.

(f) That a decision was taken to issue 40,000 equity shares of Rs. 100 each partly paid up of Rs. 4 per share and the balance to be paid without any interest by 31-12-1997.

(g) That it was resolved that the Articles of Association of company be amended to make provision for a permanent managing director and for full voting rights on

partly paid up shares.

(h) That one Mr. Vikram Nanda was inducted as a Director of the Company.

6. According to the petitioners the entire minutes were fabricated and manipulated were false, fraudulent, oppressive and prejudicial. No such meeting was ever held. Neither was any notice of the meeting received.

The second respondent was instrumental in doing so for harming the interest of the petitioners and that of the company. It was further alleged that this was done mala fide to reduce the petitioners to a minority and not for the purpose of infusing funds into the company.

7. It has been stated by the petitioners that respondents 2 and 3 have alleged that the Board of Directors of the respondent company made a further allotment of 6,25,000 shares to the said respondents on 6-6-1997 as the company was in dire need of funds for investment in Skycell yet the payment shown is again Rs. 4 per share of the face value of Rs. 100 without there being any mention when the balance amount will be paid. The alleged action has been taken without issuing any notice to the petitioners or making any offer to them. The alleged action is manipulated, illegal and void being totally prejudicial to the petitioners as well as the company. It has been further stated that the alleged meeting of 6-6-1997 the petitioners were allegedly removed from the Board under section 283(1)(g) for not attending the board meetings when none was held as alleged.

8. It has been further alleged that second and third respondents had stealthily opened a bank account in the name of the company with the Bank of Punjab, Karol Bagh, without the knowledge of the petitioners with a view to fraudulently siphon off funds and to keep petitioner in dark with respect to all financial transactions of the company. The authorised signatory for the said bank account were only the respondents 2 and 3 who were also shown as the only directors. It is alleged that the purported Board resolution authorising opening of bank account was never actually passed and no notice of such board meeting was ever issued to the petitioners. Another bank account of the company was opened by the second and third respondent in Hong Kong and Shanghai Banking Company and

giving the residential address of the father of the third respondent. It was further alleged that the second and third respondent illegally excluded petitioners from management of the company for the last almost two years without holding any meeting of the Board since year 1996 or any general meeting since 1995. Inter alia in these circumstances the petitioners submitted that the affairs of the company were being conducted in a manner which is oppressive to the petitioners and such affairs of the company are being mismanaged. While it is just and equitable that the company should be wound up but to do so would prejudice the interest of the petitioners, therefore, it was prayed that the relief specified in the petition (as amended) be granted.

9. The respondents have filed their reply to the petition wherein they have at the outset challenged the maintainability of the petition on the ground that the petitioners not hold the requisite shareholding as specified in section 399 of the Act to maintain the petition. Denying the allegations made in the petition the contesting respondents have pleaded that the petitioners do not hold 50 per cent of the shareholding of the company as alleged and their shareholding is less than 10 per cent. The authorised share capital of the first respondent-company was increased from Rs. 2 crores to Rs. 9 crores divided into 9 lakh shares of Rs. 100 each with the full consent of the petitioners who were present at the meeting of the Board of Directors on 21-8-1996 when the resolution was passed and it was resolved to hold a general meeting to amend the memorandum of articles of association.

The respondent-company had to make heavy investment in Skycell Communications (P.) Ltd. and required funds. Petitioners declined to make any further investments and insisted that the company's stake in Skycell be sold. They were also not willing to give their personal guarantees for raising funds from other sources. In order to raise further funds and enhance the share capital base the respondent-company decided to allot further shares and the petitioners were duly informed of the same and invited to invest in subscribing additional shares. The petitioners declined to do so. The matter was considered by the Board of Directors on 21-8-1996 wherein the petitioners not only refused to subscribe additional shares but tendered their resignation which was not accepted.

10. The petitioners even offered to sell shareholding in the respondent-company at par which the second respondent accepted but requested for a period of two years for making payment along with interest at the rate of 15 per cent. As the petitioners declined to take further shares the second respondent was allotted the said 40,000 shares. With a view to broad base the Board of Directors the second respondent proposed the name of Vikram Nanda, a noted industrialist as director and he was elected at the general meeting held on 28-9-1996 with the full consent of the first petitioner who attended the subsequent board meetings along with Vikram Nanda. In the meantime the joint venture partners of Skycell were pressurizing the respondent-company to pay for the shares subscribed by it in 1996 and were threatening to forfeit the said shares due to non payment. In order to raise further funds the respondent-company decided to issue further shares at a meeting held on 6-6-1997 which the petitioners did not attend. As the petitioners declined to take further shares, hence, with a view to increase equity base in order to increase the security available for raising further funds the second and third respondent agreed to accept allotment of 6,25,000 numbers of equity shares with the full knowledge of the petitioners. The petitioners thereafter lost interest in the respondent-company and even neglected to attend the meeting of the Board of Directors. The first petitioner did not attend the meeting of the Board held after 21-2-1997 and the second petitioner did not attend any meetings after 21-8-1996. The petitioners ceased to be directors of the respondent-company with effect from 6-6-1997. Due notices of the meetings were dispatched to the petitioners by post/by fax/ by hand and the allegation that no meeting of the Board of Directors has been held since 1996 is wholly false to the knowledge of the petitioners.

11. It is the case of the respondents that it was incorrect to allege that one share which belong to S. Daleep Singh and was transmitted in the name of the second respondent was to be kept in trust without any voting rights. There is no such evidence or any understanding to that effect. On the contrary the annexure to the compromise decree passed by the Delhi High Court would show that second respondent was given one share more in this company. According to the second respondent as he was Managing Director and in charge of day to day affairs of the company since its inception this one share was given to him specially.

The joint venture in the Skycell Communication was also due to the efforts of the Second respondent and the petitioners were always against any investment in the said joint venture. The respondents have stated that the respondent company had not taken any advance from Citibank against security of shares of public companies held by the petitioners. Certain personal loans were taken by the petitioners as well as respondents 2 and 3 from Citibank and a part of the said money was paid to the respondent company on which interest was paid by the respondent company. The petitioners did not actively participate in the day to day business of the company but only participated in the management as members of the Board and that too the first petitioner attended for the last time on 21-2-1997. So far as the loan from the Deutsche Bank is concerned the petitioners as well as the second and third respondent furnished their personal guarantee. Subsequently the petitioners pressed the respondents to get their guarantee released and declined to arrange any funds for the said purpose. Consequently the second and third respondent had to induct funds personally to repay the said bank. The respondents have denied the allegation that they have removed the statutory books and records from the registered office of the company and have asserted that the same continue to remain in the registered office. The respondents have further asserted that the meetings of the Board of Directors and the annual general meeting had been held regularly and due notices of all the general meetings were duly dispatched to the petitioners and notices of all meetings of the Board of Directors till 6-6-1997 were duly sent to the petitioners. The respondents have denied that the affairs of the company are being mismanagement as alleged or at all. So far as the opening of the bank account with Bank of Punjab was concerned the respondents have asserted that the same was duly authorised by a resolution of the Board of Directors and as the petitioners were not participating in day to day affairs of the company, hence they were not being made the authorised signatories to the said account. The respondents have asserted that no case of either oppression or mismanagement has been made out and the relief as prayed for in the petition is not liable to be granted.

12. Dr. Singhvi senior counsel appearing for the petitioners has strongly urged that no such meeting as alleged to have been held on 21 -8-1996 was in fact held and the said minutes were forged and fabricated, which a perusal of the original

minutes books would establish. No reliance can be made on the minutes as the second respondent has fabricated the minutes books as he had removed all the records of the company from the registered office providing enough opportunity to manipulate and fabricate the Minutes Books. Of the 5 Minutes Books, two of them which were kept in loose leaf forms were found to have been bound very recently after removing the original Minute Sheets and substituting fabricated ones. In some of the minutes in which the second respondent is shown as the Chairman, the paper on which the minutes have been recorded look crisp and fresh and in some of the minutes the signature of the second respondent has been rubbed off to show aging. In some of the minutes, different pages are found to have been typed on different typewriters indicating that pages have been replaced. Therefore, the recording that the petitioners had attended that meeting and had consented to the decisions taken there at is absolutely false. Further, the alleged notice of the meeting which is said to have been sent under certificate of posting was never served on the petitioners and was also fabricated. It has been contended that the petitioners and his family and the respondent and his family were holding 50 per cent shares each and had equal strength in the Board.

There was absolutely no reason why the petitioners would agree to become a minuscule minority by agreeing to the issue of 40,000 shares in favour of second respondent. Besides it was absolutely unbelievable that the 40,000 shares were to be issued to the second respondent just by a part payment of Rs. 4 per share that too to be adjusted against a loan of about two lakhs of the second respondent with the company and the balance amount of Rs. 96 per share was to be paid by 31 - 12-1997 after one and half years especially when it was alleged that the shares were being issued for infusing funds to the company as it was in financial difficulties. On the top of it the respondent No. 2 was made a non-retiring managing director with 100 per cent voting rights by amendment of the articles of association. He was also permitted to appoint his friend Vikram Nanda as Additional Director, thereby destroying the family status and the equilibrium in the Board. It was further contended that serious disputes between the parties had developed around the year 1994 as admitted by the second respondent in that plaint of Suit No. 102 of 1997 filed by him against the petitioners No. 1, therefore, the petitioners would never agree to permit the respondents 2 and 3 to run the

respondent company unhindered.

13. It was submitted that the alleged issue of shares in favour of respondents 2 and 3 was mala fide and clearly prejudicial to the petitioners interest and was not in the interest of the company nor for the purpose to infuse funds into the company. With regard to the allegation that the petitioners desired to sell shares held by DSS in Skycell Communications it was submitted that the said allegation was absolutely incorrect and there is no letter or any authentic document produced to corroborate the said allegation. Besides this would have been contrary to the joint venture agreement with Skycell which was entered on 18-3-1992 wherein there was a restriction of transfer of shares for a period of at least three years from the date of the license as provided in clause 3.4 of the said agreement. It was further submitted that Skycell had started doing business from early 1995 and it was well known by that time that it would be a profitable venture, It was therefore, inconceivable that the petitioners would advise disposing of the shares of DSS in Skycell. As a matter of fact steps were taken to raise finances for equity participation in Skycell and with that end in view a loan of Rs. 1 crore was obtained from Deutsche Bank on personal guarantees being given by the petitioners. The loan had to be taken ostensibly for leasing of bottles as banks do not give loans for investment in equity of companies. Under the circumstances the allegation regarding the proposed sale of DSS shares by the petitioners was without any basis. Similarly, the allegation that the petitioners were not interested in infusing any further funds in the company was totally incorrect. The entire share capital investment in Skycell has been raised from loans taken by the petitioners from the Deutsche Bank, Citi Bank private parties and subsequently from external commercial borrowings. On the other hand during the relevant period upto the alleged meeting 21-8-1996 not a single rupee was brought into the company by second respondent. In relation to the allotment of 40,000 shares to him an amount of Rs. 1,60,000 was adjusted against the initial paid up capital at the rate of Rs. 4 per share from the credit line to his account to the company. It is inconceivable that the petitioners will not opt for additional shares specially when he was not required to pay immediately and had credit line to their account of over Rs. 6,93,000 as per balance sheet dated 31-3-1996, which could be adjusted at the rate of Rs. 4 per share as had been done in the case of second respondent.

14. It was further submitted that the allegations that the petitioners were not willing to give personal guarantee or that the petitioners wanted that earlier guarantees given to Deutsche Bank to be released were totally false. The petitioners case is that during the relevant time June-August 1996 petitioners were never asked to give personal guarantee for the purpose of raising loan for investing in Skycell if asked they would have done so immediately. So far as releasing of the earlier guarantee is concerned they would have written directly to the bank if that were true but there is no such document produced.

15. In regard to the allegation that the petitioners tendered their resignation but the resignation letter was returned it was submitted that the same was false, and fraudulent. The respondent has filed a forged photo copy of the alleged resignation letter of the petitioners purporting to bear his initials resigning from the Board when their case is that the resignation letter was not accepted and returned to the petitioners No. 1. It was submitted how could a photo copy be made when the resignation letter was immediately returned to the petitioners.

Besides no resignation letter of petitioner No. 2 has been produced though it is alleged that both petitioner Nos. 1 and 2 tendered their resignation.

16. As regards the allegation that the petitioners offered to sell their shares in DSS to Second respondent at par to be paid within two years with interest from 21-8-1996, the said allegation has been totally denied and it is submitted that no reasonable person would agree to sell shares and to have them paid for within a period of two years specially when the petitioners were aware that investment in Skycell would have given substantial returns. So far as the alleged decision to increase the authorised capital from Rs. 2 crores to Rs. 9 crores it is submitted that the minutes appear to have been forged or fabricated and no notice of the meeting was served on the petitioners.

Even the Form No. 5 required to be filed with ROC with respect to the increase in authorised capital was not filed within 30 days of 28-9-1996 but only filed on 30-5-1997. Obviously the resolution has been prepared subsequently on a back date. It was alleged that the balance amount of 40,000 equity shares allotted to respondent No. 2 on 21 -8-1996 was to be paid by 31 -12-1997 but there are no

documents to show that the said amount has been paid.

17. So far as the induction of Vikram Nanda as a Director of the company it was submitted that said Nanda was a close friend of the respondent No. 2 and a rank outsider who could not be accepted in a family concern specially when he has not brought any funds to the company. Though he was alleged to have been appointed on 28-9-1996 but the Form No. 32 was submitted approximately after 8 months. Though the respondent opened a new bank account with Bank of Punjab on 27-5-1997 in the name of the respondent company but strangely the opening form does not find mention of the name of Nanda as one of the directors of the respondent No. 1 company.

18. It was submitted that no notice of the AGM dated 28-9-1996 had ever been received by the petitioners and no such meeting was actually held. No evidence had been produced to show receipt of notice in the form of extract of Dispatch register AD Cards or otherwise. When faced with this difficulty, only at the time of final hearing an affidavit dated 14-2-2001 was filed by which copies of some fabricated postal receipts were filed. The necessary statutory Form 23 was filed with the ROC after about 8 months. It is inconceivable that the petitioners having received the notices would not have attended the AGM specially when the share capital was proposed to be raised from Rs. 2 crores to Rs. 9 crores. It is alleged by respondents that prior to 6-6-1997 four other board meetings on 3-3-1997, 3-4-1997, 9-5-1997 and 26-5-1997 had taken place for which notices were sent to the petitioners under UPC but the petitioners did not attend. All the letters under UPC were allegedly posted from Minto Road Post Office on different dates bearing the same Gandhi Stamps have obviously been manipulated and cannot be relied upon. The respondents have alleged that a registered letter was sent to each of the petitioners on 9-5-1997 mentioning therein that 6,25,000 equity shares of Rs. 100 each with paid up capital of Rs. 4 in part payment were being offered and the petitioners could subscribe to the same. The petitioners have denied the receipt of alleged letter and no independent evidence with regards to the dispatch of the said letter had been produced by the respondents. It is inconceivable that having received the letter the petitioners would not have responded knowing fully well that the shares have become very valuable as Skycell had become functional and only

a very small investment at the rate of Rs. 4 per share had to be made. The said shares have been allotted to the respondents 2 and 3. Significantly the share certificates were signed by Bua Singh as the authorised signatory when against him the petitioners had filed an FIR in March 1997 alleging fraud and whereas admittedly according to the respondents, the petitioners continued to be the directors till 6-6-1997 and would have signed the certificates, if they had agreed for the issue of shares to the respondents.

19. Summing up Dr. Singhvi has contended that the petitioners 1 and 2 who were 50 per cent shareholders of the respondent-company have been reduced to a minority by the machinations and manipulations of the respondents 2 and 3 inasmuch as meetings of the Board of Directors have been shown when none was held notice of the meeting and the minutes thereof have been forged and fabricated. Notices of alleged meetings of 21-8-1996 and held thereafter has not been served on the petitioners.

It is apparent from the copies of the notices that they have been typed on the same typewriter and all allegedly sent under certificate of postings issued by the Minto Road Post Office bearing the same Gandhi Stamp though alleged notices were of different dates, covering several months. Shares have been allotted to respondent Nos. 2 and 3 without their being any offer to the petitioners that too on payment of only 4 per cent of the face value of the shares. There was no reason why the petitioners would not have accepted the offer in case the same was offered to them. There was also no reason why the petitioners would agree to the issuance of further shares in favour of respondents 2 and 3 and willingly agree to become a minority shareholder and agree to hand over the company to the respondents 2 and 3 on a platter knowing fully well that the company was to turn round the corner on account of the joint venture with Skycell.

20. Replying to the preliminary objections raised by the respondents regarding the maintainability of the petition on the ground that the petitioners were holding less than 10 per cent of the shares of respondent No. 1, Dr. Singhvi, the learned counsel has amongst others relied upon the decision in the case of TNK Govindaraju Chetty & Co. v. The Kadri Mills (CBE) Ltd [1998] 3 Comp. LJ 329

(CLB), wherein it has been held that where petitioners held required percentage of shares before further allotment of shares which have been impugned in the petition, the petition was held to be maintainable.

21. As regards the question of oppression to the petitioners in the facts of the present case, the learned counsel has relied on the decision of TNK Govindaraju Chetty's case (supra) as well as the decision in the case of Farhat Sheikh v. Esemem Metal Chemicals (P.) Ltd. [1996] 87 Comp. Cas. 290 (CLB), wherein it was held that allotment of shares excluding deliberately some shareholders was an issue which could be agitated as an act of oppression in a petition under section 397/398. Reliance has also been placed on the decision of the Andhra Pradesh High Court in the case of CN Setty v. Hillock Hotels (P.) Ltd. [2000] 1 Comp. LJ. 18 wherein on a consideration of large number of decisions it was held in the facts of the said case that the petitioners who was having equal stake in the company and was associated with the company from the beginning but was not put on due notice of the proposed allotment of additional shares, would undoubtedly tantamount to acts of oppression within the meaning of section 397. Reliance was also placed on the case of Dipak G. Mehta v. Anupar Chemicals (India) (P.) Ltd. [1999] 98 (N.A.) Comp. Cas. 575 (CLB) where additional shares were issued to benefit a particular shareholding group and notice of the Board meeting was not given to all the directors the transfer was held to be invalid. Reliance was placed on the case of P.D. Chitlangia v. Trinity Combined Associates (P.) Ltd. [1999] 4 Comp. LJ 514 (CLB) wherein a family company major decisions were taken in the Board meeting without the presence of all the family directors it was held to be an act of oppression and all acts in pursuance of the Board decisions was declared as null and void. Reliance was also placed in the case of S.T. Ganapathy Mudaliar v. S.G. Pandurangan [1999] 1 Comp. LJ 350 (CLB) wherein allotment of additional shares were made to certain shareholders to the exclusion of others in a family company to gain undue advantage and further the allotment had actually been made against certain credits standing in the name of the respondent without fresh cash having been brought, the CLB had cancelled the allotment of the additional shares in favour of the respondent and passed consequential orders.

22. As regards the authenticity of notices sent through certificate of posting, the learned counsel has also sought support from a decision of the Supreme Court in the case of Shiv Kumar v. State of Haryana 1994 (4) JT 162 wherein on the facts of the said case the Apex Court had held that it was not felt safe to decide the controversy on the basis of certificates of posting produced before them and it was observed that it was not difficult to get such postal seals at any point of time. For the same purpose the learned counsel has also referred to the decision in the case of Stridewell Leathers (P.) Ltd. v. Shoe Specialities (P.) Ltd. 1996 (1) CLJ 426 (CLB) and on the case of Akbar Ali Kalvert v. Konkon Chemicals (P.) Ltd, 1994 (3) CLJ 102 (CLB) wherein it was observed that certificate of posting can be got hold of without actually putting the letters in post and in case of dispatch under postal certificate a general presumption of posting may be drawn, however, the said presumption was rebuttable.

23. In the facts of the present case where the matter related to a family company comprising of two brothers and their wives, the learned counsel submitted that the respondents have exercised the power solely for their personal aggrandizement and to take control of the company by playing fraud and fabricating minutes by placing reliance on manufactured postal certificates. In view of the settled position as laid down in the aforesaid cases the reliefs prayed for in the petition as sought to be amended vide application CA No. 3 of 99 dated 2-1-1999 deserved to be granted.

24. The learned counsel for the petitioners strongly contended that the fraud played by the respondent would be evident from a registered letter sent to the petitioners by the respondent No. 2, subsequently during the pendency of the present case, the envelope of which was opened before the CLB in the hearing dated 19-12-1998 and the said envelope was found containing some other paper instead of the purported notice of the AGM. The CLB had recorded the same in its order dated 19-12-1998. It was argued that if such fraud could be played when the matter was pending before CLB the allegation of the petitioners that the notices and the minutes of the meeting were forged stand fully substantiated. It was submitted that the facts of the case amply demonstrate that the respondents have acted in an oppressive and prejudicial manner to the petitioners and their actions

completely lack probity and fair dealing.

25. Initiating the arguments on behalf of the contesting respondents the learned counsel Shri Vibhu Bhakru contended that apart from the fact that the present petition is not maintainable in terms of section 399 but also is liable to be dismissed as an abuse of the process of law. It was submitted that the petitioners had no faith in the businesses of the company hence refused to contribute any funds for the same. They voluntarily withdrew from the business of the company and it was left to the respondents 2 and 3 to raise funds by selling their assets and to arrange the requisite funds by their own efforts. When the petitioners were offered to take shares of the respondent company to raise its equity base as the company needed funds the petitioners declined to do so. Consequently the respondents were allotted the shares issued. Now finding that the investment made by the respondents in Skycell will become a profitable venture the present petition has been filed feigning ignorance of the affairs of the company for over two and a half years. The petition is, therefore, barred by laches and is liable to be dismissed as this Board is exercising its equitable jurisdiction. In support of this submission Learned Counsel has referred to the decision of the Supreme Court in the case of Gattulal v. Gulab Singh AIR 1985 SC 547 and relied on the following observation : "... a Court will not aid those who can be shown to have remained quiet in the hope of being able to evade responsibility in case of loss, but being able to claim a share of gain in case of ultimate success." (p. 549) 26. Replying to the submission of the petitioners that the shareholding of the respondent company was held equally between the family of the petitioners and the respondents, the learned counsel has contended that the said submission was incorrect and the petitioners have deliberately withheld the annexure which was the part of the compromise decree and which discloses that so far as the company Pure Drinks (P.) Ltd. was concerned the shares of late S. Daljeet Singh devolved on his two sons namely, Ajit and Satwant in the ratio of 564 to 566. If the intention was to divide the shares equally then both Ajit and Satwant would have got 565 shares each. In the same manner in the respondent company the one share belonging to S. Daljeet Singh was given to Satwant deliberately and therefore the shareholding between the two brothers were not equal. Further the allegation that said share was held in trust was without any basis and an afterthought. Further right from the

time of incorporation Respondent No. 2 was looking after the affairs of the respondent company and was also its Managing Director, it is for that reason that the share belonging to Daljeet Singh was transmitted to second respondent. As regards the allotment of 150 bonus shares the submission of the petitioners that out of the same 75 shares were allotted to the petitioner No. 1 to maintain the equality of shareholding it was submitted that the said submission was incorrect as the 75 shares which were transferred to the petitioners after a year on 25-3-1996 was not the 75 bonus shares but as evident from the share transfer certificate the same were split out of the original shares belonging to the second respondent and this was done as the said petitioner wanted those shares as a price for giving personal guarantee for obtaining loan for respondent company. This contention it was argued finds support from the fact that the bonus shares issued on 25-3-1995 were issued under the signatures of both the first petitioner and the second respondent. Had the petitioners any reservation regarding the issue of bonus shares he would not have agreed to issue the entire 150 bonus shares in the name of the second respondent. As a matter of fact the minutes of the meeting of the Board of Directors held on 25-3-1996 which was attended by the first petitioner would go to show that the old share certificates held by the second respondent were split in order to facilitate the transfer and one Rajesh Arora was authorised to register the transfer.

27. Appearing along with Shri Bhakru for the respondents Shri Sarkar, senior counsel has invited attention to the reliefs sought in the petition and has contended that as the petitioners have not challenged the allotment of shares made in favour of the second and the third respondents nor sought their cancellation they cannot be permitted to challenge the same in their oral submission. The learned counsel has further contended that the case of the petitioners is that no meeting of the Board of Directors were held after the year 1995 and they have also challenged the meeting dated 21-8-1996 by which 40,000 shares were allotted to the second respondent, as fabricated and manipulated. In paragraph 18 of the petition the petitioners were admitting that they participated in the management till June, 1996 and it was unbelievable that they would not be aware of the Board Meetings held at least till that date. Counsel contended that it is evident from the Articles that Table 'A' applied to this company

and as per Regulation 73 the Directors could call a meeting of the Board. Both the petitioners were directors and had equal representation in the Board, therefore they could call a Board meeting themselves if none were held after 1995.

Their silence makes their stand unbelievable. It is submitted that the petitioners had full knowledge about the investments to be made in Skycell and the First petitioner had participated in the Board meetings after the year 1995 till 21-2-1997 but has deliberately denied having participated in Board meeting after 1995. Drawing attention to the minutes of the Board dated 5-9-1994 (page 81 of Vol. VI) the learned counsel has pointed out that in the said meeting the question of investment in the shares of Skycell was discussed and the first petitioner was found differing regarding investment in Skycell and was not optimistic about its prospects. Again in the Board meeting dated 21-11-1994 the question of finding finances for investment in Skycell was discussed in the presence of the petitioners. In the meetings of the Board dated 27-4-1994, 20-2-1995 and 28-3-1995 the question of issuing bonus shares in respect of the first respondent was being discussed for raising the authorised share capital of the company from Rs. 10 lakhs to Rs. 2 crores and in Board meeting dated 28-3-1995 the said bonus shares were issued. This was done to raise finance for investment in Skycell and the first petitioner was present in the said meetings. Not only this, the bonus share certificates were also signed by the first petitioner as director. The petitioners were trying to represent that they were not aware of the contribution required to be made for investment in Skycell Shares, as they were trying to show that no board meeting was held after 1995. They have deliberately not disclosed the date of last meeting attended by them. In any case as noticed above the matter regarding the Skycell matter was being discussed in the meetings during 1994-95. The stand taken by the petitioners is also belied by the fact that the feasibility report regarding the investment towards equity of Skycell has been annexed by the petitioners themselves (page 90/Vol. I) which was drawn around Sep.

1995 and wherein it was shown that an investment of Rs. 5.25 crores were required to be made by the first respondent company as equity contribution of Skycell. This was also inconformity with the admitted decision of the Board of Directors of the respondent company as recorded in its meeting of 28-3-1995, the

minutes of which indicate that a sum of Rs. 5 crores were required. As noticed above the first petitioner was present in the said meeting. That apart with a view to raise finance for the equity participation in Skycell a loan of Rs. 4.5 crores was being negotiated through one Atul Goel from South Asian Financial Exchange (SAFE). The fact that the said funds did not materialise is also admittedly known to the petitioners. A complaint was filed by the respondent company against Atul Goel through Shri P.Ramachandran who was given a power of attorney on behalf of the company in the Board Meeting dated 3-10-1996 presided by First petitioner.

Ramachandran was functioning directly under the first petitioner as Senior Manager (Legal) of Pure Drinks (New Delhi). According to the learned counsel the meeting of the Board dated 21-8-1996 has to be viewed in this backdrop. Funds were being required for investment in the equity of Skycell but the petitioners were not interested in bringing funds or making any investment or even prepared to give their personal guarantee. Further the fact that meeting dated 21-8-1996 was actually held and the petitioners had full knowledge about it as they participated is also corroborated from the fact that the minutes of the said meeting were confirmed in the Board Meeting of 12-9-1996 in which the petitioners were not present but the minutes of the meeting dated 12-9-1996 was confirmed in the minutes of the board meeting dated 3-10-1996 chaired by the first petitioner.

28. The learned counsel has further submitted that no grievance regarding non-receipt of notice was ever raised by the petitioners prior to the present proceedings. Further there was no practice of the directors signing the attendance or the minutes register of the company. The meetings chaired by the first petitioner bear his signature as Chairman but, those minutes have never been signed by any other director therefore, no grievance can be made that the minutes dated 21-8-1996 are not signed by the petitioners.

29. It has been contended that the petitioners were never interested in the project of Skycell and wanted the company to exit from the same and dispose of the shares. In this connection the learned counsel has drawn attention to the minutes of the Board dated 5-9-1994 where the proposed investment in Skycell was considered. The first petitioner had objected to the investment in Skycell whereas

the second respondent was optimistic about its future. Further in the board meeting dated 24-6-1996 the minutes record that the first petitioner had desired the company to sell its shares in Skycell. The said suggestion was also reiterated in the meeting of the Board on 21-8-1996. It has been further contended that it was incorrect to contend that according to the terms of the joint venture agreement the shares of Skycell could not be sold. The shares could be sold with the consent of other shareholders or the same could be transferred to other shareholders or sold to third party with their consent.

30. The learned counsel has contended that it is incorrect to submit that there were no urgency of funds with respect to Skycell Investment in the year 1995. Our attention has been drawn to the Board minutes dated 12-9-1995 and 6-2-1996 in which the first petitioner was allegedly present and the requirement of funds for investment for purchase of shares in Skycell was discussed. In this connection our attention was also drawn to pages 58,67, 79, to 95 of the Sur-rejoinder (Vol. II) which are the various correspondences for obtaining funds from SAFE through Atul Goel and letters from the Deutsche Bank requiring the company to make payments of the loan of Rs. 1 crore taken from the bank. That a sum of Rs. 5.5 crores were required by October 1995 was sought to be substantiated from the feasibility report which has been annexed by the petitioners and was in their full knowledge.

Apart from the same there are correspondence on the record (copies annexed to the Sur-rejoinder) showing that the joint venture partners in Skycell had been putting tremendous pressure on the respondent company to bring in their share of contributions. Under the above circumstances it has been contended that it could not be said that there was no urgency for funds. It was also contended that by 1994-95 as admitted by the petitioners himself the Pure Drinks (P.) Ltd. was in dire financial strain. It was therefore quite natural for the petitioners to decline further investments in respect of the Skycell shares and this was reflected in the minutes indicated above where the petitioners had refused to make investments.

31. It has been contended that when the petitioners had refused to make investments the question of increasing the equity base of the respondent company

and the issue of bonus shares was discussed by the Board on 27-12-1994, 20-2-1995 and the said shares were issued on 28-3-1995 and petitioners were present in the said meeting. For the purpose of procuring funds for Skycell shares the respondent No. 2 approached private parties, banks and financial institutions for loans and the minutes of the Board meeting dated 3-5-1995, 1-9-1995, 5-12-1995 and 5-2-1996 shows that the respondents 2 and 3 had obtained loans by giving their shares and personal guarantee as security. In all these meetings the first petitioner was present and had full knowledge of the same. The minutes of the Board meeting dated 8-3-1996 was referred to show that in connection with the loan from Atul Goel the petitioners declined to give personal guarantee and subsequently as per Clause V of the agreement signed with Atul Goel personal guarantee was given by the Second respondent though ultimately this loan did not fructify. According to the respondents the loans which were obtained by the respondents on behalf of the respondent company was being paid by the respondents and the petitioners have not contributed anything towards the same.

32. It has then been contended that it is incorrect to state that for the 40,000 shares allotted to the second respondent on 21-8-1996 the balance amount of Rs. 38,40,000 has not been paid. It was submitted that the said amount has been paid and it is also reflected in the books of account. As a matter of fact the respondents had to sell their personal assets and also raised loans from third parties for raising resources for the respondent company and in this manner raised a sum of over Rs. 2.2 crores which is also substantiated from the report of the Chartered Accountants of the company and has been filed by respondents along with the additional affidavit dated 14-2-2001. Further the complete record of funds inducted by the respondents for could be traced through the bank accounts of the respondents for the year 1997-98 and are not book entries as alleged. On the other hand the fact that the petitioners were not willing to give personal guarantee or security and arrange funds for the respondent company was discussed in various meetings of the Board of Directors held on 25-7-1995, 1-9-1995, 8-3-1996, 24-6-1996, 21-8-1996, 11-12-1996 and 21-2-1997. Further there was nothing to show on the record that any personal guarantees were given by the petitioners after July, 1995 for the loans taken by the respondent company. On the contrary, the petitioners were keen to have their personal guarantee released which were

given to Deutsche Bank will be evident from the recorded minutes of the Board.

33. It has been contended that the letter of resignation of the petitioners is not a fabrication as alleged would be evident from the photocopy of the said letter filed by the respondents. The said letter was tendered at the Board Meeting dated 21-8-1996 by petitioners but the same was not accepted and before returning the original resignation letter a photocopy of the same was not made as the said facility was available in the registered office of the respondent company. The resignation letter and the various minutes signed by the first petitioner bears his signature which could be compared with his admitted signatures and the allegation that the signature has been forged is incorrect.

34. Replying to the contention of the petitioners that by the year 1995 Skycell had become functional and they were aware that the value of the shares would go up and consequently had no reason to decline investment. It has been contended that the same was incorrect and untenable as none of the Cellular Companies which were in business were doing well in the initial period and were running at a loss. Therefore, it could not be said at that stage that Skycell was a profitable venture,

35. It has been urged that one of the grounds of challenge of the meeting dated 21-8-1996 was the appointment of the second respondent as permanent Managing Director. But right from the inception it was the second respondent who was the Managing Director of the respondent company without any protest from the petitioners who never actively participated in the business of the respondent company. The petitioners were more involved in the business of Pure Drinks which had run into financial difficulties by the year 1994-95. The fact that the second respondent was actively managing the respondent company is reflected in numerous documents and various correspondence including those with the joint venture partners of Skycell all signed by second respondent on behalf of respondent company and none by the first petitioner.

Consequently it cannot be said that as the second respondent was made a permanent Managing Director the same was not in keeping with the fitness of things or was in any manner oppressive.

36. So far as the non-submitting of the relevant statutory documents before the registrar of companies within the prescribed period it has been contended that even earlier there was some delay on the part of respondent company submitting the documents with ROC when admittedly First petitioner was in management, due to constraints of staff and late fees had to be paid. On that account authenticity of the documents could not be doubted.

37. In reply to the submission of the petitioners that it was inconceivable that they would agree to dispose of their share in respondent company and wait for receiving the consideration for over two years, it has been contended that the submission was misconceived as the total investment of the petitioners in the respondent company was only Rs. 50,000 whereas they will be getting at least Rs. 75 lakhs for their shares. Therefore, the delay in getting the consideration was well worth it specially when the joint venture was not doing well and large sums of money were required to be contributed for Skycell and payment of loan.

38. It was also contended that the decision to amend the articles to provide voting rights on partly paid up shares was as per the advice of Dinodia and Company (an eminent firm of professional accounts/consultants) as shares were proposed to be placed with third parties as collateral who have desired voting rights for their protection. In fact amendment of articles was an Item in the agenda of the Board Meeting dated 21-8-1996 as per copy of notice dated 7-8-1996 (at page 1.1.5 Vol. II). The idea of placing shares with third parties as collateral was considered even in the meeting of 27-12-1994 attended by the petitioners, therefore, the allegation that it was considered only in Mid. 1997 and minutes of 21-8-1996 are fabricated is *ex facie* erroneous.

39. As regards induction of V. Nanda as a director it was contended that he was a well known businessman and family friend of the parties and his induction without remuneration was for the benefit of the company and no prejudice was caused. In reply to the contention of the petitioners that no notice for AGM dated 26-9-1996 was received and no such general meeting was held, it was contended that notice convening the AGM was dispatched on 23-8-1996 by Regd. Post and the copies of the postal receipts were placed on record by means of additional affidavit dated

14-2-2001. Petitioners case that Regd. Post are fabricated is ex facie untenable. It cannot be believed that the petitioners who are seasoned business people and who contend that they are Directors will remain silent for over two and half years if no AGM was held during this period. It was further contended that the petitioners have taken an omnibus stand that all documents such as minutes, postal receipts, correspondence with third parties, balance sheets are fabricated but have not come up with certain positive evidence to substantiate their allegations.

40. As regards the Board meeting dated 6-6-1997 in which further shares were allotted to respondents 2 and 3, it is contended that the decision to issue further shares was taken by the Board on 9-5-1997 notice of which was sent under certificate of posting as was usual in addition petitioners were personally informed about the meeting by second respondent, however, they did not attend the meeting. Similarly, the decision to allot further shares was sent by the Regd. Post vide letter dated 9-5-1997 (pages 103-104 Vol. II and the Regd. Postal receipts at page 105 of the same volume). That apart second respondent has sworn that he informed the petitioners personally but they declined.

41. Referring to the allegations of the petitioner that an envelope sent to them during the pendency of the present proceedings allegedly containing the notice of AGM dated 18-12-1998 was found by CLB to contain some other papers, the counsel for the respondents have strongly contended that the fact is quite to the contrary and a fraud has been played by the petitioners by opening the Regd. Envelope and switching another letter pertaining certain tax matter which was sent to petitioner by courier on 9-12-1998 and placing the same in Regd.

Envelope. The counsel contends that in response to the letter dated 14-12-1998 from the petitioners counsel for holding AGM, Shri Bhakru, the counsel for the respondent vide letter dated 15-12-1998 after obtaining instructions, wrote back mentioning that notice for AGM has been sent by Regd. Post but notwithstanding the same copy of the notice, annual report and final accounts were being enclosed and sent by courier. Admittedly, these documents were received by the petitioners on 17-12-1998 yet to dramatize the entire thing they did not attend the AGM and sought to open the Regd, Envelope in which they had already switched the

document, before CLB on 19-12-1998. Had there been any intention to keep the petitioners in dark about the AGM there was no question of sending an additional copy through courier.

42. As regards the petitioners claim that they had written four letters to the second respondent making certain complaints regarding functioning of the company, the learned counsel has contended that the said letters were fabricated for the purpose of the present case copies of which have been produced without any proof of dispatch.

43. So far as the allegation of fabrication of certificates of posting and sending all notices of the board meeting from Minto Road post office it was contended that the said Post Office is nearest to the Regd. Office and easiest to reach. Besides, even prior to 1996 notices were sent from the same Post Office. As regards the Gandhi stamp affixed on the postal certificate it has been contended that the same were very much in use and even letters admittedly received by the petitioners from the respondent also contain the same Gandhi stamp and therefore, the Gandhi stamp affixed on the postal certificate cannot be made an issue. Similarly, assuming that the same typewriter has been used to type the notices of the meetings sent during the period the same is of no consequence as the same typewriter was in use in the office of the respondents and, therefore, the notices could be typed on the same typewriter.

44. So far as the cases cited by the petitioners in support of their case the learned counsel has distinguished each of them on facts and has contended that the same do not help the petitioners in the peculiar facts of the present case at hand. In particular the learned counsel has contended that cases cited by the petitioners are those in which the shares were increased mala fide without the knowledge of the petitioners and by the said increase the party concerned had taken control over the company whereas in the facts of the present case the respondents have demonstrated that the petitioners who were fully aware of the allotment of further shares and participated in the meeting but declined to contribute. They were even prepared to sell their shares and resigned from the post of directors. Besides the petitioners were never in majority and the respondents group was always in

management and had one share more.

45. In support of his submissions that there was no oblique motive behind the resolutions to increase the share capital and the same was necessary for subscription in Skycell shares which was in the interest of the respondent company, Shri Sarkar strongly relied upon the Supreme Court decision in the case *Nanalal Zaver v. Bombay Life Assurance Co.*

Ltd. AIR 1950 SC 172 wherein it was held that if the directors exercise the power of increasing share capital for the benefit of the company and at the same time they have a subsidiary motive which in no way affects the company or its interest then the very basis of interference of the court is absent. In para 51 of this judgment Supreme Court observed that if the company was in need for funds the issue of further shares was necessary. This decision of the Supreme Court was followed in the case of *Needle Industries India Ltd.v. Needle Industries Neway (India) Holding Ltd.*[1981] (3) SCC 333. Following the above cases the Bombay High Court in the case of *Jetu Jacques Taru Lalvani v. J.B.A, Printing Ink Ltd.* [1997] 88 Comp. Cas, 759. Observed "Merely because the minority shareholders were required to make substantial payment for buying the shares this was no ground for holding the resolution as oppressive of the minority unless it was shown that the Board of Directors had acted with some oblique motive" (p. 769). On the same proposition, Shri Sarkar also relied on *Maharani Lalita Rajya Lakshmi v. Indian Motors Co. Ltd*, AIR 1962 Cal, 127, *Pushpa Prabhudas Vora v.Voras Exclusive Tools (P.) Ltd.(CLB)* and *Rajinder Kumar Malhotra v. Harbanslal Malhotra & Sons Ltd.* [1996] 87 Comp. Cas. 146 (CLB).

46. We have considered the pleadings and the arguments of the counsel.

In this petition mentioned on 17-9-1998, the petitioners had voiced their grievances in relation to their being kept in dark about the affairs of the company by the respondents by not holding any Board meetings or general body meetings and that the respondents had been mismanaging the affairs of the company. In the first reply dated 19-11-1998, the respondents, while reserving the right to file a detailed reply, disclosed that further shares had been issued, new members had been admitted by transfer of shares, one Shri Nanda had been appointed as a

director and that the petitioners had ceased to be the directors of the company. However, this reply did not contain any relevant document. The petitioners filed a rejoinder to this reply challenging the stand of the respondents in these matters and thereafter they filed CA 3/99 seeking to amend the petition incorporating therein reliefs relating to cancellation of the allotment and restoration of the directorship. No reply appears to have been filed on this application. However, the respondents filed a Sur-rejoinder dated 8-2-1999 wherein they had annexed a number of documents after which the petitioners also filed a Sur-rejoinder dated 27-7-1999. Even though Shri Sarkar contended that in the petition, no relief has been sought in regard to the allotment of shares and cessation of office, the fact is that they did file an amendment application before completion of the pleadings. From the records, it is seen that this application does not seem to have been formally heard, but the learned counsel for the petitioners submitted that it was kept pending to be heard along with the petition. Since, the main allegation of the petitioners in the petition relates to their exclusion from the management and since both the sides have argued extensively on the various Board Meetings/Minutes, and since all the disputes relate to the Board Meetings, even without any specific prayer relating to any item, appropriate relief could be granted based the findings on the allegations, more so, when the allegations arise out of the disclosures in the reply filed and based on the documents filed thereafter.

47. When this petition was mentioned on 17-9-1998, certain interim reliefs were sought for ex parte. With a view to hear the respondents before granting any reliefs, the petitioners were directed to serve a copy of the petition on the respondents and the matter was kept for hearing on seventh December, 1998. On this day, this Bench directed that the company should furnish a fortnightly statement of receipts and payments to the petitioners and that the petitioners would be given inspection of records and documents of the company as per the list to be furnished by them. In regard to the minutes of the Board meeting since, the respondents objected to the inspection by the petitioners, the Bench Officer was directed to authenticate the Minutes Book. It was also directed that the company would not invest, disinvest an amount exceeding Rs. 25,000 in respect of a single transaction, till the disposal of the petition. In the hearing held on 9-2-1999, the petitioners were permitted to inspect the Directors' Minutes Book till 6-6-

1997 up to date of which according to the respondents, the petitioners were directors. In the hearing held on 7-4-1999, on an application filed by the respondents, the company was permitted to take all steps in regard to the sale of investment in the shares of Skycell Communications Private Limited, however, with the stipulation that before sale of the shares, the matter should be brought before this Board. During the course of the proceedings it was also intimated that the parties were attempting to settle all the disputes within the family, due to which, the hearing of the petition was deferred from time to time. In the meanwhile, both the side filed a number of applications and this Bench also passed suitable interim orders. Since the compromise efforts had failed, the petition was heard on merits and the counsel also filed their written submissions later.

48. The respondents have raised the issue of maintainability of the petition in terms of section 399 on the ground that with the increase in the issue capital, the share holding of the petitioners has come below 10 per cent and since there are more than 20 shareholders, by number also, they are below 10 per cent and as such this petition is not maintainable. As we have pointed out in an earlier paragraph, in the petition, the petitioners have claimed 50 per cent shares in the company and only on filing of the reply, according to them, they had come to know of the increase in the issued capital of the company. By an amendment application, they have challenged the further issue of shares. But for the issue of further shares, their shareholding would satisfy the provisions of section 399. In such situations, where the qualification to apply has been affected by further issue of shares or by admission of new members, which is also challenged, this Board has been taking a view that in such cases, the Board would first adjudicate on these complaints before examining other allegations. Dipak G.Mehta's case (supra), Farhat Sheikh's case (supra), TNK Govindarajulu Shety & Co.'s case (supra). Therefore, whether this petition is maintainable in terms of section 399 or not would depend on the findings given on the allegations relating to issue of further shares and admission of additional members by transfer of shares and therefore cannot be dismissed in limini as sought for by the respondents.

49. Even though there are a number of allegations in the petition, the principal complaints of the petitioners relate to the allotment of further shares to the

respondents and the exclusion of the petitioners from the management, induction of additional members and appointment of non-family members as directors and they have sought for consequential reliefs. These complaints and the reliefs arise out of their claim that the company is a family company with equality in the shareholding and equal participation in the management. According to the respondents, the shares were allotted to themselves only in view of the reluctance of the petitioners to invest in shares and their exclusion from the management was due to operation of law and that additional members were admitted as members and non-family members were appointed as directors only with the view to get their assistance in mobilizing funds for the company.

50. The admitted position is that the signatories to the memorandum were the first petitioner and the second respondent and they were also the first directors. Later on, their wives - the second petitioner and the third respondent - were admitted as members and when further shares were issued after their admission, the same was done in a manner that share holdings of the two groups remained equal. From each group, there were two directors. (The father, holding 1 share was also a director till he expired). Thus there was equality in the shareholding and directorship. There is a dispute in regard to the 1 share held by the father and transmitted to the second respondent, as indicated in the arguments. We find that the legal heirs of the deceased father entered into a compromise according to which his investment in the shares of various companies were divided equally between the first petitioner and the second respondent. Wherever his investment in a company was in odd number, the same could not be divided equally and one of the two sons got one share extra after dividing the balance equally. Except for the shares of one company wherein the paid up value of the shares was Rs. 1000 each, the second respondent had been given the extra share in respect of all other companies and since the deceased had only one share in the first respondent company, the same had gone to the second respondent. It appears that the division all the shares held by the deceased in various companies was done in such a way that there was equal distribution in terms of the paid up value of the shares. Thus the first petitioner was allotted shares with the total paid up value of Rs. 1,25,420 and the second respondent Rs. 1,25,430. It is on record, whatever might be the reason for doing so, that, after bonus shares were issued the first

petitioner got 75 shares transferred from the second respondent, which maintained the equality in the shareholding between the two groups except for the one share extra with the second respondent. Further, there was equality in the remuneration drawn by the second petitioner and the third respondent. For some time, the father of the petitioners second respondent was also a shareholder with one share. These facts, taken together with the original name of the company, would indicate that the company is a closely held family company, wherein the principles of quasi-partnership and legitimate expectations could easily be applied. It is also the stand of the respondents, that when further shares were issued, the same were offered to the petitioners, indicating that the respondents had recognised the family nature of the company. In such family companies, any disturbance in the long held shareholding/equal participation in the management and admission of non family members as shareholders/directors, would merit winding up of the company on just and equitable consideration. However, as pointed out by Shri Sarkar, relying on various case laws that, if the issue of shares is bona fide and in the interest of the company as also admission of new members, then, such issue of shares and admission of new members cannot be considered to be acts of oppression even if the same upsets the exiting shareholdings/membership. Keeping these aspects in view, the grievances of the petitioners have to be examined.

51. At the outset, we would like to record that in respect of all the complaints, the respondents have justified the action on the basis of various minutes of the board of directors, which according to the petitioners are fabricated. Initially, when the petitioners desired inspection of the minutes books, the same was resisted by the respondents on the ground that the petitioners might misuse the same in other proceedings between them and therefore, this bench only directed the bench officer to authenticate the minutes books, Later on, at the insistence of the petitioners, they were allowed inspection of the minutes books and were also given copies of the same. After carrying out the inspection, the petitioners alleged that in many of the minutes their attendance, even though they were not present for want of notice, had been recorded and certain statements had been falsely attributed to them. They have alleged various infirmities in the minutes book and have claimed that these would indicate that the minutes were fabricated. Unfortunately, the minute books reportedly lodged with the bench could not be

traced. Therefore, in the absence of the original minutes books, the perusal of which would have enabled us to form an opinion on the allegations of fabrication, we are not in a position to categorically accept or reject this allegation, other than drawing presumptions based on the facts and circumstances of this case.

52. It is necessary to note that besides this family company, the parties to the proceedings have other family companies, the main one being Pure Drinks (New Delhi) Limited. There have been certain disputes between the parties in connection with that company and certain proceedings have also been initiated. The petitioners have filed a list of documents in relation to that company on 10-7-2000 from which we find that in the middle of 1996, the disputes in that company between the parties had escalated. It shows that the personal relationship between the parties had not been cordial for quite some time. This aspect also may have to be kept in mind in dealing with the allegations in the petition.

53. Before we deal with the allegations relating to allotment of shares and cessation of office by the petitioners, it is essential to deal with the issue relating to admission of new members arising out of transfer of shares by the respondents. According to the respondents, the present strength of members of the company is 24. In other words 20 new members have been admitted by transfer of shares. The justification given for such transfer of shares is that the company being private company cannot take deposits from other than members and that with the view to take deposits from them, they were admitted as members.

Further it is also mentioned that some of the shares have been pledged and the pledgees desired to become members. It appears that the number of shares transferred is only 25 to each of the transferees and that other than mentioning that deposits have been taken and shares have been pledged against loans, no details of the same have been furnished.

Further, there are no details as to when the shares were transferred.

From the copies of the minutes of the board meeting available on record, new members had not been admitted at least till 6-6-1997. Since the reply to the petition was filed in November 1998 in which the admission of new members has

been disclosed, the admission should have taken place between June 1997 and November 1998. In terms of Section 82, more particularly in case of private companies, the transfer of shares has to be in conformity with the Articles. We find that Article 7 permits transfer of shares to non members (without prejudice to the provisions of Article 8 which permits transfer of shares to a member or to any close relation of a member) provided the directors consider that the admission of the transferees would be in the interest of the company. We do not have the benefit of perusing the minutes of the board meeting in which the approval to register the transfer of shares was taken to examine the material before the board to consider that their admission would be in the interest of the company. Even otherwise, there is nothing on record to show that the company has been benefited by their admission as members as by then the investment in Skycell shares had taken place. The number of new members and the insignificant number of shares transferred to them by which they became members and the timing of the transfers etc. would indicate a possibility that they were admitted as members perhaps with the view to reduce the percentage of the petitioners' membership below 10 per cent.

In a company in the nature of a quasi-partnership, admission of new members should be with the consent of all the existing members, especially when there are only two groups holding 50 per cent shares each. Further, the admission of the transferees as members has not been established to be in accordance with the articles, and therefore, the transfers cannot stand. In that case, the petitioners constituting 50 per cent of the membership before the admission of new members, can maintain this petition and therefore they satisfy the alternate limb of the provisions of Section 399.

54. According to the petitioners, they had not attended any board meeting after June 1996 for want of notice and therefore, their alleged attendance shown in the board meetings after June 1996 is fraudulent.

They have also alleged that some of the statements attributed to them in the meetings attended by them are fabricated by removing the correct minutes and substituting the same with fabricated minutes. The respondents assert that the first

petitioner attended board meetings till February 1997 and the second petitioner up to 21-8-1996 and therefore the decisions taken in the board meetings till then and more particularly on 21-8-1996 were with the consent and knowledge of the petitioners directors.

55. The respondents have produced copies of certificates of posting to evidence sending of notices for the board meetings from the meetings held on 5-2-1996 to 6-6-1997. These copies have been annexed with the Sur-rejoinder dated 8-2-1999. However, the respondents have not replied as to why they did not enclose the same at the first available opportunity-along with the reply to the petition. Further, they have also not indicated as to whether the practice of sending notices for the board meetings had always been through certificates of posting or was started only for and from the meetings held on 5-2-1996. If it is the later case, then, there is no explanation as to why this practice commenced suddenly. The petitioners have also questioned the authenticity of the certificates of posting on the ground of all the certificates containing Gandhi stamps which may not be possible as the certificates were obtained on different days. This may not be a conclusive evidence to doubt the authenticity of the certificates unless the petitioners establish that other stamps of the same denomination were available in that Post Office on the relevant dates.

However, a certificate posting only raises a presumption that a letter is posted and such a presumption is rebuttable especially in view of the fact that certificates of posting are easily obtainable. The cases cited by the learned counsel for the petitioners support this.

Therefore, when the addressee denies receipt of the letter, the onus to prove the posting rests with the sender who has to establish the posting by sufficient corroborative evidence like postage account, dispatch register etc. Since in this case, the respondents have not done so, they have not conclusively established that notices for the various board meetings were sent to the petitioners.

56. A gist of the minutes of the alleged board meeting on 21-8-1996, is given in paragraph 6 ante. As per the minutes, the certain statements had been attributed to the petitioners directors - that they were not willing to give any personal

guarantee, that they advised sale of the Skycell shares, that they offered to sell their shares in the company, that they had submitted their letters of resignation from the Board. In that meeting the decision to allot 40,000 shares at Rs. 4 as partly paid to the respondents was taken including amendment to the articles to provide for full voting rights on the partly paid shares. It was also decided to induct an out side director Shri Nanda. These alleged decisions upsetting the equilibrium in the shareholding and the management have been assailed by the petitioners on various grounds.

According to them, they did not attend the meeting for want of notice, that if they had attended the meeting they would not have rejected the offer for further shares as the shares were offered against the loans advanced to the company and the petitioners had over Rs. 6 lakhs in their credit and that they would not have agreed for induction of an outsider in the family company. Thus according to them the minutes are fabricated.

57. According to the respondents, for a long time, as is evident from the minutes of various earlier Board Meetings, the petitioners were not interested in inducting any further funds in the company and that they were advising the sale of Skycell shares. Therefore, the entire recording in the minutes of the Board Meeting on 21-8-1995 being in consistence with the earlier stand of the petitioners cannot be doubted. The entire case of the respondents rests on the need for money for investment in Skycell shares and the refusal/reluctance on the part of the petitioners either to bring in fresh funds or to stand as guarantor for the loans to be raised. The admitted position as is evident from the feasibility report is that the company needed about Rs. 5 crores to take up 10.5 per cent in Skycell, even though there is a dispute on the timing of the requirement of funds for this investment. In the minutes of the Board Meeting on 25-7-1995 it is recorded that a loan of upto Rs. 2 crores had been arranged from Deutsche Bank and that even though the petitioners were against giving their personal guarantee, finally they were persuaded to do so with the condition they would not agree for any further exposure. It is on record that the petitioners did give their personal guarantee for Rs. 1 crore granted by this Bank. It was in July 1995. In the Board Meeting held on 12-9-1995, it was decided to subscribe to 21,77,693 shares of Skycell. The

consideration for these shares would work out to about to Rs. 2.18 crores. As per the minutes of the Board Meeting on 5-2-1996, the Board had decided to accept the offer of right shares by Skycell of similar number of shares, the consideration of which would again work out to Rs. 2.18 crores. As per the minutes of the Board Meeting on 8-3-1996, it was decided to raise Rs. 4.5 crores as loan from one Shri Atul Goel and it is recorded in the minutes that the petitioners present in that meeting had stated that they would not offer their personal guarantee and that the company should try to get this condition waived. From the minutes of the board meeting on 25-3-1996, we find that the petitioners were not willing to give their shares as collateral for this loan unless 75 shares in the company were transferred from the second respondent to the first petitioner. It is also recorded that 75 shares were accordingly transferred. (According to the petitioner, 75 shares were transferred out of the bonus declared on 1 share which was originally held by their father and the transfer was effected to keep the parity in the shareholdings). However, according to the respondents, in the next meeting held on 24-6-1996 which was reportedly attended by the first petitioner, he suggested selling of the Skycell shares and also expressed that he and the second petitioner would not invest any further funds into the company. As per the minutes of the next Board Meeting on 7-8-1996, in which the annual accounts were reportedly adopted, the Board noting that Skycell was pressing for payment of consideration for the shares, also decided to request Skycell to grant some more time to make the payment. Nothing is recorded about the first petitioner expressing his desire to go out of the company. Nothing has been brought on record to show as to why, so suddenly, the petitioners having 50 per cent shares and equal participation in the Board for a long time and who had given personal guarantee for Rs. 1 crore in July, 1995 and having reportedly got 75 shares transferred as a quid pro quo for pledging their shares as late as in March 1996, should not only offer to sell their shares and also submit letters of resignation from the Board in August, 1996 especially when no financial burden had been thrust on them. Further, in this meeting 40,000 shares were allotted to the respondents at Rs. 4 as partly paid and the Articles were proposed to be amended to provide for full voting rights on the partly paid shares. Further decision to induct an outsider as a director was also taken. These decisions would straight away upset the equilibrium in the

shareholding, voting and management in the company, which, we feel no person of ordinary prudence would have agreed. More so when there is nothing in writing from the petitioners expressing their desire to go out of the company.

In regard to the copy of the resignation letter purportedly submitted by the first petitioner, the minutes record that the letter was returned to the petitioners (copy of the purported letter of resignation of the second petitioner was not filed). If so, how a copy of the same was taken has not been explained in the pleadings by the respondents. The petitioners deny to have attended this meeting for want of notice and there is nothing on record to independently establish their presence in that meeting. Further, the petitioners also question the factum of holding this meeting. One independent evidence that could have established that the meeting was held on that day in which allotment of shares took place would be the Form No. 2 filed with the Registrar of Companies. We find that the Form No. 2 was filed belatedly at which point of time, the disputes between the parties had escalated by filing of a suit in March, 1997 by the second respondent.

We also note the respondents have not established that by this allotment, the company was in any way benefited. Therefore, we are of the view that the respondents have not established conclusively that a meeting took place on 21-8-1996 and the petitioners having attended that meeting consented to the allotment of shares and also to the appointment of Shri Nanda as a Director. Further, by this allotment, no money came into the company and the allotment was against the credit balance standing in the account of the second respondent. For us to conclude that the petitioners did attend that meeting and had declined to subscribe to further shares, we have no materials before us to take that view in the absence of any independent evidence. Therefore, we have to perforce come to the conclusion, even assuming that this meeting took place, that the petitioners did not attend that meeting to give their consent to decisions prejudicial to their interest. Since by the allotment of shares exclusively to the second respondent, the equality in the shareholding has been upset without the consent and knowledge of the petitioners, they are right in complaining of oppression as far this allotment is concerned. Further, we also note that the proposal to amend the articles providing for full voting rights in case of poll on partly paid shares is also against the

provisions of Section 87(1)(b) of the Act according to which voting right on poll shall be in proportion to one's share of the paid up capital of the company. As per Section 9 of the Act, any provision in the articles which is in derogation of the provisions of the Act is void.

58. Further allotment of 6,25,000 shares at Rs. 4 partly paid was made in a Board Meeting on 6-6-1997. Neither of the petitioners attended this meeting. Earlier to this meeting, there were reportedly meetings on 9-5-1997 in which the decision to issue the above shares was taken and on 26-5-1997 in which it was reported that the petitioners had not responded to the offer of shares. These shares could not have been issued without increase in the authorized capital. It is the claim of the respondents that the increase in the authorized capital was decided in a board meeting held on 21-8-1996 and the approval of the general body was obtained on 28-9-1996. The petitioners deny their attendance in these meetings for want of notice. However, unlike the earlier allotment of 40,000 shares for which no sufficient justification had been shown, in respect of this allotment, the respondents have furnished sufficient justification. From the documents filed by the respondents in their Sur rejoinder, it is seen that even as late as in May, 1997, the company had not paid the consideration for the right issue made in January, 1996 and the second respondent had been exploring various possibilities of raising funds for this purpose. We find from the letter dated 28-5-1997 of Credit Agracole Indoseuz suggesting increase in the subscribed capital of the company substantially and to increase the paid up capital at a later date, so that funds could be organized to invest in Skycell shares. From the Balance Sheet for the year 1997-98 we find that the company had raised about Rs. 5 crores as external commercial borrowings (ECB). Thus, we find justification to issue further shares as partly paid. Therefore, we do not doubt the bona fide of this issue of shares and the only issue for consideration is whether the petitioners were offered the shares, especially in view of the recording in the minutes of the Board Meetings on 4-4-1997, 9-5-1995 that the shares would be offered to the promoter directors. In fact, in the minutes of the Board Meeting on 26-5-1997, it is recorded that the second respondent mentioned that he had sent offer letters to the petitioners. According to the respondents, the offer letters were sent to the petitioners by registered post, the receipt of which is denied by the petitioners. The respondents have also

produced copies of the receipts given by the Post Office to evidence booking of the registered letters on 9-5-1997. In the offer letter, the petitioners were requested to subscribe to at least a part of the total offer since the shares were being offered at a low paid up value. Referring to the postal receipts, the learned counsel for the petitioners pointed out that the letters had been addressed to 9, Friends Colony, while the petitioners reside at 9, Friends Colony (West) and therefore, the letters were not properly addressed and as such no proper offers had been made. We find that in the body of the offer letters, the addresses of the petitioners had been correctly shown, and it is quite possible that while issuing the receipts, the Post Office had omitted to add the word 'West'. Any way, when the petitioners deny the receipt of the offer letters and since there is no other independent evidence to show that they had received the letters, whether by way of acknowledgement signed by them or certificate of delivery from the Post Office, the only conclusion that we could reach is that the petitioners had not received the offer letters. As far as the complaint of the petitioners before this Bench on 19-12-1998 that the envelope sent by the company allegedly enclosing therewith the notice for the AGM, actually contained some other papers, we do not consider the same as material, since, the petitioners received the notice for the meeting by courier.

59. One of the main complaints of the respondents is that the petitioners were never interested in the company acquiring the shares in Skycell and that they advocated sale of the shares of Skycell. The reluctance of the first petitioner to invest in Skycell shares is recorded in the minutes of the Board Meeting on 5-9-1994. In paragraph 3(f) of the Sur-rejoinder, the petitioners have alleged fabrication of these minutes. However, in the next Board Meeting showing the attendance of the 1st petitioner, it is recorded that various sources for investment in Skycell should be attempted. Subsequently, decision to issue bonus shares was taken with the view to enhance the capital base which would facilitate raising funds. An amount of Rs. 1 crore was raised from Deutsche Bank with the personal guarantee, of the petitioners and decision to raise further Rs. 5 crores from Atul Goel was taken. In all these meetings, the presence of the first petitioner is recorded. Thus, from the materials available, we are not in a position to come to the conclusion that the petitioners, were against investment in Skycell shares.

Even though it is contended by the respondents, based on the minutes that the petitioners were not interested in bringing additional funds, the fact is that the respondents themselves have invested only about Rs. 27 lakhs by way of share capital by allotting 6,65,000 shares at Rs. 4 per share. (It is reported that the respondent had subsequently paid balance Rs. 96 due of 40,000 shares). Thus substantial amount of investment in Skycell shares had come from borrowings. Again, it is the stand of the respondents that the petitioners advocated the sale of Skycell shares indicating that they were not interested in investment in these shares.

We find that the respondents themselves had proposed sale of the shares held in Skycell in the notice for the Board Meeting convened on 6-6-1997. As a matter of fact, the respondents filed a formal application seeking for permission to sell the Skycell shares.

Therefore, when the respondents themselves had proposed the sale of the shares within a short time after the petitioners had allegedly made this suggestion, the respondents cannot hold the said proposal against the petitioners.

60. The next issue is about the cessation of the petitioners as directors. According to the minutes of the board meeting on 6-6-1997, the petitioner did not attend the board meetings held on 3-3-1997, 30-4-1997, 9-5-1997, 26-5-1997 and 6-6-1997 inspite of notice and without leave of absence and therefore they had ceased to be directors in terms of Section 283(1)(g) of the Act. They have enclosed copies of certificates of posting for having sent the notices for the meetings on 30-4-1997, 9-5-1997 and 6-6-1997. The petitioners deny to have received these notices. As per Section 283(1)(g), a director ceases to be as such if he fails to attend 3 consecutive Board Meetings without leave of absence or all Board Meetings within a period of 3 months whichever is longer. In the absence of any proof of sending notices for the meeting on 3-3-1997, the period of 3 months would commence only from the meeting on 30-4-1997 as held by this Board in *Vinod Kumar Mittal v. Kaveri Lime Industries Ltd* [2000] 2 CLJ 354 and therefore, invoking the provisions of Section 283(1)(g) for their absence in the meetings on 30-4-1997, 9-5-1997 and 6-6-1997 is not correct, even assuming that notices were sent for

these meetings. Further, in family companies leave of absence is normally given without oral or written request and it appears that the same is the practice in this company also as is evident from the minutes of various Board Meetings that leave of absence had been granted to the directors. Thus, we find that the stand of the respondents, that the petitioners had vacated office is not correct. One other important aspect we have noticed is that as per the minutes, there was a Board Meeting on 7-8-1996 attended by the first petitioner in which the accounts for 1995-96 was adopted and the second and third respondents had been authorized to sign the accounts. From the earlier minutes, we find that from 1990 onwards, the annual accounts were authorized to be signed only by the first petitioner and the second respondent. By this time, there is nothing on record to show that the first petitioner had expressed either to quit as a shareholder or as a director and therefore, he would have definitely objected to this change in the practice if he was really present in that meeting.

This give us an impression that attempts to exclude the petitioners from affairs of the company had started even then. Insofar as the induction of out side directors, in the absence of any material to show that the company had benefited by their induction, the same rationale applied to the induction of new members, would apply in this case also and if so, the respondents could not have inducted non-family directors without the consent and knowledge of the petitioners. In view of this, the contention of the petitioners that their cessation of office and appointment of Shri Nanda as a director are based on fabricated minutes one does not need any examination even though the petitioners have also brought to our notice, the application filed by the respondents to open a bank account with Punjab National Bank, Karol Bagh on 27-5-1997 in which in the list of directors, the name of Shri Nanda does not find place to contend that the minutes of the AGM on 28-9-1996 showing the appointment of Shri Nanda as a director is a fabricated one and also the contention raised in the application filed after the hearing was concluded that the company had shown that the petitioners were directors in the application to the RBI on 7-7-1997.

61. Even though we have held that by allotment of further shares, inducting new members and by excluding the petitioners as directors on the ground of operation

of law, the respondents have acted in a manner oppressive to the petitioners, we also note that the petitioners seem to have abandoned their interest in the company. In the proceedings under section 397/398, the conduct of the parties is a relevant consideration. From a perusal of the board minutes and the minutes of the general body meetings, we find that the petitioners were active in attending the board meetings as well as general body meetings earlier.

Being 50 per cent shareholders and having equal representation in the Board, if their claim is that they had not attended any board meetings after the middle of 1996 for want of notice, there is nothing on record to show that they had at any time raised the issue with the respondent directors. Being business persons, they should be aware of the statutory provisions relating to holding of Board Meetings and general body meetings. Further, it is in their knowledge that the company had to invest substantial funds in Sky-cell. They do not appear to have taken any interest in ensuring that the commitment to invest in Skycell was complied with especially when they assert that they had always wanted to invest in those shares. It is on record that due to the efforts of the second respondent only that the company was able to arrange for funds through ECB for investment in Skycell shares and besides investing over Rs. 65 lakhs in the shares of the company they have also brought in over Rs. 50 lakhs as loans (as per B/S as on 31-3-1998). As per the statement of funds inducted into the company furnished by them, the respondents have funded the company to the tune of about Rs. 2 crores during 1996-2000. Thus, while, we have held that the petitioners have been oppressed by the respondents, we also find that investment in the Skycell shares could be possible only due to the efforts of the respondents. This aspect has to be kept in mind in molding appropriate relief in this case.

62. Under these circumstances, granting the prayer of the petitioners that they should continue to hold 50 per cent shares in the company and that they should have equal representation on the Board, not only be unfair to the respondents who had nurtured the company when the petitioners had not taken any interest in the affairs of the company, but also, in view of the estranged relationship between the parties only escalate further disputes in the affairs of the company which would not be in the interest of the company. Under the circumstances, taking into

consideration the efforts of the respondents in mobilizing funds for the company and the inaction of the petitioners in involving themselves with the affairs of the company for over 2 years, we are of the view that the petitioners should go out of the company by selling their shares to the respondents/ company on receipt of fair value for their shares.

63. Normally when we direct a shareholder to go out of the company, the option to purchase his shares is given to the other side or the company. In the present case, we find that the respondents themselves have been borrowing money and the company also does not have funds. But at the same time it is on record that the company is proposing to sell the Skycell shares by which the company can generate funds to purchase the shares of the petitioners. Accordingly we direct the petitioners to sell their shares to the company on the fair value to be determined by the statutory auditor of the company. The valuation will be made on the basis of the balance sheet as on 31-3-1998, being the proximate date of the petition. Since there are 6,25,000 shares as partly paid, the share of the petitioners in the company shall be determined on the basis of the paid up capital of the company as on 31-3-1998. Since the respondents had brought in substantial funds into the company other than investment in shares, by way of loans and advances, they will be entitled to bank rate of interest as on 31-3-1998 to be provided on such loans and advances at the time of valuation. The parties are at liberty to make oral and written submissions by 30-9-2001 before the valuer who, after taking the same into consideration, prepare a draft valuation report and furnish copies of the same to both the sides by 31-10-2001. They are at liberty to react to the draft report by 20-11-2001 where after, the valuer will prepare his final report by 15-12-2001. He will also take into consideration all the subsequent events having a bearing on the valuation as may be submitted by the parties. Once the valuation is done, the company will, subject to the sale of the shares in Skycell by that time, make payment for the shares within 30 days at which time the petitioners will hand over all the share certificates to the company for cancellation. On payment of the consideration for the shares, the company will reduce its share capital to the extent of the face value of the shares. In case, the sale of shares in Skycell had not taken place by that time, the consideration for the shares will be made within 30 days of sale of the shares in Skycell. Since we have held that the stand of the

company that the petitioners had vacated the office of directors under Section 283(1)(g) is not in accordance with that section, we could have declared them to be the directors of the company till their shares are purchased but we only direct that till the consideration is paid, the company should furnish copies of all the Board minutes to the petitioners, so that they are kept in knowledge of the affairs of the company. They will also be entitled to receive notices for all the general meetings of the company till then.

64. With the above directions the petition is disposed of without any order as to cost. All the interim orders are vacated.

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