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SooperKanoon Citation : sooperkanoon.com/48189

Court : Company Law Board CLB

Decided On : Sep-21-2007

Reported in : (2008)215CTR290

Judge : K Balu

Appellant : G. Ramana Reddy and ors.

Respondent : Vijaya Durga Estates Private

Judgement :

1. The petitioners collectively claiming 20.83% of the paid up capital of M/s. Vijaya Durga Estates Private Limited ("the Company"), aggrieved on account of certain alleged acts of oppression and mismanagement in the affairs of the Company have invoked the provisions of Sections 111, 397 & 398 of the Companies Act, 1956 ("the Act") seeking the following reliefs: a) to direct the Company rectifying the register of members in respect of 1025 shares by restoring the names of the petitioners; b) to direct the respondents to deliver the share certificates in respect of 615 shares in favour of the petitioners 1 to 5, in lieu of duplicate share certificates; c) to declare that the petitioners 1 & 4 are directors of the Company; d) to remove the second respondent from the office of director and managing director; e) to restrain the Company from selling, transferring, encumbering or in any manner dealing with the immovable properties of the Company; g) to surcharge the second respondent consequent upon the outcome of such investigation.

2. Shri R. Murari, learned Counsel, while arguing in support of the petitioners submitted: 2.1 The main object of incorporating the Company is to operate a scheme, to buy and develop agricultural lands, to be handed over to the subscribers and accordingly a scheme was formulated in March 1997 for a period of 50 months, upon completion of which in April 2001 and on due payment of all instalments, the Company would allot certain area of land to such members. In the event of any member not opting for the land, the Company would repay an amount of Rs. 1,25,000/- by sale of land that was to be allotted to such members.

The fourth petitioner one of the subscribers to the Memorandum of Association of the Company was appointed as one among the first directors of the Company and the first petitioner became with effect from 01.03.2001, a director of the Company. The names of the petitioners were appearing as shareholders till the year 2004 in the records of the Company, and later found to be deleted, despite the fact that the petitioners have never sold their shares held in the Company. The petitioners along with other members and relatives introduced by them constituting 75 members contributed an aggregate sum of Rs. 93.75 lakh under the scheme formulated by the Company.

The Company claims to have paid cash on maturity of the scheme to the members belonging to the petitioners group, while most of the members of the scheme have been paid by cheques, as could be seen from the bank statement of the Company, but none of the cash payments has been substantiated by production of any documentary proof apart from lacking details of dates of such cash payments. The pass books issued by the Company are still in custody of the petitioners. The alleged cash payments in favour of the members belonging to the petitioners group exceeding of Rs. 20.000/- are violative of the provisions of the Income Tax Act. After sale of certain lands of the Company to meet the obligations towards members of the scheme, the Company presently owns the only land located at Kondakal village. The petitioners and their family members are desirous of only being allotted land in terms of the scheme, but the second respondent is surreptitiously attempting to dispose of the remaining landed property of the Company, as borne out by a public notice caused in September 2006, by an agreement holder in local news dailies, in order to settle members of the third

respondent company, incorporated by the second respondent which is engaged in similar activities carried on by the Company. The land of the Company that is meant to be provided to the subscribers of the scheme cannot be permitted to be sold by the second respondent to make any unlawful gain. The proposed sale is without any authority of the board and with a view to siphon of the funds of the Company by the second respondent and deny the petitioners and their family members of their investment made in the Company and of their entitlement to land as assured in the Company's scheme. If the Company is allowed to sell its only land, it will be left with no other operations and assets. This course of action will be prejudicial to the interests of the petitioners and other members.

2.2 The land is owned by the Company, but not disclosed as fixed asset in the schedule of assets forming part of the balance sheet of the Company, for the purpose of manipulating the price of such land at the time of sale so as to divert the profits thereof. The balance sheet as at 31.03.2004 shows as if an amount of Rs. 91.98 lakhs is payable by the Company to the third respondent, which is fictitious, as no transactions have taken place between these two Companies.

This is evident from the annexure to the auditors report for the relevant year, according to which the Company has not taken loans from companies in which the directors are interested.

2.3 The second respondent has not been convening any board or general body meetings of the Company or maintaining accounts or other statutory records of the Company, thereby keeping the members of the scheme and of the Company in dark about the affairs of the Company. The petitioners never received notices of any annual general meeting or copies of the balance sheet for any of the years, inspite of repeated requests made by them, compelling the petitioners 2 & 5 to issue legal notices to the respondents 1 & 2 calling upon them to execute and register sale deeds in respect of the lands to which they were legitimately entitled as per the scheme. The respondents through their reply notices falsely contended that the Company has paid off the petitioners and their relatives under the scheme, that the petitioners transferred their shares and that the petitioners 1 & 4 ceased to be directors of the Company. The petitioners 1 & 4 had neither resigned

nor were removed from the office of directors of the Company. In view of the false stand taken by the second respondent, the petitioners were forced to file a civil suit in O.S. No. 640 of 2006 before the Court of District Judge, Ranga Reddy District, seeking an order of permanent injunction restraining the respondents from alienating the landed property of the Company and obtained an order of status quo, which came to be vacated on the ground that the matter related to the affairs of the Company and that CLB would have jurisdiction in the matter. The Civil Court, while disposing the interlocutory application, found that the petitioners herein have every right to approach the CLB and get appropriate remedies according to law. The order of the Civil Court will not in any way affect the rights of the petitioners as shareholders of the Company, who have however, preferred an appeal against the order of the Civil Court, which is pending for adjudication by the appellate court.

2.4 A The petitioners 1, 2, 3 & 6 are still in possession of the original share certificates issued by the Company entitling them to a total of 410 shares of the Company and the original share certificates issued with respect to the holding of the petitioners 2 to 5 are lying in the office premises of the Company. The petitioners at no point of time executed any transfer deed nor presented the shares certificates to the Company as required under Section 108 of the Act and therefore, no transfer could have been registered in respect of the impugned shares. The respondents have produced fake transfer deeds with forged signatures of the petitioners and such documents may be referred to the forensic laboratory to establish the correct position. The respondents have not paid any consideration to the petitioners towards such alleged transfer of shares, without which the transaction is not valid. The names of the petitioners having been entered in the register of members are found omitted without sufficient cause from the register and therefore, the petitioners have filed the present petition seeking rectification of the register of members by including their names as holders of 1025 shares in the Company.

2.5 The petitioners, as sought to be made by the respondents, in their reply notice, surrendered their shares as early as in the year 1991, but contended before the civil court that the petitioners surrendered their shares way back in the year 2001

by receiving their amounts through cheques and cash. Thus, the respondents have been taking different false stands at different points of time, while (i) issuing reply notice dated 14.09.2006; (ii) filing counter to the application (1A No. 1763 of 2006 in O.S. No. 640 of 2006) and (iii) filing counter to the main petition before the CLB and thus the earlier stands taken by the respondents will negate the present contention that the petitioners ceased to be shareholders in the year 2005, which clearly establish the complete falsity of their present case pleaded before the CLB. The petitioners would not have transferred their shares at face value of Rs. 100/- per share in the year 2005, especially when the landed property of the Company will exceed Rs. 10 crores in the year 2005. Hence, the petitioners would not have transferred their shares at face value. The respondents have not produced any proof for payment of consideration in respect of the impugned shares. Thus, the petitioners continue to be shareholders of the Company holding 20.83% of the paid up capital of the Company and are entitled to invoke the provisions of Section 397/398 of the Act. The second respondent realising the appreciation in the land value of the Company is attempting to corner the land to himself.

2.6 The respondents have produced fabricated share transfer deeds, bearing the names and signatures of different transferees, out of which only 100 shares are shown to have been transferred to the second respondent. The respondents indulged in issuance of fresh certificates for the purpose of effecting the fraudulent transfers.

There are deficiencies reflected in the share certificates which ought to have been rectified by incorporating the dates and affixing common seal of the Company. The resolutions were reportedly passed on 31.03.1998 for issuing fresh certificates, but never raised such plea in civil court proceedings and only for the first time in the present proceedings, whereas some of the fresh share certificates said to have been issued to the petitioners are dated 10.06.2005 and one fresh share certificate purportedly issued to the fourth petitioner bears the date 18.01.1997, which is prior to the board resolution dated 31.03.1998. This will again confirm the fraudulent means resorted to by the respondents. According to the respondents the fourth petitioner was a director on 31.03.1998, but no such item of issuance of fresh certificates was ever discussed at the board meeting of 31.03.1998. The share

holders were not intimated about the invalidation of old share certificates in terms of the board resolution dated 31.03.1998. While the old share certificates were signed by three directors, including the fourth petitioner, the duplicate share certificates do not bear the signature of the fourth petitioner even though he was a director as on that date and of Padma Reddy, who was also a director and who had signed the original share certificates. The resolution authorises the second respondent and Mr. Anil Reddy to sign the fresh share certificates, whereas the fresh share certificates are found to be signed by Mr. K. Sheshikanth Reddy, an employee of the Company, who was never a director of the Company, as borne out by a status report furnished by a Company Secretary', after conducting necessary search of the Company's record at the office of Registrar of Companies showing the names of all the directors. Furthermore, the new share certificates contain the changed distinctive numbers of shares. The petitioners never asked for the split share certificates, as they never had the intention of transferring the impugned shares. The share certificates filed by the respondents (page 46 of counter) reveal that Mr. Anil Reddy had signed the share certificates, on 18.01.1997, whereas the second respondent and Mr. Anil Reddy were authorised to signed the new share certificates only by a board resolution dated 31.03.1998. The resolutions for issuing the new share certificates were passed as early as on 31.03.1998, whereas, some of the new certificates, issued in favour of the petitioners are dated 10.06.2005. The respondents have produced a communication dated 25.12.2006 of the Sub-Inspector of Police regarding loss of share certificates, which does not contain details of the share certificates. This communication is in furtherance of the false complaint lodged by the second respondent. If new certificates were required to be issued the same ought to have been issued only on retrieval of the original share certificates, from the respective shareholders, which ought to have been destroyed by the Company.

2.7 The respondents, similarly have taken contradictory stands in regard to directorship of the petitioner Nos. 1 & 4. These petitioners have never resigned from the post of directors. However, the respondents 1 & 2, in their reply notice dated 14.09.2006 stated that the fourth petitioner was terminated from the office of director and such termination was in accordance with due process viz. a resolution of the board, whereas the requirements of Section 284 have not been met for

removal of the fourth petitioner from directorship. Furthermore, the respondents 1 & 2 in yet another reply notice dated 14.09.2006 had first stated that the fourth petitioner had resigned as director and thereafter in the same reply notice took a different stand by stating that the fourth petitioner was removed as director and presently the stand of the respondents is that the petitioners 1 & 4 had resigned from their office as directors of the Company. The resignation letters of petitioners 1 & 4 produced by the respondents are fabricated and forged. The filing of forms with the Registrar of Companies is of no consequence since the same has been concocted and does not reflect the correct position. The petitioners 1 & 4 continue to be directors. Even according to the respondents, the fourth petitioner was a director on 31.03.1998, but none of these petitioners was issued any notice of such board meeting for issue of new share certificate.

2.8 The abstract of the balance sheet of the third respondent company filed along with the annual return for the year ended 31.03.2005 discloses meagre assets worth Rs. 12.63 lakh with corresponding source of funds of Rs. 12.63 lakh and therefore, with such poor financial position, the third respondent company could not have lent a sum of Rs. 92 lakh to the Company herein. The bank statement of the third respondent company produced for the period from 01.06.2006 to 24.02.2007 would reflect that the second respondent had transferred huge sums of money from the Company's account to himself amounting to Rs. 131 lakh, to the third respondent an aggregate sum of Rs. 430 lakh and other directors as well as their relatives, to an extent of Rs. 125 lakh, establishing diversion of funds by the second respondent. Though the respondents reported to have incurred an amount of Rs. 99 lakhs by way of development charges as per the balance sheet as at 31.03.2002 in respect of JANWADA properties, no such work is established, in terms of the sale deed executed on 29.05.2001 by the Company, and furthermore the lands in question have already been sold by the Company. The Company operates several accounts and similar transactions have been carried out through all of such accounts.

With such amounts, the third respondent company disbursed the maturity amounts to its members, as per the scheme, which directly affects the shareholders of the first respondent Company. The respondents are guilty of producing fabricated

documents before the Bench, as evidenced from a series of legal notices said to have been received by the Company in April 2001, from members of the scheme, containing telephone numbers with eight digits, which came into operation only in the year 2003. All the actions of the respondents, which shall include diversion of funds of the Company, are serious and continuous which constitute clear acts of oppression and mis-management in the affairs of the Company, affecting its profitability and business. The circumstances as exist justify the making of a winding up order under Section 433(f) but any such order would unfairly prejudice the petitioners and other shareholders. The petitioners are, however, seeking alternate remedies, as claimed in the present proceedings.

3. Shri V.S. Raju, learned Counsel, while opposing the company petition submitted: 3.1 The petitioners were holding 1015 shares (first petitioner - 100; second petitioner - 210; third petitioner - 205; fourth petitioner - 200; fifth petitioner - 200 and sixth petitioner - 100) in the Company and not 1025 shares. This is in view of the fact that the first petitioner had only 100 shares and not 110 shares as claimed by the petitioners. The first petitioner was wrongly issued a share certificate for 110 shares. The original share certificates issued in respect of the subscribed shares on 18.01.1997 were not dated and without any number of shares in the share certificates.

Consequently, the Company issued fresh share certificates in pursuance of a board resolution dated 31.03.1998. in lieu of the old share certificates, wherein the petitioners 1 & 4 attended the board meeting, thereby they became parties to the decision for issue of new share certificates. The original share certificates were issued to shareholders for the total number of shares held by them. The shareholders desired to transfer their shares in required lots and accordingly the board of directors had issued the split share certificates in terms of a resolution dated 10.06.2005, at the specific request of the petitioners 2 & 3. The petitioners have transferred their shares by duly executing and lodging the transfer deeds together with the original share certificates on 01.07.2005.

The transfer deeds were witnessed by one of the directors who is none else than the sister of the petitioners 1 & 4 and the daughter of petitioners 2 & 3. The

impugned transfers were approved by the board at its meeting held on 15.07.2005. The petitioners do not therefore, hold any more shares in the Company. The petitioners 1 & 4. who were directors had resigned on 01.12.2001 from the board of the Company, which came to be accepted at the board meeting held on 04.12.2001, in terms of the statutory returns filed with the Registrar of Companies. The petitioners having resigned voluntarily in the year 2001 never whispered upto 2006 about their directorship and transfer of shares in the first respondent Company. The fourth petitioner was a signatory to all the cheques issued by the first respondent Company till he resigned in the year 2001. After the transfers, some of the share certificates lodged with the Company were lost, which was followed by a complaint made on 30.07.2005 to the police authorities, which was replied on 25.12.2006.

Consequently, the petition is not maintainable under Sections 397 and 398 of the Act.

3.2 The petitioners have surrendered their pass books in respect of the scheme floated by the Company in the year 2001 as admitted by them in the Civil Suit in O.S. No. 640 of 2006 before the Additional District Judge, Ranga Reddy District, Hyderabad for a decree of perpetual injunction restraining the Company from selling the immovable property belonging to the Company, wherein the petitioners obtained an ex parte interim injunction order against the Company, to maintain status-quo in regard to its immovable property, which came to be vacated, while disposing the interlocutory application, by the Court. The civil suit is pending and therefore, the subject matter is sub-judice.

3.3 The scheme framed by the Company in March 1997 was to encourage the saving habits catering to the housing requirements by enlisting members upto a maximum of 360 for a period of 50 months on contribution of Rs. 3000/- per month for a duration of 30 months.

After completion of 50 months, each member will be allotted a plot worth of Rs. 1.25 lakh. If any member is not interested in taking a plot, he will be paid an amount of Rs.1.25 lakh together with the incentive thereof as envisaged in the scheme, which came to an end in April 2001, when 50 members retired from the

scheme after receiving their eligible amounts. The Company was forced to sell some of its landed properties and further arranged additional funds to pay the maturity amount for the remaining 310 members of the scheme. While the Petitioners 1 & 4 were directors of the first respondent Company, the scheme was implemented and finally executed for the benefit of the members of the scheme under the active supervision of the petitioners 1 & 4. Thereafter, the petitioners being relatives joined as members in the scheme framed by the third respondent company under the brand name. Sun Vistas Project" of the first respondent Company. The logo of the first respondent Company was used, since 2001. by the third respondent company.

3.4 The petitioners have called upon the respondents by a legal notice, not to violate the terms of the scheme and further demanded to execute and register the sale deeds in their favour, but the respondents did not deal, in their reply notice, about any transfer of equity shares held by the petitioners. Since the scheme promoted by the Company came to an end in the year 2001, it was suitably replied that the petitioners have transferred their pass books of the membership of the scheme. Hence, in the annual return filed for the year ended 31.03.2004, the petitioners have been shown as shareholders holding equity capital in the Company. Any sale of shares and its consideration are left to the transferor and transferee and it is not for the Company to decide the market value of the shares and it is for the transferor and transferee to receive the consideration either in cash or cheque.

3.5 The petitioners 1 & 4 have submitted their letters of resignation dated 01.12.2001, which were accepted at the board meeting held on 04.12.2001 and the same is reflected in the annual returns made as on 30.09.2002 and filed with the Registrar of Companies on 25.11.2002. The signatures appearing in the transfer deeds and the letters of resignation, petitions, affidavits filed by the petitioners are one and the same. The petitioners have differently signed in different places as evident from the petition, counter affidavit and general power of attorney executed by them in order to disclaim their own signatures. The fifth respondent signs differently in different documents and she has never signed with her surname "C which is established from her affidavits.

3.6 The first respondent Company in its balance sheet for the year ended 31.03.2004 has disclosed (a) land and land advances under the head "current assets" since it is not known whether the persons who are entitled as members of the scheme desired to have the plot/land or cash to be refunded to them; and (b) an amount of Rs. 41,20,058.40 under the head "current assets loans and advances".

Therefore, it cannot be said that the balance sheet is not reflecting the fixed assets of the Company. The balance sheet further reveals that the Company owes to an extent of Rs. 91.98 lakhs in favour of the third respondent Company and the Company is bound to meet its repayment commitment of loans payable to the third respondent company, pay off the liabilities of the first respondent Company and honour its commitment made in the scheme. The first respondent Company refunded the amounts to all of those who did not opt for the allotment of land under the scheme and the remaining members who are not willing for allotment of land are entitled for refund of Rs. 1.75 lakhs, which include the incentive. Therefore, the Company has got obligation in such of those cases to return the amount of Rs. 1.75 lakhs. The accounts of the Company were duly audited and certified by the Auditors and hence there is no question of manipulation of the accounts by the respondents by tampering the records and books of account of the Company. The first respondent Company has already entered into an agreement for sale of its land to meet its financial obligations and, therefore, may be permitted to go-ahead with the proposed sale of the landed property.

4. I have considered the pleadings and arguments of learned Counsel.

The main issue before me is whether the petitioners are entitled for the reliefs as claimed in the company petition in the facts of the present case, before which the preliminary objection of the Company whether the petitioners are shareholders entitling them to agitate their grievances in the affairs of the Company, invoking the provisions of Sections 397 & 398 of the Act shall be considered.

5. The petitioners collectively claim 1025 shares of the Company namely, first petitioner - 110 shares; second petitioner - 210 shares; third petitioner - 205 shares; fourth petitioner - 200 shares; fifth petitioner - 200 shares and sixth

petitioner - 100 shares, of which the first petitioner's shareholding is disputed by the respondents 1 and 2.

The share certificate No. 20 is said to have been wrongly issued in favour of the first petitioner for 110 shares as against 100 shares. In this connection, the annual returns for the period as at 30.09.2002 and 29.09.2004, on which strong reliance is being placed by the petitioners, assume relevance, according to which the first petitioner held at the relevant point of time only 100 shares. Nevertheless, the first petitioner has not agitated all these years his rights over the disputed 10 shares and therefore, the first petitioner will only be entitled to 100 shares and not 110 shares as claimed by him.

6. According to the respondents 1 & 2, the entire shareholding of the petitioners in the Company has been transferred as early as on 01.07.2005 in favour of the respondents 2, 4 & 5 (second respondent - 100 shares; fourth respondent - 305 shares; fifth respondent - 610 shares). These transfers were reportedly approved on 15.07.2005 at the meeting of board of directors of the Company. The petitioners are challenging, inter-alia, execution of any instruments of transfer and judgement of any such transfer instruments together with original share certificates in compliance with the mandatory requirements of Section 108 of the Act, and are further seriously contending that the transfer deeds produced by the respondents 1 & 2 are fake ones with forged signatures of the petitioners and are not supported by any valid consideration. In this context, it is absolutely necessary to go into the entire controversies in relation to the issue of (i) original share certificates; (ii) new certificates in lieu of old share certificates; (iii) split certificates; and (iv) transfer of shares impugned in the company petition.

7. The minutes of the board meeting dated 31.03.1998 reveal that there were "certain mistakes in the certificates already issued such as the distinctive numbers were not allotted to the subscribers to the memorandum and the date and common seal were also not affixed on them".... The board of directors after deliberations resolved to issue new certificates in lieu of the old certificates. There are, however, no details in regard to (i) members who were issued new certificates in lieu of the old certificates; (ii) number of new share certificates issued; (iii)

number of shares in respect of which new share certificates were issued; (iv) despatch of new share certificates in favour of the petitioners; and (v) any intimation to the shareholders regarding invalidation of the original share certificates in terms of the board resolution dated 31.03.1998. The board resolution makes a reference to a copy of the statement showing old certificate numbers and new certificate numbers initialled by the chairman, yet the respondents have not chosen to produce any such statement, substantiating their claim, in this behalf. The minutes of the board meeting would indicate that the mistakes in the share certificates related to non-allotment of distinctive numbers to the subscribers to the memorandum. It may be observed that only the fourth petitioner and not any of other petitioners was one of the subscribers to the memorandum and articles of association of the Company. There is, however, no explanation on the part of the Company for having issued new share certificates in lieu of the old certificates in favour of the petitioners 1 to 3, 5 & 6, despite the fact that they are not subscribers to the memorandum of association of the Company. The board resolution to issue new share certificates in lieu of the old certificates was reportedly passed on 31.03.1998, whereas the share certificate No. 07 comprising of 10 shares and share certificate No. 19 comprising of 190 shares issued in lieu of the share certificate No. 16 in favour of the fourth petitioner are dated 18.01.1997, which is prior to the date of resolution and 31.03.1998 respectively. While the respondents 1 & 2 claim that the petitioners 1 & 4, the then directors, were party to the board resolution made on 31.03.1998, authorising the issue of new certificates, the annual return as at 30.09.2002 discloses that the petitioners 1 & 4 came to be appointed as directors only on 01.03.2001. There is nothing to indicate that the petitioners 1 & 4 were directors on 31.03.1998. The board resolution dated 31.03.1998 authorises the second respondent and Shri L. Anil Reddy, managing director and director respectively to affix common seal on the new share certificates issued in lieu of the old share certificates.

However, it is found that the new share certificates have been signed apart from the second respondent and Shri L. Anil Reddy, by one, K. Shashikanth Reddy, claiming to be an authorised signatory, which is not in tune with the mandate of the board of directors of the Company for issuance of the new share certificates, in support of which the Company has not produced any material at all.

8. The board of directors at the meeting held on 10.06.2005 said to have approved the request of some of the shareholders for splitting of the share certificates. This resolution does not specify the names of shareholders who made any request for splitting of the share certificates. No such request of the petitioners 2 & 3 has either been placed on record by the Company when it is explicitly denied by these petitioners. Nevertheless, the Company had split - (i) share certificate No. 24 comprising of 210 shares and issued certificate No.43 for 100 shares and certificate No. 44 for 110 shares in the name of the second petitioner; and (ii) certificate No. 25 comprising of 205 shares and issued certificate No. 45 for 100 shares and certificate No.46 for 105 shares in the name of the third petitioner. It is relevant to point out that while the second petitioner purportedly transferred the whole of his 210 shares in favour of the fourth respondent and third petitioner transferred her entire holding in the Company, namely, 205 shares in favour of the fifth respondent. There was no need for splitting of the share certificates when the entire holdings of the petitioners 2 & 3 came to be transferred in favour of the respondents 4 & 5 respectively. While, the Company has issued on 10.06.2005 new certificates Nos. 45 & 46 in the name of the third petitioner and the new certificate Nos.43 & 44 in the name of the second petitioner, carrying the signatures of the second respondent. Shri L. Anil Reddy and Shri K. Shashikanth Reddy, the board resolution dated 10.06.2005 authorises only the managing director and any director to sign the split share certificates. There has been no authority produced for exercising the authority by Shri K. Sashikanth Reddy to sign, the split share certificates. I am not, therefore, convinced that the petitioners 2 & 3 either made any request for splitting of the share certificates or there was any necessity for splitting of the share certificates as sought to be made out by the respondents.

9. While the first petitioner has produced the original share certificate No. 20 with distinctive numbers 3486 to 3595 comprising of 110 shares in his name with the defects as pointed out by the Company, the respondents have produced the new certificate No. 20 with distinctive Nos. 2676 to 2775 comprising of 100 shares issued in lieu of the original share certificate No. 20, thereby, both the original share certificate No. 20 for 110 shares and the new share certificate No. 20 for 100 shares are in the custody of the first petitioner and fourth respondent

respectively. Similarly, while the second petitioner has produced the original share certificate No. 21 with distinctive Nos. 3596 to 3695 comprising of 100 shares in his name with all the defects, the respondents have produced the new certificate No. 24 with distinctive Nos. 3496 to 3705 comprising of 210 shares issued in lieu of the original share certificate Nos. 18 & 21. The respondents have produced the original share certificate No. 18 with endorsement of cancellation, but no such original certificate No. 21 duly cancelled has been produced by them, whereas the petitioners are in possession of the original share certificate No. 21 for 100 shares. Thus, the second petitioner is still in possession of the original share certificate No. 21 for 100 shares, while sixth respondent is in custody of the new share certificate No. 24 for 210 shares which encompass 100 shares covered under the original share certificate No. 21 issued in the name of the second petitioner. The sixth petitioner has produced the original share certificate No. 23 with distinctive numbers 3796 to 3895 comprising of 100 shares in his name, with all the defects, while the respondents have produced the new share certificate No. 26 with distinctive Nos. 3911 to 4010 comprising of 100 shares issued in lieu of the original share certificate No. 23, thereby the original share certificate No. 23 for 100 shares and the new share certificate No. 26 for 100 shares are with the sixth petitioner and second respondent respectively. The third petitioner has produced the original share certificate No. 22 with distinctive numbers 3696 to 3795 comprising of 100 shares in her name, with all the defects and the respondents have produced the new certificate No. 25 with distinctive Nos. 3706 to 3910 comprising of 205 shares issued in lieu of the original share certificate Nos. 19 & 22. The respondents have made available the original share certificate No. 19 with necessary endorsement of cancellation thereof, but no such original certificate No. 22 duly cancelled has been produced by them, whereas the third petitioner is in possession of the original certificate No. 22 for 100 shares. It is, therefore, clear that the third petitioner is still in possession of the original share certificate No. 22 for 100 shares while fourth respondent is in custody of the new share certificate No. 25 for 205 shares comprised in the original share certificate Nos. 19 & 22 issued in the name of the third petitioner. It is, therefore, clear that the petitioners are still in possession of a number of original share certificates accounting for 410 shares, while the new share certificates reportedly issued in lieu of those original

share certificates are held by the transferees. There is no material to show that the Company had ever called upon the petitioners to surrender the original defective share certificates before issuing the new share certificates in lieu of the original ones. The police complaint dated 30.07.2005 found to have been lodged on behalf of the Company on loss of "some of old share certificates" from the Company's premises, without any details whatsoever does not go in aid of the respondents in justifying any of the aforesaid discrepancies. The minutes of the board meeting dated 15.07.2005 indicate that the board approved the transfer of, inter-alia, 1015 shares reportedly effected by the petitioners in favour of the respondents 2, 4 & 5. The board minutes do not suggest whether necessary requirements, before effecting transfer of shares as specified in articles 13 to 21 have been duly satisfied or not.

10. The general power of attorney dated 02.12.2006 executed by the petitioners 1 to 3, 5 & 6 in favour of the fourth petitioner contains the admitted signatures of the petitioners 1 to 3 & 6 and the signature of the fifth petitioner as contained therein is disputed by the respondents. The admitted signatures of the petitioners 1 to 3 & 6 are found in three pages of the said power of attorney dated 02.12.2006. A very careful comparison of the admitted signatures of the petitioners 1 to 3 & 6 as appearing in the power of attorney on record with the purported signatures of these petitioners found in the transfer deeds looks to me that there are certain dissimilarities between those two sets of signatures. The subtle differences in the signatures of the petitioners 1 & 6 appearing in the transfer deeds dated 01.07.2005 are apparent on their face. While the second petitioner has signed as "G Malla Reddy" in the power of attorney, the disputed signature in the transfer deed reads as "G. Malla Redy", thereby it is found that the name of the second petitioner is differently spelt in the transfer deed, which is under challenge in the present proceedings. The signature of the third petitioner as reflected in the transfer deed having been put in the local vernacular language, namely, Telugu suffers from variation, to some extent, in style of such signature. It is observed from the vakalath and company petition filed in the present proceedings, containing several of the admitted signatures of the fourth petitioner that there is space between Venkat and Reddy, whereas no such space is found in the disputed signature of the fourth petitioner as contained in the transfer deed dated

01.07.2005. The disputed signature of the fifth petitioner contained in the transfer deed is not in consonance with her admitted signature as reflected in the plaint filed in O.S. No. 640 of 2006 before the Additional District Judge Court, Ranga Reddy District, in the light of the difference in use of the letters and the underlining thereof, which forms part of the signature. To put it in a nutshell, the disputed signatures of the petitioners are not identically similar when compared with their admitted signatures. It cannot, therefore, be conclusively said that the transfer deeds in respect of the impugned shares do contain the signatures of the petitioners. In this connection, it is abundantly made clear that while comparing the signatures, this Bench has not played the role of handwriting expert, but only assessed the evidence which has been adduced by the parties about the probabilities and improbabilities of the case. I am constrained to reach this extreme conclusion on account of the conduct of the contesting respondents in causing production of legal notices, which do not appear to be genuine, as pointed out by Shri R. Murari, learned Counsel and taking parallel stands which are destructive of each other.

11. After conclusion of the oral submissions, the petitioners after notice to the respondents caused production of a certified copy of the statement of "shares transfer details" reportedly submitted by the Company in O.S. No. 640 of 2006 before the Court of District Judge, Ranga Reddy District, containing transfer details in respect of 3185 shares belonging to as many as 36 transferors, which include the transfer of 1015 shares impugned in the company petition. A comparison of details of the impugned transfers as urged before the CLB and put forth in the civil proceedings by the respondents No. 1 & 2 reveal that there are material variations in such transfer of shares, but the said statement is neither dated nor signed by any person(s), as rightly pointed out by the respondents in their affidavit sworn as 07.09.2007 and therefore, does not carry any evidentiary value at all.

12. The impugned shares, as claimed by the respondents have been sold at face value of Rs. 100/- per share, whereas its market value after taking into account the valuable land owned by the Company comprising of over 85 acres, without any doubt, will be far above the face value of Rs. 100/- per share. Furthermore, none

of the transferees has chosen to establish the actual payment of consideration for purchase of the impugned shares, which becomes rather necessary, when the very transfers are questioned by the transferors.

13. The Company in its legal notice dated 14.09.2006 sent by way of reply to a legal notice dated 08.09.2006 of, among others, the petitioners 2 & 5 categorically states that the petitioners who held shares in the Company "had withdrawn by receiving the share value by transferring their shares to the company in due process. It is needless to add that your clients are the signatories to all such transfers of shares in lieu of which values were received by your clients in the year 1999 by way of bank cheques." Though, the petitioners 2 & 5 in their legal notice dealt only with the grievances in regard to the scheme promoted by the Company, yet the Company categorically replied that the petitioners have transferred the shares as early as in the year 1999. The later part of the reply notice dated 14.09.2006 reiterates that the petitioners "have already received the amounts either as shareholders or as its members".... The Company further in its legal notice dated 14.09.2006 sent in reply to the legal notice dated 10.09.2006 of the fourth petitioner made it abundantly clear that the petitioners have already sold the shares and received the consideration, in these words. "It is needless to add that your client had already sold his shares pertaining to my client company along with his other family members by receiving consideration as against to the value. The receipt of consideration as against to transfer of shares and ancillary benefits are made through bank cheques and cash which are acknowledged under separate vouchers. All such payments received by your client are reflected in the audit, statement of accounts of my client." The second respondent in his reply affidavit dated 09.10.2006 filed in the civil suit initiated at the instance of the petitioners affirmed that the petitioners are falsely claiming to be shareholders of the Company when they had "surrendered their shares way back in the year 2001 which were subsequently allotted to other members". The second respondent further affirmed that "the petitioners were also among the shareholders initially and those shares were surrendered to the respondent by receiving their amounts through cheques and cash. The shareholders/petitioners had also complied with the procedure for such transfer of shares. The entire process is recognised by the Registrar of Companies. The petitioners are the signatories to all such transfers of

shares in lieu of which values were received by them." The above sequence of events would indicate that the Company is not definite as to whether petitioners had transferred the impugned shares either in the year 1999 or in the year 2001. There is no explanation from the Company as to why the annual return for the period as at 29.09.2004 admittedly signed by the second respondent discloses the petitioners as shareholders holding 1015 shares in the Company. The respondents 1 & 2 have now contended in the present proceedings that "the petitioners have submitted the transfer deeds together with share certificates to the 1st respondent company on 1/7/2005 and the same was transferred at the board meeting held on 15/7/2005." It is, thus, found that the respondents 1 & 2 have been taking inconsistent stand from time to time regarding the transfer of impugned shares by the petitioners in favour of the transferees. Against this background shrouded with controversies, it cannot be contended that the petitioners ceased to be the shareholders of the Company merely on the strength of the disputed transfer deeds produced before the Bench and consequently the preliminary objection raised by the respondents 1 & 2 on the maintainability of the company petition does not survive.

14. While the petitioners 1 & 4 claim to be part of the board of the Company, they are as sought to be asserted by the respondents 1 & 2, ceased to be directors, with effect from December 2001, pursuant to the written resignations, which are however disowned by the petitioners 1 & 4 as fake and fabricated ones. The claim of the petitioners, is found to be belied, as borne out by the general power of attorney dated 02.12.2006 executed by the petitioners 1 to 3, 5 & 6 in favour of the fourth petitioner, relevant portion of which reads thus: We are all related to each other along with Mr. G. Venkat Reddy, in whose favour this GPA is executed.

We submit that some of us were earlier directors of one company by name M/s Vijava Durga Estates Private Limited, and also share holders of the said company apart from members of a scheme floated by the said company.

Unfortunately, there have been some litigations pending before various courts with regard to the affairs of the above Company and one Mr. K. Venugopal Reddy, who is acting as director of the said company filed by us before the civil courts and also

company law board etc.

15. There was no need for execution of the above general power of attorney, if the J petitioners do not continue to be the shareholders of the Company. Before going into the explicit admission of the petitioners by virtue of the recitals forming part of the power of attorney, the factual position, namely, the fourth petitioner one of the subscribers to the Memorandum of Association, was one among the first directors of the Company and the first petitioners became with effect from March, 2001, director of the Company, must be borne in view. No one else from the petitioners group was ever on the board of the Company. Accordingly, the categorical statement in the power of attorney that "some of us were earlier directors" of the Company, would only refer to the petitioners 1 & 4 and no one else. It is unambiguously confirmed that the petitioners 1 & 4 "were earlier directors" of the Company, which would mean that the petitioners 1 & 4 cannot any more claim to be directors and seek any declaration in their favour, in this behalf. Form No. 32, dated 27.12.2001 filed with the Registrar of Companies would show that the petitioners 1 & 4 had resigned with effect from 04.12.2001, as directors of the Company. The annual return as at 30.09.2001 furnishes, inter alia, directors list, according to which, the petitioners 1 & 4 ceased to be directors with effect from 04.12.2001. The annual return as at 29.09.2004 does not include the names of the petitioners 1 & 4, as directors of the Company. Nevertheless, the petitioners never even endeavoured to enforce their rights as directors for the past over six years but on the other hand, found to be mute spectators without involving in the day-to-day affairs and operations of the Company. These events, inspite of the controversial letters of resignations of the petitioners 1 & 4, would lead to irreversible conclusion that the petitioners 1 & 4 are no more directors and therefore, they are not entitled for declaration that they continue to be directors of the Company. The grievances of the petitioners on account of non-convening of board or general meetings of the Company or non-sending of notices for any of such meetings or non-maintenance of the statutory records of non-sending of copies of balance sheets of the Company for several years, not having been raised at the appropriate point of time but belatedly for the first time in their legal notice dated 10.09.2006 cannot by themselves constitute oppressive acts, as claimed by them.

16. The petitioners with other members and relatives had reportedly contributed an aggregate sum of Rs. 93.75 lakh under the scheme promoted by the Company in March, 1997, which according to the Company, came to be paid in cash, on maturity of the scheme. The petitioners, however, denying any such cash payment, are demanding the allotment of land in terms of the scheme. The scheme formulated by the Company in March, 1997 is for a duration of 50 months, upon completion of which and on regular contribution of Rs. 3000/- per month for a period of 30 months, members will be allotted a plot or farm house in terms of the scheme. The disputes concerning non-allotment of land having arisen out of the contractual obligations in connection with a scheme formulated by the Company are nothing to do with the rights of members qua Company and are not amenable to the jurisdiction of the Company Law Board under Sections 397 & 398. Clause 11 of the scheme provides that: "Any dispute arising out of these terms and conditions, shall be settled, through arbitration and subject to Hyderabad jurisdiction". The petitioners, therefore, are at liberty to agitate their rights under the scheme in a manner known to law, in accordance with the terms and conditions of the scheme.

17. The only landed property found reflected in the balance sheet of the Company under the heading "Current Assets", not having been questioned by the petitioners, all these years, can lawfully be dealt with for the purpose of the Company by the board of directors, whose collective wisdom will not ordinarily be interfered with by any judicial or quasi-judicial forum, unless it is shown that any such decision is ultra vires of the articles of association of the Company/the Act. At the same time, the genuine fear of the petitioners has to be examined in the interest of the Company and its shareholders.

When the purported borrowal of an amount of Rs. 91.98 lakhs by the first respondent Company from the third respondent company is questioned as fictitious transaction, the only unconvincing justification put forth by the Company and its Managing Director is that "It is seen from the balance sheet as at 31st March, 2004 that the 1st respondent company owes to an extent of Rs. 91,98,106/- to the 3rd respondent company".... The purported liability of the first respondent Company due to the third respondent company must be viewed in the light of the

observations found in the auditors' report dated 03.09.2002 and 02.09.2004 for the year 2001-2002 and 2003-2004 respectively, which read as follows: 3. According to the explanations given to us the company has not accepted loans from other parties listed in the register under Section 301 and from the companies under the same management.

4. According to the explanations given to us the company has not granted loans to companies, firms or other parties required to be listed in the register under Section 301 and to the companies under the same management as defined under Section 370(1B) of the Companies Act, 1956 at the terms not prejudicial to the interests of the company. (for the year 2001-2002)...

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3) a) As informed, the company has neither granted nor taken any loans, secured or unsecured to/from companies, firms or other parties covered in the register maintained under Section 301 of the Companies Act. 1956.

b) As the company has not taken loans from/granted to companies, firm or other parties listed in the register maintained under Section 301, the clause relating to rate of interest and other terms and conditions of loans given or taken by the company, is not applicable.

c) As the company has not taken loans from/granted to companies, firm or other parties listed in the register maintained under Section 301, the clause relating to the terms of repayment is not applicable. for the year 2003-2004) 18. It is evident from the auditors' reports for the aforesaid period that the Company has not taken any loans from the companies, in which the directors are interested. This is contrary to the claim of the respondents 1 & 2 that the Company owes an amount of Rs. 92 lakh in favour of the third respondent company, wherein the second respondent herein is an interested director. The entries in the balance sheet, prima facie, evidence the liability of the first respondent Company in favour of the third respondent company, yet when such liability is disputed, onerous duty is cast upon the first respondent Company to establish the borrowings said to have been availed from the third respondent company. However, there are no materials whatsoever substantiating, among other things, purpose of the loan, amount of the loan, terms and conditions for availing the loan, authority to avail the loan, necessity for any such loan, utilisation of the loan proceeds and benefits accrued to the Company, on account of the loan said to have been taken from the third respondent company, without which, correctness of the outstanding dues to an extent of about Rs. 92 lakh reportedly payable by the first respondent Company in favour of the third respondent company, is in doubt, unless and until duly verified and certified by an independent Chartered Accountant, especially when the third respondent company, as at 31.03.2005, has meagre assets worth Rs. 12.63 lakh with corresponding source of funds of Rs. 12.63 lakh.

19. The specific charges of the petitioners in terms of the bank statement of Current Account No. 347701010035706 of the third respondent company

maintained with Union Bank of India for the period from 01.06.2006 to 24.02.2007, that the second respondent (a) transferred from the company's account Rs. 200 lakh on 14.10.2006 and Rs. 230 lakh on 25.11.2006 to the third respondent company; (b) withdrew an aggregate sum of Rs. 131 lakh; and (c) paid Rs. 125 lakh to directors and relatives, without any justification, remain uncontroverted either in the pleadings or at the time of arguments on behalf of the respondents 1 & 2. The landed properties situated at Mirzaguda Village (previously JANWADA Village) R.R. District. Andhra Pradesh, belonging to the Company have been sold on 29.05.2001, while the balance sheet as at 31.03.2002 discloses land development charges at JANWADA of Rs. 99.60 lakh, which are seriously disputed. The relevant recitals contained in paragraph 11 of the sale deed dated 29.05.2001 would indicate there were no mango trees/coconut trees/betel leaf gardens, or no mines or quarries of granites or such other valuable stones, no machinery, or no fish ponds in the lands being transferred by the Company. The sale deed does not throw any light on the development work carried out by the Company in JANWADA lands before effecting the sale, as reflected in the balance sheet as at 31.03.2002, which is not supported by any concrete material produced in this regard. The second respondent being a party to the balance sheet for the year 2001-2002 is accountable to the Company, for the development charges allegedly incurred in respect of JANWADA properties, for which no explanation has forth come from the respondents 1 & 2.

20. In view of my foregoing conclusions and in exercise of the powers under Sections 111, 397, 398 read with Section 402 of the Act, it is ordered as under: (i) The Company shall rectify the register of members by substituting the names of the petitioners in the place of the respondents 2, 4 & 5 in respect of 1015 shares, namely, first petitioner - 100 shares; second petitioner - 210 shares; third petitioner - 205 shares; fourth petitioner - 200 shares; fifth petitioner - 200 shares and sixth petitioner - 100 shares.

(ii) The original share certificates as well as the new share certificates issued in lieu of the original ones in respect of 1015 shares of the Company in the custody of the petitioners and respondents 2, 4 & 5 shall forthwith stand cancelled.

- (iii) The Company shall issue fresh share certificates in respect of 1015 shares in favour of the petitioners.
- (iv) The Company shall act in terms of clause (i), (ii) and (iii) herein above within 30 days of the receipt of copy of this order.
- (v) The Company is at liberty to dispose of the landed property in strict compliance with the applicable provisions of law and shall utilise the sale proceeds of the property exclusively for the purpose(s) of the Company, which shall duly be certified by the board of directors of the Company before utilisation thereof.
- (vi) Shri J. Venkateswarlu, (Partner, Sarathy & Balu & Co.) 12, Master Sai Apartments, Somajiguda, Hyderabad - 500 082 (Tel. No. 040-23312442) Chartered Accountant, is appointed to scrutinise and verify the books of accounts, vouchers and other connected records of the first respondent Company, as well as the third respondent company for the period from 01.04.2006 till date and submit a report on the financial transactions, which shall include all the receipts, payments, expenses incurred on account of the Company as well as irregularities, if any, and find out the amounts due and payable by the first respondent Company in favour of the third respondent company. The parties are at liberty to make submissions before the Chartered Accountant, who will after necessary verification in terms of this order, circulate a draft report among the contesting parties. The Chartered Accountant, after taking into account the comments, if any of the contesting parties will submit a final report by 30.11.2007. The Chartered Accountant will also verify and confirm the development expenses said to have been incurred by the Company in respect of the landed properties originally owned by the Company at JANWADA village. The final report is binding on all the parties.
- (vii) The second respondent shall reimburse monies of the Company, if any, found diverted, on verification by the Chartered Accountant, within 30 days of receipt of final report, failure of which will attract the interest at the rate of 10% simple till date of payment in full.
- (viii) The Company shall bear the remuneration of the Chartered Accountant, appointed by the Bench.

With the above directions, the company petition stands disposed of. In view of this, the interim order dated 23.01.207 is vacated. No order as to costs. The parties are at liberty to apply in the event of any difficulty only in regard to the implementation of this order and not on any other account.

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