

In Re: Legend Technologies

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SooperKanoon Citation : sooperkanoon.com/48222

Court : Company Law Board CLB

Decided On : Feb-15-2008

Judge : K Balu

Appellant : In Re: Legend Technologies

Judgement :

1. The petitioner claiming 34.68% of the paid up capital of M/s. Legend Technologies (India) Private limited ("the Company") aggrieved on account of certain acts of oppression and mismanagement in the affairs of the Company, has invoked the jurisdiction of the Company Law Board under Sections 397, 398, 402 and 403 of the Act, claiming the following reliefs: (i) to declare that the Company is quasi-partnership, with a right to participate in the management of the Company; (ii) to declare that the resolution passed at the extra ordinary general meeting held on 30.01.2006, removing the petitioner from the office of director is illegal, malafide and oppressive and quash the same; (iii) to declare that the fourth respondent is not a director appointed at the board meeting held on 12.01.2006; (iv) to declare that Form No. 32 filed with the Registrar of Companies in January, 2006 by the Company is null and void; (v) to declare that the circular resolution passed on 16.12.2005, authorising the second respondent as the sole authority to operate the fifth respondent bank, account as null and void, illegal, malafide and oppressive and quash the same; (vi) to order investigation or inspection into the affairs of the Company, fixing responsibilities for various acts of mismanagement by the second respondent and order restoration of all funds received and used by the second respondent and/or his agents, not relating to the business of the

Company; (vii) to remove the second respondent from the office of director of the Company for having indulged in acts of oppression and mismanagement; (viii) to direct the Company to buy back shares of second respondent at a fair value to be determined by the Company Law Board and consequently order reduction of the share capital of the Company; (ix) to order initiation of suitable action under sec.408 of the Act for breach of trust, misfeasance, misappropriation, frauds, falsification, fraudulent conduct of business of the Company by the respondents 2 to 4; (x) to declare that the transfer of 28,500 shares from the petitioner in favour of second respondent as approved at the board meeting held on 12.01.2006, is null and void, illegal, malafide and oppressive and quash the same; (xi) to declare that the transfer of 15,000 shares from Shri M. Jeetendra Reddy (MJR) in favour of the second respondent as approved at the board meeting held on 28.01.2005, is null and void, illegal, malafide and oppressive and quash the same as claimed in C.A. No. 108 of 2007; and 2. Shri M.S. Sivasankaran, learned Authorised Representative of the petitioner, while initiating his arguments submitted: o The petitioner and the second respondent, being technocrats, had initially commenced in May 1992 the business of designing and assembling aerospace vehicles, by formation of a partnership firm at Mysore under the name and style of M/s. Legend Designers, admitting their spouse as partners and sharing the profits of the firm equally. The Company came to be incorporated in May 1998 at Bangalore, expanding the activities of the partnership firm, by the petitioner and the second respondent, each subscribing to 50% of the capital of the Company and becoming the first directors. The Company in substance is a quasi-partnership formed as a family concern by the petitioner and the second respondent on equal ownership basis and on the basis of mutual trust and confidence. The relationship between the parties is that of partners with both members taking an active role in the management and control of the Company. While the petitioner looked after the firm, the affairs of the Company are being taken care by the second respondent.

o The partnership firm was doing business in aerospace on the lines of the Company, which is reflected in copies of the purchase orders placed by Hindustan Aeronautics Limited (HAL) with the firm during the years 2003 to 2005. The second respondent was obtaining orders for the firm from HAL and also operating till January 2007 the bank account maintained by the partnership firm, as borne

out by copies of certain cheques signed by the second respondent which are produced before the Bench. The second respondent was totally responsible for the affairs of the partnership firm as could be seen from copies of the correspondence exchanged between him and the firm's banker and copies of the invoices signed by the second respondent, which were paid by HAL and falsely 'appropriated towards the Company's account. The second respondent not only diverted the funds of the firm to the Company, but also stopped the flow of further orders from HAL to the firm. The purchase order received from Vikram Sarabhai Space Centre, Trivandrum for a value of Rs. 160 lakhs by the firm during September 2005 was subsequently diverted to the Company, without the knowledge of the petitioner.

The fourth respondent had incorporated a firm at Mysore and approached the Kamataka State Financial Corporation (KSFC) to take over the partnership firm namely, Legend Designers, due to default in the repayment of the outstanding loan amount, and stealthily got the bid in his favour. The unit and assets of the firm were sold in 2005 and consequently the business of the firm was closed, but the spouse of the petitioner and the second respondent continue to be partners of the firm and is not dissolved. Thus, the second respondent was responsible for closure of the partnership firm, as elaborated in C.A. No. 109 of 2007.

o At the instance of the second respondent, the petitioner had mobilised an amount of US \$ 10000 (Rs. 4,50,000/-) by way of direct remittance to the Company in August 2001 through MJR on the assurance that the amounts would be returned on his demand by the Company. The network message dated 31.07.2001 of State Bank of India, Chicago would show that an amount of Rs. 4.60 lakhs was transferred, by way of "customer transfer" from MJR to the account of the Company and not towards investment in the Company. It came to light later that the Company had allotted certain shares to MJR, which were however transferred to the second or other respondents at the time of returning the amounts partially to MJR. The fact of the matter is that the Company had never allotted any shares to MJR in respect of the remittance of US \$ 10000 made by him. At the request made by MJR the second respondent had in January, 2004 arranged to return from the funds of the Company to the credit of NRE Account of

MJR. as borne out by the bank account statement for relevant period.

nameK, debit entries of Rs. 1,35,237/- on 21.01.2004 and Rs. 3,65,000/- on 29.01.2004. MJR by his letter dated 02.05.2006 addressed to the petitioner categorically reported that the remittance made by him was not towards share capital of the Company and that the Company had returned the amounts taken as loan from him in two trenches, namely, an amount of Rs. 1.35 lakhs by way of a demand draft in the name of Shri Rajashckar Reddy and a sum of Rs. 3.65 lakhs by direct remittance to his NRH account, as evidenced by the statement of account of the Company maintained with Vijaya Bank.

The transfer deed discloses as if the second respondent paid an amount of Rs. 4.50 lakhs towards consideration of 15000 shares reportedly sold by MJR, but the statement of bank account does not in any way indicate the payment of consideration of Rs. 4.50 lakhs by the second respondent to MJR. Similarly, the statement of bank account does not establish the payment of consideration by the second respondent in favour of the petitioner for the purported sale of his shares. MJR has by means of an affidavit affirmed that he neither invested any money towards allotment of shares in the Company nor transferred any shares to the second respondent. The affidavit of MJR would show that the alleged allotment of 15,000 shares covered under share certificate Nos. 24 & 25 against the unsecured loans advanced by MJR was without his consent in writing, and the transfer of those shares to the second respondent not being true are prima facie acts of oppression and mismanagement which need to be set aside. The second respondent misused his fiduciary responsibilities as a director to make personal gain out of the funds of the Company.

o There was never any formal board or general meeting since incorporation of the Company and no notice of any board or general meeting was ever received by the petitioner. The respondents failed to produce any attendance sheets in respect of the board meetings reportedly conducted prior to 11.08.2004. At the first formal board meeting held on 11.08.2004, the petitioner was introduced to certain persons including the third respondent as additional directors and at the first formal annual general meeting held thereafter on 21.08.2004 at Bangalore some

more friends of the second respondent were introduced as shareholders. The shares have been allotted to as many as 7 outsiders, yet the petitioner is not seeking to set aside those allotments. The petitioner did not question the action of the second respondent for induction of additional directors and issue of shares to outsiders, at that point of time, in view of the Company's growth and the faith as well as confidence reposed in the second respondent. The notice dated 11.08.2004 convening the annual general meeting on 21.08.2004 received by the petitioner did not contain any agenda regarding appointment of the additional directors and, therefore, the additional directors reportedly appointed at the annual general meeting held on 21.08.2004 cannot continue to be directors of the Company, as a result of which, the petitioner and the second respondent alone are directors of the Company. There was also no need for additional directors, claiming to be experts. The expert directors cannot have voting rights. In view of this, all the board meetings, save the meetings held on 28.02.2005, 30.09.2005, 18.12.2005 and 12.01.2006, which were attended by the petitioner, were invalid and all the board resolutions passed thereon are inoperative. All the five additional directors appointed at the board meeting held on 11.08.2004, ceased to be directors on and from the date of the next general meeting, namely, 21.08.2004, in the light of the provisions of Section 260 of the Act. All their actions as directors on and after 21.08.2004 are invalid. The alleged appointment of the second respondent as Chairman and Managing Director at the purported board meeting of 11.08.2004 and the fixation of his remuneration at Rs. 20,000/- are false and concocted, since they were neither placed before nor approved by the board of directors of the Company. The compliance certificate signed by the third respondent as at 11.08.2004, without disclosing his appointment as an additional director is contrary to the statutory mandate of the Company Secretaries Act, 1980 and is null and void.

o At the board meeting held on 11.08.2004, no resolution was passed authorising the second respondent to operate solely the bank account maintained by the Company. Nevertheless and despite the objections raised at the instance of the petitioner, the second respondent has taken steps for passing the requisite resolution by circulation thereby authorising the second respondent to operate the bank account in terms of the circular resolution Nos. 01/2005-05 dated 02.12.2005

and 01/2005-06 dated 16.12.2005, in order to usurp the Company putting the petitioner into irreparable loss and hardship.

At the board meeting held on 15.12.2005, when the resolution for operation of the bank account solely by the second respondent was defeated, he once again circulated the very same resolution, seeking the approval of the directors, inter-alia, for operation of the bank account by sole authority of the second respondent, which was however rejected on 28.12.2005 by the petitioner.

o The second respondent while carrying on the day-to-day affairs of the Company, committed serious acts of mismanagement which compelled the petitioner to obtain a search report in October, 2005, revealing the allotment of shares without convening any board meeting, appointment of directors without following due process of law and transfer of unallotted shares, without following the mandatory requirements of law. The approval of accounts for the year ended 31.03.2005 signed by one Shri M.K. Shanmugam, not being a director, needs to be approved once again by the board of directors, and thereafter be submitted before the auditors for their verification.

The second respondent had indulged in the financial irregularities as borne out by the statement of accounts obtained from the Company's banker in respect of the Company's operations and the shareholding of the petitioner has been kept at around 40% instead of being at 50% in terms of the annual return of the Company.

o The second respondent had illegally collected an aggregate amount of Rs. 19.84 lakhs due to the partnership, firm from one of its customers namely, HAL and credited to the Company's account. The complaint lodged by the petitioner was withdrawn on account of heavy compulsion at the instance of HAL so as to ensure that the interest of third party does not suffer for the illegal action of the second respondent. The second respondent further indulged in prejudicial acts of advising the bankers on sole authority of operations of the accounts of the Company and denied access to the Company's files, data, records, financial details, books of account etc.

o The second respondent had illegally remitted monies of the Company in April 2005 to Singapore for the benefit of his son in terms of the statement of account issued by the Company's banker and the communication dated 20.04.2005 of the Company requesting the bank to debit the required amount from its account. The second respondent further furnished the Company's guarantee for his son's education abroad, to pay damages which may be caused on account of any default, if any, in adhering to the terms of scholarship, which has nothing to do with the affairs of the Company, and caused great prejudice to the Company at large and the members.

o The Company falsely filed Form No. 32 as if the fourth respondent was appointed as an additional director at the board meeting held on 12.01.2006 in order to usurp the Company. At the said board meeting, the second respondent produced a transfer deed dated 11.06.2002 for having allegedly obtained transfer of 28,500 shares from the petitioner, whereas the agenda for the board meeting never contained any business relating to either appointment of director or transfer of shares. The transfer deed executed on 11.06.2002 was validated after two months on 15.12.2005 which is contrary to Section 108(1A) and illegal. The impugned transfer instrument stamped on 27.11.2002 includes 4500 shares issued only on 30.09.2002, copy of the relevant share certificates has been produced before the Bench. Thus, it is clear that the share certificate dated 30.09.2002 comprising of 4500 shares was not available when the transfer was affected on 11.06.2002. The second respondent made use of the blank but signed transfer deeds obtained from the petitioner and his family members on the pretext that the shares were required to be pledged with the Technology Development Board (TDB) and KSFC, securing the amounts due to the Company and one of such transfer deeds was illegally used of by the second respondent in a malafide manner. The petitioner never sold his shares and no consideration was received by him. The share certificate No. 18 comprising of 10000 shares has been pledged in favour of TDB in terms of the communication dated 21.07.2001 and these shares, namely, 14,500 shares could not have been transferred by the petitioner to the second respondent. Hence the claim of the second respondent in respect of 28,500 shares is absolutely false.

The second respondent has not paid any consideration for the shares reportedly transferred by the petitioner. The petitioner similarly at the request of the second respondent in good faith had signed blank annual reports, balance sheets and other statutory returns, whereas the second respondent had illegally made use of those blank documents to sub-serve his selfish motives and without authority of law. The balance sheet for the year ended 31.03.2003 shows that the Company owed an amount of Rs. 1.93 lakhs to the petitioner, but never claimed. The second respondent played fraud on the petitioner to gain unlawfully with a view to throw out the petitioner by all illegal means.

o The fourth respondent had on 26.12.2005 requested the Chairman and Managing Director and again on 12.01.2006 to convene an extra ordinary general meeting for removal of the petitioner in compliance with Section 284, but the essentials of Section 169(4) have not been met, since the fourth respondent does not hold 10% of the shares of the Company as required therein, which is mandatory and therefore, these requisitions of the fourth respondent are vitiated in law. The removal of the petitioner from the office of director is not valid.

The petitioner's removal from the office of director, at the extra ordinary general meeting held on 30.01.2006, based on a purported notice received under Section 284 from the fourth respondent, claiming to be a shareholder, despite the request made by the petitioner to postpone the meeting on health grounds thereby denying an opportunity of hearing to the petitioner and the consequent filing of Form No. 32 dated 30.01.2006 with the Registrar of Companies are oppressive. The respondents 2 to 4 have thus devised a scheme to oust the petitioner from the management of the Company, with a view to take control of the Company and deprive his rights as a shareholder, which is oppressive and unfair, especially when, the petitioner by virtue of Article 18(b) is entitled to hold office for life time, unless he resigns on his own or becomes disqualified under Section 283 of the Act. The resolution said to have been passed at the alleged general meeting on 20.03.2002, deleting Article 18(b) of the Company is not in accordance with law, since no such meeting was ever held and no notice was issued to the petitioner, as claimed by the second respondent. Mere minutes of the board meeting would not be adequate to establish the amendment to the articles. At that relevant point

of time, the petitioner and the second respondent alone were the directors and without the second respondent no meeting could have taken place. Furthermore, the subsequent annual general meeting notices do not reflect any effect of such amendment by passing resolution for retirement of directors in the years 2002, 2003 and 2004 respectively, since the amendment would have the effect of due compliance of Section 255 of the Act in the subsequent years. The petitioner being one of the promoter directors and having 50% holding and management participation in the Company, cannot be removed from his directorship by a purported member, who holds of less than 3% shares of the Company. The board of the Company cannot be altered by dubious methods without following the due process of law.

o The rights of the petitioner have been deprived continuously deliberately and consistently by the respondents which are oppressive and harsh, thereby conducting the affairs of the Company, in a manner prejudicial to the interest of the Company, which would justify the winding up of the Company on just and equitable grounds, but any such order would unfairly prejudice the interest of the Company, being engaged in a profitable business. The petitioner is, therefore, entitled for the alternative remedies under Sections 397 and 398 read with Section 402 of the Act.

o During the pendency of the company petition, the Company came out in September 2006 with a proposal to issue further shares of Rs. 10/- each on rights basis at a premium of Rs. 35/- per share so as to raise Rs. 20.45 lakhs for meeting the capital expenditure, acquisition of fixed assets/income generating assets and for repaying the outstanding dues to the financial institutions, whereas the Company has stated in the affidavit filed before the Bench that there are orders worth Rs. 6 crores for which permission was sought to issue further shares on rights basis. The petitioner asked for details on various aspects from the Company in order to decide on subscribing to the shares sought to be issued on rights basis, which were deliberately declined by the Company.

o The petitioner, with a view to end the ongoing disputes, came forward with a proposal of either selling the shares held by the petitioner and his family for a

consideration of Rs. 3.50 crores, on the basis of the market value of the landed property and other assets owned the Company or purchasing the shares of the respondents group at the same price.

3. Shri Sivasankaran, learned authorised representative, in support of his legal submissions relied on the following submissions: J.C. Augustine v. Remanika Silks Pvt. Ltd. (2003) Vol. 115 CC 1024 to show that in a Section 397/398 petition, normally directorial complaints are not entertained save in certain circumstances like the family company in the garb of a quasi-partnership etc. Ador-Samia Ltd. v. Indocan Engineering Systems Ltd. (2000) Vol.

100 CC 370 & B.M. Jain and Sons Co. P. Ltd. v. Bombay Cable Car Co.

P. Ltd. (2002) Vol. 108 CC 91 to show that any directorial complaints can be entertained in a Section 397 petition in cases of family companies and in companies in the guise of quasi-partnership. Gautam Kupur and Ors. v. Limrose Engineering Works P. Ltd. and Ors. (2005) Vol. 128 CC 237 to show that this Board has been taking a view that directorial complaints can be entertained in a petition under Section 397/398 of the Act, in case of closely held family companies and if facts so warrant. Praful M. Patel v. Wonderweld Electrodes P. Ltd. (2003) Vol. 115 CC 377 to show that in a petition seeking relief against oppression under Section 397, the principles of quasi-partnership can be applied even though there was no deadlock in the management of the company, because deadlock in the management is not an exclusive ground which would depend on the facts of each case; Maharashtra Power Development Corporation Ltd. v. Dablw Power Co.

and Ors. (2003) Vol. 117 CC 506 to show that a single act of oppression would not ordinarily give rise to a cause of action for filing of a petition under Section 397 of the Companies Act. If the effects of a single act are burdensome, wrongful, oppressive and of continuing nature, and the member concerned is deprived of a right and privilege for all time to come in future, then the petition under Section 397 of the Act can be filed even in respect of a single act. Dale and Carrington Investments P. Ltd. and Anr. v. P.K. Prathapan and Ors. (2004) Vol. 122 CC 161 to show that the allotment of additional shares must be bona fide and not mala fide to gain control of the Company; must be in the interest of the company and proper

and legal procedure must be followed to make the allotment. The entire allotment of shares has to be set aside in the absence of any material to justify issue of further share capital. If the facts on record show that the company was being run as one-man show; the minutes book of meetings of board of directors is maintained only to comply with the statutory requirement in this behalf; the minutes do not reflect the actual position; no book is maintained to record presence of directors at meetings of the board of directors; it would be presumed that no meeting of the board of directors did take place. When no meeting of the board of directors of the company was held the question of validity of the meeting does not arise.

o C. Govindaraj and Anr. v. Venture Graphics P. Ltd. and Ors. (2005) Vol. 128 CC 632 to show that with mere production of the disputed minutes validity of the resolutions passed thereof at such meetings cannot be established.

o Micromeritics Engineers Private Ltd. v. Munusamy (2003) Vol. 116 CC 465 to show that where the entire minutes of the board meeting are duly entered, signed and kept in compliance with the provisions of Section 193 of the Companies Act, the presumption under Section 195 of the Companies Act, 1956 with regard to validity of the resolutions made at such board meetings would apply. Navin R. Shah and Ors. v. Simshah Estates and Trading Co. P. Ltd. and Ors. (2005) Vol. 128 CC 55 to show that in the absence of anything on record to show that notice of the meetings was sent to the petitioners and that they were present in the meetings except that their names were included in the minutes which were signed by the chairman and without production of the attendance register substantiating these facts, necessary presumption must be drawn in favour of the petitioners. Kobian Pte Ltd. v. Kobian India Private Limited and Ors. (2005) Vol. 126 CC 675 to show that without production of any evidence in regard to dispatch of the notice of the general meeting, it would remain merely as averments without being substantiated by the respondents. If any document of the company on the records of the Registrar of Companies is disputed, a certified copy of such a disputed document does not carry out any evidentiary value. Rohit Churamani v. Disha Research and Marketing Services Pvt. Ltd. and Ors. (2005) Vol. 123 CC 467 to show that all board meetings/extra ordinary general meeting held by the

company without the petitioner being a director are illegal and must be set aside, and therefore, the petitioner is restored as director of the company which position he held before the disputed meeting. *Capt. Manmohan Singh Kohli v. Venture India Properties Pvt. Ltd. and Ors.* (2005) Vol. 123 CC 198 to show that if the requirements of special notice to be sent to the director under Section 284(2) and grant of opportunity to be heard under Section 284(3) of the Companies Act, 1956, are not complied with, his removal from the directorship of the company is bad in law and such person must be restored to his original position as director and all subsequent actions taken by the company in this regard are declared as null and void.

o Giridhar Gopal Gupta and Ors. v. AAR Gee Board Mills P. Ltd. and Ors. (2004) Vol. 60 CLA 182 to show that any removal of directors belonging to one of the two equal groups of the company and appointment of an additional director not in conformity with the procedure laid down in the Act, would result in setting aside such removal of directors, being bad in law. *S. Varadarajan and Anr. v. Udhayem Leasing and Investments Pvt.*

Ltd. (2005) Vol. 125 CC 853 to show that the allotment of further shares made for personal gains and with a view to gain advantage against the other shareholders of a closely held company is neither in compliance with the legal requirements nor ensure the fair play and probity in corporate management, resulting in the enhancement of the shareholding of the second respondent which would constitute an act of oppression. Any omission to serve a special notice on the directors sought to be removed, would constitute denial of their statutory right of reply and in the absence of such notice to the directors, any resolution for their removal would be vitiated by such omission. *B.V. Thirumalai and Anr. v. Best Ventures Trading P. Ltd. and Ors.*

(2004) Vol. 63 CLA 118 to show that any omission to serve a special notice to the director sought to be removed constitutes denial of his statutory right of reply, and in the absence of a notice to the director, any resolution for his removal will be vitiated by such gross omission. It is a settled proposition of law that further shares could be issued only for the benefit of the company and not with a view to create a

new majority, even if the powers to issue shares is vested in the Board. If the purpose of allotment of shares is for upsetting the existing shareholding to the detriment of one group, then such an allotment of shares, is to be held an act of oppression, whether or not partnership principles are applied. *Mahendra Sahai and Ors. v. Dhruv Theatres and Productions P. Ltd. and Ors.* (2005) Vol. 126 CC 164 to show that any failure to place any record of the board meeting at which allotment of further shares was made and filing of Form No. 2 with the Registrar much prior to the disputed allotment indicating the malafide intention of the respondents, warrant the intervention of the CLB and the allotment of further shares is to be set aside. *IT Cube Inc v. IT Cube India P. Ltd.* (2004) Vol. 121 CC 671 to show that where there is further allotment of shares without general meeting of shareholders of the Company and in breach of the Articles of Company and the provisions of the Act, such allotment is illegal and void. *Kamal Kumar Dutta v. Ruby General Hospital Ltd.* (2006) Vol. 70 SCL 222 to show that any allotment of shares if not completely bona fide deserves to be set aside.

o *M.S. Kumanan and Anr. v. S.S.M. Processing Mills Ltd. and Ors.*

(2004) Vol. 122 CC 504 to show that no one can claim to be the owner of equity shares and cannot claim title to shares on the basis of mere entries in the annual returns of the company, especially when the annual return cannot conclusively prove title to these shares. *Mrs. S. Rehana Rao and Anr. v. Balaji Fabricators Private Ltd. and Ors.* (2004) Vol. 122 CC 804 to show that unless the transfer impugned in the company petition is duly approved by its directors, which must be substantiated by production of the minutes of the meeting of the board of directors, approving such transfer or any other document evidencing the same, it cannot be said that the transfer was in compliance with the relevant article and mere pleadings have no evidentiary value. *Smt Claude-Lila Parulekar v. Sakal Papers P. Ltd.* (2005) Vol. 65 CLA 317 to show that the provisions of Section 108 are mandatory. *Kshounish Chowdhury and Ors. v. Kero Rajendra Monolithics Ltd. and Ors.* (2002) Vol. 110 CC 441 to show that appointment of additional directors in the board meeting if not bonafide and in the interest of the company, but done only to gain majority control on the board, must be declared invalid.

o M. Moorthy v. Drivers and Conductors Bus Service P. Ltd. (1991) Vol. 71 CC 136 to show that in the absence of any evidence of showing how one actually became the Managing Director of the Company, such appointment is non est and declared void arid illegal. Gopal Krishnaji Ketkar v. Mahomed Haji Latif and Ors.

to show that even if the burden of proof does not lie in a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. N. Venkataswamy Naidu v. Sri Suryateja Constructions P. Ltd. and Ors. (2005) Vol. 128 CC 245 to show that by virtue of regulation 44 of the Company Law Board Regulations, 1991, every Bench of the Company Law Board has the inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench. Regulation 47 provides that a Bench shall be deemed to be a court or the lawful authority for the purpose of prosecution or punishment of a person who wilfully disobeys any of its directions or orders. The Company Law Board is deemed to be a court as envisaged in regulation 47 and in exercise of the inherent power under regulation 44, is empowered to invoke Section 10 of the Contempt of Courts Act for the purpose of punishing persons who had willfully disobeyed the orders of the Board.

o R.S. Jalan v. Deccan Pvt. Ltd. Vol. 75 CC 417 to show that directors are bound by their fiduciary duties to allot shares only for the benefit of the Company and allotment of shares otherwise is a breach of the fiduciary duties.

serious allegations of fraudulent conduct by the management have been made, it is necessary to get the same investigated so that the investigator having powers not only to investigate the affairs of the company but also associated companies, could bring out the truth.

o Universal Glass Ltd. v. Meerut Bottlers P. Ltd. (1985) Vol. 58 CC 68 to show that the respondent company has become commercially insolvent and lost its substratum, because its factory lay closed, there is no sufficient justification for the

closure, it has failed to pay salaries and bonus to its employees and not deposited the contributions towards state insurance and provident fund, there are suits against the company for recovery of large amounts and large amounts are also due towards sales tax and Central Excise. *Arun Kumar Mohta v. Ganesh Commercial Co. Ltd.* (2006) 74 CLA 116 & *Rajesh Patil v. Moonshine Films P. Ltd.* (2006) 74 CLA 151 to show that in a case of oppression, a member has to specifically plead on five facts - (a) what is the alleged act of oppression; (b) who committed the act of oppression; (c) how it is oppressive; (d) whether it is in the affairs of the company; (e) and, whether the company is a party to the commission of the act of oppression. In the present case all the five aspects of oppression stand proved.

The acts of oppression in the affairs of the company have been listed in detail highlighting how these are oppressive.

o *Amur Natlt Malhotra v. MCS Ltd.* (1993) 76 CC 469 to show that the provisions relating to special notice do not dispense with the requirement of Section 188. Resolutions which require special notice do not cease to be resolutions as contemplated by Section 188 of the Act. Section 190 read with Section 225 neither expressly nor by implication overrides the requirement of Section 188 of the Act.

Sections 188, 190, 225 and 284 must be read together and if so read the intention of the Legislature becomes manifest. *Life Insurance Corporation of India v. Escorts Ltd.* (1986) 59 CC 548 to show that every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting. Nor are the reasons for the resolutions subject to judicial review. *Lt. CDR. D.K. Chatterji v. Rapti Supertronics Pvt. Ltd.* (2003) 114 CC 265 & *Rohit Churamani v. Disha Research & Markeating Services Pvt. Ltd.* (2005) 123 CC 467 to show that any director can call meeting. However, any resolution passed without required quorum is ipso facto void and all such board meetings and general meetings held without quorum are illegal and set aside. *Kamal Kumar Dutta and Anr. v. Ruby*

General Hospital Ltd. and Ors.

(2006) 74 CLA 91 to show that when the board meeting convened without proper service of notice, such board meeting cannot be said to be valid, (Para 31). When an important decision was taken in the absence of main promoter of the company to oust him from the Managing Directorship and to install someone else in his place, it is the grossest act of oppression by the Board of Directors. When a material change is brought about in the management to be detrimental of the interest of the main promoter it is squarely covered under Section 398(1)(b) of the Act. Dr. T.N. Raghunath and Anr. v. Lakeside Medical Centre (P) Ltd. and Ors. (2006) 72 CLA 222 to show that the directors who are empowered by the articles of association of the company to allot shares at their discretion, must (i) exercise their power with utmost good faith for the benefit and interest of the company, (ii) ensure fair play in action in corporate management, and (iii) act bona fide in exercise of their responsibilities in further allotment of shares. Where the directors acted in breach of the fiduciary power to allot shares at the rate much below the book value for the purpose of consolidating and improving power of one set of shareholder in exclusion of the remaining shareholders, the action of the directors would constitute a grave act of oppression against minority shareholders. Binod Kumar Agarwal and Ors. v. Ringtong Tea Co. Pvt. Ltd. and Ors. (1996) Vol. 85 CC 289 to show that if any thing is lacking in the petition, it may be made good by the subsequent affidavits and, therefore, it is necessary to consider the entire evidence that has been placed in order to do justice between the competing rights of the parties. The case of justice will not suffer if reliefs are granted after the consideration of all the evidence even though the original plaint was lacking in particulars. The creation of a new majority without allowing the petitioners to participate in the further issue of equity is definitely an oppressive act, especially considering the circumstantial evidence which clearly points out that the factum of issue and allotment of such shares is not beyond doubt. Mritunjoy Pani and Anr. v. Narmanda Bala Sasmal and Anr. (1961) SC2 GJX 0111 SC to show that no one can be allowed to benefit from his own wrongful act. Public Passenger Service Ltd. v. M.A. Khadar and Anr. (1966) CC 2 GJX 0015 SC to show that the well-known maxim of equity that "he who comes into equity must come with clean hands", and that the courts should dismiss the applications when the respondents did not come

with clean hands must be rejected when the respondents are asserting their legal rights to the shares on the ground that the forfeiture is invalid, and they continue to be the legal owners of the shares.

The maxim does also not mean that every improper conduct of the applicant disentitles him to equitable relief. The maxim may be invoked where the conduct complained of is unfair and unjust in relation to the subject-matter of the litigation and the equity sued for. *T. Ramesh U. Pai and Ors. v. Canara Land Investments Ltd. and Ors.*

(2005) Vol. 123 CC 869 to show that the CLB has the power to order division of the assets and properties, when the Company possessed of vast real estate and allocate them to the rival groups, according to their shareholding in the company.

4. According to Shri R. Murari, learned Counsel, the petition lacks the requirements of Sections 397 & 398 and no relief can be granted in the light of the petitioner's conduct and several of the incorrect as well as mis-leading statements as put forth by him and further denied categorically the charges levelled against the respondents as under:

- o The petitioner and the second respondent initially commenced and jointly managed the partnership business at Mysore, till the second respondent shifted to Bangalore in the year 2000, thereafter which, the petitioner has been running the firm, while the second respondent is looking after the affairs of the Company. The firm never involved in the field of aerospace industry but only in manufacturing special purpose machines for the tyre industry and related industries as brought out by the brochure produced by the petitioner. As a business strategy orders were being routed through the firm, but the firm did not have the expertise or equipment to carry out such work and the same was being subcontracted to the Company, which was executing the contract. The petitioner has no knowledge in aerospace industry, whereas the second respondent has worked for six years in HAL. The second respondent is only responsible for the manufacturing activities of the Company. The petitioner having been always placed at Mysore only attended the board meetings and not the day-to-day affairs or management of the Company. The petitioner is holding only 70000 shares constituting 24.64% of the paid up capital of the Company and not

34.68% as claimed by him. While the initial shareholding has been equal, there is no agreement between the petitioner and the second respondent for equal share holding in the Company. Thereafter, the shareholding came to be changed to fund several large projects of the Company with the full knowledge and concurrence of the petitioner. Hence, the principles of quasi partnership which can be imported into the corporate entity only in limited circumstances and not as a general principle will not apply to the facts of the present case. The second respondent never diverted the flow of orders of HAL from the firm in favour of the Company. The partnership firm came to be closed by reason of the mismanagement of the petitioner, apart from the fact that the petitioner transferred a sum of Rs. 4 lakhs from the firm's account into his wife's account and a further sum of Rs. 80,000/- to himself, leading to dishonour of the cheque issued to KSFC, which ultimately resulted in its recalling the loan and the consequent closure and seizure of the unit. KSFC came out with public notices on 17.11.2005, 06.06.2006 and 15.10.2006 auctioning the firm's property, but the bids were rejected for lack of adequacy and ultimately the property could be sold, pursuant to a paper advertisement effected on 02.02.2007 in favour of the fourth respondent, being the highest bidder for Rs. 97 lakhs in the presence of the petitioner and the second respondent. KSFC having sold the unit for its dues, the question of diverting the orders of the firm to the Company does not survive. The petitioner has been acting in a manner prejudicial to the interest of the Company, compelling the respondents to remove the petitioner from the office of director in the best interest of the Company after following the procedure prescribed in Section 284 of the Act.

o The directors were appointed at the board meeting held on 11.08.2004 and at the annual general meeting of 21.08.2004, which were attended by the petitioner. The purported notice of the sixth annual general meeting filed by the petitioner being a draft notice was not circulated among the members and certified copy of the notice of the annual general meeting filed with the Registrar of Companies is produced before the Bench. The notice so filed contains the agenda regarding appointment of the additional directors and accordingly directors were appointed at the annual general meeting held on 21.08.2004. At the next annual general meeting held on 30.09.2005 two of the directors retired and one technocrat was inducted on the board, in terms of Form No. 32 filed with the Registrar of

Companies. At the board meeting of 11.08.2004, the second respondent was appointed as Chairman and Managing Director, who authorised to operate the bank account. His remuneration was increased at the board meeting held on 30.09.2005. The fourth respondent was elected at the board meetings held on 12.01.2005.

These meetings were attended by the petitioner, as borne out by copies of the attendance sheets and minutes of the respective meetings. The shareholding of the fourth respondent as well as new shareholders of the Company and the appointment of four additional directors are neither challenged nor claimed any reliefs by the petitioner and therefore, these issues need not be gone into in the present proceedings. After election of the additional directors at the board meeting held on 11.08.2004 they participated at the subsequent board meetings, which have been attended by the petitioner. The petitioner though denies the appointment of additional directors, yet admitted the enhancement of directors to seven during the period between 11.08.2004 and 21.08.2004. The circular resolution dated 02.12.2005 contained the names of the additional directors along with the petitioner and the second respondent, wherein the petitioner's name is reflected at the end of the resolution. Similarly, the circular resolution No. 01/2005-2006 dated 16.12.2005 confirms the names of other directors, with that of the petitioner at the end of the resolution. Both the resolutions have not been accepted by the petitioner, in token of which he signed against his name.

o The third respondent has made the requisite declaration and caused the passing of necessary resolution under Section 314 of the Act in regard to his holding of an office of profit in the Company and therefore, the compliance certificate issued as at 11.08.2004 is not violative of the Company Secretaries Act, 1980.

o The fourth respondent, a leading industrialist, social worker and common friend of the petitioner and the second respondent, was allotted shares as early as on 10.09.2001 and the share certificate bearing No. 021 for 6500 shares issued to the fourth respondent dated 10.09.2001 was signed by the petitioner. The fourth respondent paid the consideration for his shares by way of demand draft through the petitioner. The share certificate No. 020 dated 10.09.2001 comprising of 10000

shares in the name of the petitioner's wife was signed by the petitioner. The petitioner had also signed the annual return for the relevant year reflecting the allotment of shares in favour of the fourth respondent and other shareholders. The claim of the petitioner that Shri M. Shanmugam was introduced to him is far from truth, since Shri M. Shanmugam was working as general manager of the partnership firm run by the petitioner. The petitioner's ignorance of the new shareholders is incorrect in the light of the fact that the share certificates issued to them and the annual return for the year ended 30.09.2003 disclosing the names of the new shareholders have been signed by the petitioner. The share capital was increased on account of the stipulation imposed by TDB for releasing a loan amount of Rs. 200 lakhs. The petitioner has not challenged the allotment of impugned shares. The balance sheets of the Company for the year ended 31.03.2003 and 31.03.2005 have been signed by the petitioner and the respondents 2 & 4, which disclose the enhanced paid up capital of the Company. The petitioner's version that he had signed blank share certificates and annual returns is falsified in terms of the correspondence exchanged between the petitioner and the second respondent. The CLB being a Court of equity, it is incumbent on the petitioner to approach the CLB with clean hands.

o MJR had invested in the equity of the Company and never provided any loan as contended by the petitioner. The share certificates issued to MJR have been signed by the petitioner. The second respondent at the request of MJR purchased his 15000 shares and on payment of the consideration by the second respondent, MJR executed the transfer deed in favour of the second respondent and the transfer so effected was approved at the board meeting held on 28.01.2005, which was attended by the petitioner. The second respondent had substantial credits with the Company and therefore, payment was effected out of such credits. The annual return reflecting the impugned transfer by MJR has been signed by the petitioner.

o The Company has been conducting regular board meetings attended by petitioner from time to time and holding the general meetings periodically as borne out by the annual returns filed under the signature of the petitioner. Article 18(b) was duly amended removing the provisions which enabled the first directors

holding office for life, pursuant to the stipulation laid down by KSFC, while extending credit facilities to the Company in accordance with a special resolution passed at the extra ordinary general meeting held on 20.03.2002, to which the petitioner was also a party to the resolution. Even otherwise, any life time director can be removed under the provisions of Section 284. The search report produced by the petitioner would prove that the articles have been altered by virtue of passing a special resolution at the extra ordinary general meeting followed by Form No. 23 dated 20.03.2002 filed with the Registrar of Companies. Therefore, the claim of the petitioner for lifetime directorship is absolutely untenable.

o The petitioner surreptitiously obtained from the Company's bank statements running into 54 pages, incurring an amount of Rs. 1512/- which was debited to the Company's account, inspite of which the petitioner was unable to establish any single instance of mismanagement. The statement of accounts does not throw any light on any of the alleged financial irregularities. No guarantee was given on behalf of the Company by the second respondent to any Authority at Singapore in connection with his son's education and the Company never suffered any loss on this account. The issue of guarantee for the purpose of his son's education to a tune of Rs. 27,000/-, is a trivial issue. The foreign remittance made by the second respondent is related to the purchase of a laptop for the purpose of the Company, which is being used by the Company, as evidenced from the relevant voucher produced before the Bench. The fax invoice dated 14.11.2004 for \$ 1092 is in respect of a laptop purchased for the Company and there is no misappropriation on the part of the second respondent. The petitioner has produced along with his rejoinder copies of a number of communications including the guarantee letter issued on behalf of the Company for the benefit of his son, which are all unsigned and no reliance can be placed by the CLB. The petitioner made false complaint to the banker, HAL and the Registrar of Companies, with a view to harass the respondents causing immense prejudice to the Company.

o The partnership firm owed a large sum of monies to the Company and therefore, the Company appropriated an amount of Rs. 19.85 lakhs received from HAL in the name of the firm against the firm's dues.

The petitioner complained with the Vigilance Department of HAL, instead of taking up the issue with the Company with a view to terminate the working relationship between the Company and HAL.

However, the petitioner withdrew his complaint on 30.12.2005 at the request of HAL and, therefore, the grievance of the petitioner does not any more survive. The statement of accounts would show that the Company had settled the disputed amount of Rs. 19.85 lakhs to the firm and even then the firm owed Rs. 14.45 lakhs to the Company.

o The board of directors initially authorised by means of a resolution either director to sign the cheques, but the petitioner, never signed any cheque till date relating to the Company and all the cheques were being signed exclusively by the second respondent.

A new account was opened with Vijaya Bank as resolved at a board meeting held on 30.09.2002, in which the petitioner and the second respondent were present. The Company was constrained to take steps for passing a circular resolution dated 02.12.2005 for operation of the bank account in view of the petitioner's written instructions to the bank to stop operation of the bank account by the second respondent. After issuance of the circular resolution, the board felt the need to call for a board meeting on 15.12.2005 to obtain a fresh mandate to operate solely the bank account by the second respondent. However, no business could be transacted at the board meeting on account the behaviour of the petitioner, compelling the board to send a circular resolution in relation to the operation of the bank account which was approved by the majority of directors with the sole exception of the petitioner. The circular resolution dated 16.12.2005 was confirmed on 12.01.2006 by the board of directors of the Company.

o The petitioner had transferred his 28500 shares to the second respondent as evidenced from the transfer deed signed by the petitioner. The transfer deed was revalidated since the second respondent misplaced the same. The petitioner owed a large sum of monies to the second respondent and therefore, these shares were given in part repayment of the dues owed by the petitioner to the second respondent. At the board meeting held on 12.01.2006, the transfer of 28,500

shares by the petitioner in favour of the second respondent was approved, wherein the petitioner never expressed any dissent in regard to the resolution approving the transfer of shares, but he was a party to the resolution approving the transfer of shares in favour of the second respondent. The consideration for these shares has been adjusted out of the amount due by the petitioner to the second respondent. The board minutes dated 12.01.2006 are drawn in accordance with Section 193 and therefore, these minutes are presumed to be valid, as envisaged in Section 195.

The petitioner has taken contradictory versions in the main petition and rejoinder in regard to the blank transfer forms said to have been executed by him. The blank transfer forms produced by the petitioner are unsigned and assume no relevance. When the shares of the petitioner (70000) and the second respondent (70000) were pledged in July, 2001 with TDB, the transfer forms were duly filled and the second respondent did not obtain blank transfer deeds from the petitioner or his family members, while pledging their shares with the TDB as claimed by petitioner. The procedural irregularities elaborated in relation to the transfer forms and the purported violation of the provisions of Sections 108(1A) will be of little consequences in a Section 397/398 proceeding and have no relevance to a case of oppression and mismanagement. The petitioner has taken such false stand to avoid the transfer effected in respect of his 28500 shares in favour of the second respondent. The pledge of 70000 shares by the petitioner does not include 28500 shares transferred to the second respondent. The communications both dated 30.09.2005 addressed by the fourth respondent and other two shareholders on the ill treatment meted out by the petitioner by using abusive language, would show the conduct of the petitioner. The second respondent by his communication dated 12.01.2006 called upon the petitioner's explanation in respect of a series of charges levelled against him, but the latter never responded at all. In the meanwhile, the fourth respondent in his communication dated 26.12.2005 requested the Chairman and Managing Director to convene an extra ordinary general meeting of the Company for the purpose of removing the petitioner from the office of director which does not amount a requisition under Section 169 of the Act. The board of directors at the meeting held on 12.01.2006, pursuant to the request of the fourth respondent, resolved to convene an extra ordinary general meeting

on 30.01.2006 to remove the petitioner from the office of director. The petitioner was a party to the said decision taken at the board meeting held on 12.01.2006. The notice dated 12.01.2006 convening an extra ordinary general meeting of the Company for removal of the petitioner from the office of director sent to him was acknowledged in his communication dated 25.01.2006 addressed to the Company seeking postponement of the proposed meeting on health ground. The Company was in receipt of the request of the petitioner on 28.01.2006 and the succeeding two days being Saturday and Sunday being holidays, the extra ordinary general meeting came to be held on 30.01.2006, wherein the members unanimously removed the petitioner duly from the office of director for not answering the charges leveled against him and the petitioner was further intimated of his removal, by the Chairman in his communication dated 09.02.2006, copy of which has been produced before the Bench. Thus, the petitioner was removed after complying with due process of law.

The Courts have held that a life time director can also be removed, in accordance with law. The articles containing the Clause relating to life time director was deleted at the instance of KSFC as elaborated elsewhere. Thus, there is neither any Irregularity in removal of the petitioner nor does it constitute an act of oppression.

o MJR neither denied the application made to the Reserve Bank of India seeking approval for allotment of shares in his favour nor the transfer deed signed by him. Furthermore, the foreign inward remittance certificate would establish the purpose for which the remittance was made by MJR, namely, towards share capital money. MJR had forwarded a declaration dated 25.03.2002 from USA, on basis of which the RBI permitted him to bring money towards share capital of the Company. Form No. 23 filed with the Registrar of Companies on 04.06.2001 would show the increase of the authorised capital of the Company from Rs. 15,00,000/- to Rs. 65,00,000/- and Form No. 2 filed on 19.09.2001 with the Registrar of Companies would disclose the allotment of shares on 10.09.2001 in favour of MJR. The share certificate Nos.024 & 025 issued under the signature of the petitioner and the second respondent on 10.09.2001 would evidence the holding, namely 15,000 shares in the name of MJR. The annual return signed by the petitioner made upto

30.09.2003 while containing the increased capital of the Company, discloses the particulars of 15000 shares allotted to MJR. The balance sheet for the year ended 31.03.2003 would show the increased share capital of Rs. 28,40,000/- which has been signed by the petitioner. The transfer deed 01.01.2005 establishing the transfer of 15,000 shares of MJR contains his signature. The Company by its communication dated 28.09.2003 sought the approval from the RBI for the transfer of 15,000 shares of the Company by MJR, whereas no such approval is necessary under the relevant guidelines. At the board meeting held on 28.01.2005 the transfer of 15000 shares by MJR to the second respondent was approved, to which the petitioner was a party as reflected in the attendance sheet maintained for the said board meeting. In the light of these documents the plea of MJR made in his communication dated 02.05.2006 as well as the affidavit that he did not hold any shares of the Company and that he never signed any transfer deed in respect of any shares of the Company stands falsified.

o The Company, during the pendency of the main petition, came out with an offer on 15.09.2006 in favour of all the shareholders to issue further 45440 equity shares of Rs. 10/- each on rights basis, at a premium of Rs. 35/- per equity share aggregating Rs. 20,44,800/- in the ratio of sixteen equity shares for every hundred equity shares, towards capital expenditure, acquisition of fixed assets, generator and repayment of the outstanding dues to the financial institutions. When the Company has received share application money from all the shareholders except the petitioner, his wife and another small shareholder. This Bench by an order dated 22.11.2006 granted further time to the petitioner to subscribe to the rights shares till 25.11.2006. The petitioner was only raising queries, but failed to subscribe to the shares within the stipulated time, and therefore, the board of directors of the Company have allotted the rights shares to other shareholders of the Company as per the letter of offer in accordance with their entitlement.

Accordingly, 45440 shares were issued to as many as ten shareholders, realising an aggregate sum of Rs. 20.45 lakhs, which came to be utilised for settlement of the dues payable to TDB and Pravan Engineers.

o The petitioner and his wife have not even brought in any money towards the shares already issued by the Company bona fide and in good faith. The petitioner claims that he has not received any original share certificates at all from the Company. However, the petitioner has signed the share certificates issued in his favour and pledged all his shares securing the financial assistance extended by Technology Development Board.

o The Company's land is intended only for the purpose of manufacture of Hi-tech products and cannot be utilised for any other purpose.

The land belonging to the company cannot equated with neighbouring land acquired for real estate development purposes. The petitioner cannot convert the industry to make money, which will lead to closure of the industry. Therefore, the question of the second respondent buying the shares of the petitioner and his family members at Rs. 3.50 crores, as demanded by the petitioner does not arise. Similarly, the respondents are not equally willing to sell their shares, since they intend to run the Company so as to realise its full potential. The offer of the petitioners to purchase the shares of the respondents lacks bonafides. The shares can be valued in terms of Article 12 by the auditor of the Company, according to which the fair value arrived by the statutory auditor for the property comes to Rs. 3.38 crores and the respondents are willing to purchase the shares of the petitioner and his family members at the rate determined by the auditor. In the alternative, the petitioner may buy the firm from the fourth respondent who purchased it in the auction, run the partnership business and continue to be a shareholder in the Company.

5. Shri R. Murari, learned Counsel for the Respondents relied on the following decisions: Tarlok Chand Khanna and Anr. v. Raj Kumar Kapoor and Ors. (1983) Vol. 54 CC 12 to show that by virtue of Section 284, a permanent director is removable by the company in general meeting and the only exceptions are those that are built into the Section itself, as in the case of the directors appointed by the Central Government under Section 408, nominee directors of financial institutions and life directors holding office on April 1, 1952. (see comments of petitioner).

o G. Govindaraj v. Venture Graphics Private Limited (2005) 57 SCL to show that mere illegal, invalid or irregular acts by themselves, unless they are oppressive to any shareholder or prejudicial to interests of the company or to public interest, cannot support a petition under Section 397.

o G. Govindaraj v. Venture Graphics Private Limited (2007) High Court of Madras to show that Section 193 of the Companies Act prescribes the procedure for recording minutes of all the proceedings of every general meeting or board of directors or committee of the board, failure of which attracts penalty. Section 194 of the Act states that minutes of the meeting kept in accordance with the provisions of Section 193 of the Companies Act shall be evidence of the proceedings recorded therein. Section 195 relates to the presumption to be drawn where the minutes are duly drawn and signed, in accordance with Section 193. The minutes hence are prima facie evidence on the conduct of the meeting and resolutions passed therein. When the resolution properly recorded and filed with the Registrar, the burden of proof as regards the challenge to the meeting is on those who are alleging the contents to be not true. *Kilpest P. Ltd. and Ors. v. Shekhar Mehra* (1996) Vol. 87 CC 615 to show that the submission that a limited company should be treated as a quasi-partnership should not be easily accepted.

o V.M. Rao and Ors. v. Rajeswari Ramakrishnan and Ors. (1987) Vol.

61 CC 20 to show that the principle of the special relationship between the parties forming the substratum of the company could be invoked only in a case where originally the business was a partnership concern which was later on converted into a private limited company or where if the veil of corporate character of the company is lifted, it could be found that in reality it was a partnership. This is obviously for the reason that a partnership connotes equal status amongst partners, but the individual shareholder's rights, expectations and obligations to the company are generally governed by the memorandum and articles of association and the provisions of the Companies Act. The exercise of this right of the individual shareholder may be subjected to equitable considerations; but these equitable considerations How from the fact that it originally started as a partnership concern or that there was an agreement or understanding that all or

some of the shareholders should participate in the conduct of the business. *Sangramsinh P. Gaekwad and Ors. v. Shantadevi P. Gaekwad and Ors.*

(2005) Vol. 123 CC 566 to show that the Court in an application under Sections 397 And 398 may also look to the conduct of the parties. The court may also refuse to grant relief where the petitioner does not come to the court with clean hands which may lead to a conclusion that the harm inflicted upon him was not unfair and that the relief granted should be restricted. The principles of partnership cannot be applied to an incorporated company.

o *Srikanta Datta Narasimharaja Wadiyar v. Sri Venkateswara Real Estate Enterprises Pvt. Ltd. and Ors.* (1991) Vol. 72 CC 211 to show that the relief under Sections 397 and 398 of the Companies Act, 1956 is an equitable relief which is entirely left to the discretion of the company court. Because of the equitable and, therefore, discretionary character of the court's jurisdiction, the requirement of good faith on the part of the petitioner is necessary. Mere proof of a case of oppression and mismanagement within the scope of Sections 397 and 398 of the Act. would not entitle the petitioner to the reliefs sought for when these reliefs are discretionary reliefs.

They will be granted only to persons who approach the court with a clean record and in good faith.

6. I have considered the elaborate arguments advanced by learned Counsel for the parties. The main issue for consideration is whether the petitioner has made out a case of oppression and mismanagement in the affairs of the Company, at the hands of the respondents, thereby entitling him for the discretionary reliefs, in terms of the prayer made in the main petition. The rival claims revolve around (i) shareholding; (ii) non-convening of board or general meetings and non-sending of notices to board or general meetings; (iii) appointment of the second respondent as Chairman and Managing Director and fixation of his remuneration; (iv) appointment of additional directors; (v) operation of the bank account solely by the second respondent; (vi) financial irregularities at the instance of the second respondent; (vii) diversion of funds as well as business orders of the partnership firm to the Company; (viii) allotment of shares to outsiders; (ix) impugned

transfers, namely, 15000 shares of MJR and 28500 shares of the petitioner in favour of the second respondent; and (x) removal of the petitioner from the office of director.

7. It is on record that the petitioner and the second respondent along with their spouse had established a partnership firm as early as in 1994 manufacturing special purpose machines for tyre industries, as reflected in the brochure produced before the Bench. The Company came to be promoted in May 1998 by the petitioner as well as the second respondent, being its first directors, with the main object of designing, developing, manufacturing and marketing of aerospace vehicles. The partnership firm and Company have been projected as Legend Group of companies. The invoices of the partnership firm would clearly indicate that they are specialists for aerospace industries.

HAL, National Aerospace Laboratories, Bangalore and Vikram Sarabhai Space Centre, Trivandrum have been placing orders with the partnership firm from time to time. The second respondent has also been signing invoices, correspondence with the bankers and signing cheques on behalf of the partnership firm, as brought out by copies of the purchase orders, cheques, invoices, etc., produced before the Bench, which remain uncontroverted by the second respondent. The petitioner continued to be on the board of the Company till his removal in January, 2006. It has been admitted on the part of the respondents that as a business strategy certain orders were being routed through the partnership firm which were sub-contracted to the Company for execution by the latter. There have been inter-se transactions between the partnership firm and the Company, details of which have been furnished by the Company. The business of the Company has been complimented by the partnership firm, contributing towards the growth of the Company.

In view of this and irrespective of whether the partnership firm and the Company carried on any similar business or not, it cannot be disputed that the partnership firm and the Company have been carrying on the business under one and the same banner of "Legend Group of Companies". The shareholding ratio at the initial stage of the Company has been equal between the petitioner and the

second respondent, which has undergone changes on account of the impugned transfers as well as further allotments, in terms of the annual returns on record disclosing the following position:-----

S. No.	Name of Shareholder	Number of shares as on 30.09.2002	Number of shares as on 30.09.2003	Number of shares as on 30.09.2005
1.	Shri B.V. Reddy	77,500	98,500	98,500 (Petitioner)
2.	Smt. Uma Reddy	12,500	17,500	17,500 (wife of petitioner)
3.	Shri E. Ranga Reddy	77,500	98,500	113,500 (second respondent)
4.	Smt. E. Jaya Reddy	12,500	17,500	17,500 (wife of second respondent)

Shri B.V. Reddy 77,500 98,500 98,500 (Petitioner)2.

Smt. Uma Reddy 12,500 17,500 17,500 (wife of petitioner)3.

Shri E. Ranga Reddy 77,500 98,500 113,500 (second respondent)4.

Smt. E. Jaya Reddy 12,500 17,500 17,500 (wife of second It is observed that as at 30.09.2002 the petitioner and the second respondent held each 77,500 equity shares, which came to be increased to 98,500 shares as at 30.09.2003, over which there are no differences between the parties. While it was so, the shareholding of the second respondent got enhanced to 113500 as at 30.09.2005, by virtue of the impugned transfer of 15.000 shares by MJR in favour of the second respondent, which was purportedly approved on 28.01.2005 at the meeting of the board of directors of the Company. The holding of the petitioner came down from 98,500 shares to 70,000 shares on account of the alleged transfer of 28,500 shares approved at the board meeting of 12.01.2006 in favour of the second respondent, which is under serious challenge, in the present proceedings. If the disputed transfers, namely, 15,000 shares by MJR to the second respondent and 28,500 shares by the petitioner in favour of the second respondent are kept aside, the share holding of the petitioner and the second respondent would remain at 98,500 shares and 98.500 shares respectively. The spouse of the petitioner as well as the second respondent held 17500 shares each as at 31.09.2005. The annual return for the period ended 30.09.2003 discloses among other things 55.000 shares held in the name of as many as eight outsiders, which shall include 15,000 shares purportedly allotted to MJR. At this juncture it is relevant to point out that, in the course of the present proceedings, the Company issued further 45,440 equity shares of Rs. 10/- each on rights basis at a premium of Rs. 35/- per share aggregating Rs. 20.45 lakhs in the ratio of sixteen equity shares for every 100 equity shares to meet its business purposes, which is found

to be for the benefit of the Company and therefore, needs no intervention by the Bench. The petitioner's non-subscription to the rights shares in the course of the present proceedings cannot in any way affect the basic understanding between the parties that the Company would be considered to be a quasi partnership, connoting equal status amongst partners, for the purpose of a petition under Section 397/398. The Supreme Court in V.M. Rao and Ors. v. Rajeswari Ramakrishnan and Ors. (supra) categorically held that the principles of partnership could be imported into a corporate entity only in a case where originally the business was partnership concern which was later converted into a private limited company or of where if corporate veil of the Company is lifted, it is found to be a partnership, which are found lacking in the present case. In the light of the decision of the Supreme Court in Sangramsinh P. Gaekwad and Ors.

v. Shantadevi P. Gaekwad (Deed.) Lrs. and Ors. (2005) Vol. 123 CC 566, the principles of quasi partnership can be applied to an incorporated company, which would, of course, depend upon the facts of each case.

Going by the above facts of the present case, it cannot be said that the principles of quasi partnership is inapplicable to the Company before me.

8. The grievances of the petitioner that though the Company has been incorporated in May 1998, no formal board or general meeting was ever held nor notices of any board or general meeting was received by the petitioner till August 2004 must be viewed in the light of the search report of the Company obtained from the records of Registrar of Companies and produced before the Bench by the petitioner. The search report discloses inter-alia the annual return dated 25.10.1999, balance sheet of 31.03.1999, Form No. 5 together with copy of minutes of the extract of the general meeting for increasing the capital from 15 lakhs to 65 lakhs, annual return dated 29.09.2001, balance sheet of 31.03.2001, annual return dated 30.09.2002, balance sheet of 31.03.2002, annual return dated 30.09.2003 and balance sheet of 31.03.2003, none of which is disputed by the petitioner in his complaint dated 11.11.2005 made to the Registrar of Companies. This would clearly show that the Company has been convening the board as well as general meetings periodically in discharge of its statutory obligations, and

therefore, the blanket charges of the petitioner that the Company never held any board or general meetings prior to 11.08.2004 are devoid of any merit. Hence, non-production of the attendance sheets for, the board meetings conducted prior to August, 2004 is not fatal. I do not either see any bonafides on the part of the petitioner in accusing belatedly the second respondent of not having convened any board or general meetings during the period between the years 1992 and 2004 only in the present proceedings and not at any earlier point of time. These facts of the present case are entirely in difference of those of the cases cited on behalf of the petitioner, namely, (i) C. Govindaraj and Anr. v. Venture Graphics P. Ltd. and Ors.; (ii) Micromeritics Engineers Private Ltd. v. Munusamy; (iii) Navin R. Shuh and Ors. v. Simshuh Estates and Trading Co P. Ltd. and Ors.; (iv) Kobian Pte Ltd. v. Kobian India Private Limited and Ors.; (v) Rohit Churamani v. Disha Research and Marketing Services Pvt. Ltd. and Ors. Ltd. CDR. D.K. Chatterji v. Rapti Supertronics Pvt.

Ltd. Kamal Kumar Dutta and Anr. v. Ruby General Hospital Ltd. and Ors. (supra), on the validity of the minutes of meetings and, therefore, these decisions will not go in aid of the petitioner.

The petitioner is further aggrieved on account of the appointment of additional directors, of which he is quite aware, in terms of para 21 of the company petition and allotment of shares in favour of certain outsiders. He is not however seeking any relief against the irregular appointment of directors and allotment of shares, despite the irregularities levelled by him. It is observed that the Company had convened a board meeting on 11.08.2004, the fact of which is not under dispute. The minutes of the board meeting dated 11.08.2004 would reveal that Shri M.K. Shanmugam, Sri P.K. Pande, (third respondent), Sri S.Sivaraman, Sri K.S. Shetty and Sri P.V. Menon were appointed as additional directors. The petitioner and the second respondent are parties to the decision regarding the appointment of additional directors. At the annual general meeting held on 21.08.2004, admittedly attended by among others the petitioner, the additional directors mentioned here above, were appointed as directors of the Company. The petitioner, being a party to the resolutions passed at the aforesaid meetings is estopped from challenging any of the decisions taken at such meetings, notwithstanding the discrepancies

now pointed out by the petitioner that the notice dated 11.08.2004 convening the annual general meeting did not carry any agenda regarding the appointment of directors. Mere irregular acts by themselves, unless they are oppressive to any shareholder or prejudicial to the interest of the Company, as held in *G. Govindaraj v. Venture Graphics Private Limited* (supra), cannot support a petition under Section 397. The petitioner has not made out as to how the appointment of additional director has caused prejudice to the interest of the Company and its shareholders.

All the communications dated 23.1.2005, 02.12.2005, 03.12.2005 & 26.12.2005 addressed by the petitioner to the second respondent, copies of which are before the Bench, are found to have been endorsed in favour of among others, directors of the Company. The circular resolution dated 16.12.2005 empowering the Chairman and Managing Director of the Company to operate solely the bank account, which has not been accepted by the petitioner in terms of his endorsement, does contain the names of all the directors of the Company including the petitioner, the second respondent, Dr. S. Sivakumaraswamy, Shri M.K.Shanmugam, Shri K.S. Shetty and Shri P.V. Menon. The subsequent board meetings held on 28.01.2005, 30.09.2005, 15.12.2005 and 12.01.2006 were attended by other directors along with the petitioner and the second respondent. But the petitioner never chose to challenge either the appointment of directors or their competence to discharge the duties as directors, at any of those meetings. At the same time, the petitioner, by his conduct affirmed that the board consisted of a number of directors other than the petitioner and the second respondent. The present threat of the petitioner on the appointment of directors is deliberate and contradictory to his own affirmation. It cannot therefore, be contended that all the additional directors appointed at the board meeting held on 11.08.2004 ceased to be directors on and from the date of the next annual general meeting, namely, 21.08.2004, by virtue of Section 260 of the Act. It is not further open to the petitioner to challenge belatedly the appointment of the second respondent as Chairman and Managing Director of the Company and the terms of his remuneration fixed at the board meeting validly held and attended by the petitioner on 11.08.2004 as false and concocted. The relevant articles of association of the Company, namely, Articles 25 to 30 dealing with the proceedings of directors or

any other article do not speak of any restriction on the voting rights of the expert directors. Article 29 provides that, a resolution in writing signed by a majority of the directors shall be valid and effectual, as if it has been passed at a meeting of the directors duly called and constituted, and, therefore, the stand of the petitioner that all the resolutions passed at the board meeting held on 28.02.2005, 30.09.2005, 18.12.2005 and 12.01.2006 with participation of the expert directors are invalid and inoperative, must fail. The petitioner claims that Sri M.K. Shanmugam, appointed as a director of the Company at the annual general meeting held on 21.08.2004, is a stranger, whereas Sri M.K. Shanmugam undisputedly worked as a technical adviser of M/s. Legend Designers, wherein the petitioner was one of the partners, as brought out by a communication dated 22.08.1997 addressed by Sri M.K. Shanmugam as technical adviser of M/s. Legend Designers in favour of one of its customers namely, HAL. There is, therefore, no need for approval of accounts of the Company for the year ended 31.03.2005 once again, merely because the approval of accounts for the year ended 31.03.2005 was signed by Shri M.K. Shanmugam. The compliance certificate issued by the third respondent as at 11.08.2004 without disclosing his appointment as an additional director, the fact of which is under dispute, may be irregular but such irregularity per se may not be oppressive and the petitioner has neither pleaded nor made out as to how the aforesaid act is oppressive of the petitioner, or prejudicial to the interest of the Company and the shareholders.

9. The impugned allotments in favour of a number of outsiders, have never been challenged by the petitioner but at this stage expressed his grievances on such allotments, without, however, giving any details regarding the names of allottees, number of shares allotted, date of allotment of shares, etc. The annual return for the period ended 30/09/2002, discloses the allotment of shares in favour of the fourth respondent (6500 shares), Smt. Amba (6500 shares), M.K. Shanmugam (6000 shares), MJR (15000 shares) and Dr. K.C.N. Reddy (3000 shares). The names of these shareholders and their shareholding continue to appear in the annual return for the period ended 30.09.2003 and 30.09.2005, except that the name of MJR as well as his shareholding is not reflected in the annual return for the period ending 30.09.2005. The annual return for the year ended 30.09.2003 speaks of inter-alia, the allotment of shares in favour of Smt. Geetha Sridhar (6500

shares), Shri Raj Siddarth (6500 shares) and Chandrasekhar Reddy (5000 shares).

The share holding of these members does also appear in the annual report for the year ended 30.09.2005. It is also relevant to point out that the petitioner is a party to the relevant annual returns, copies of which are on record before the Bench. The enhanced capital on account of the allotment of shares forms part of the balance sheet for the year ended 31.03.2003 and 31.03.2005 and the petitioner is a party to those balance sheets of the Company. The share certificates issued in favour of all such allottees, namely, share certificate bearing Nos.

021 (fourth respondent); 022 (Amba); 023 (M.K. Shanmugam) all dated 10.09.2001; 038 & 039 (Geetha Sreedhar Rao) and 040 & 041 (B. Raj Siddarth) all dated 24.04.2002, bear the signature of the first petitioner. All the allottees are not arrayed as parties to the present proceedings. The acquiescence by the petitioner in the matter of allotment of shares will disentitle him from drawing support from the decisions in (a) Dale and Carrington Investments P. Ltd. and Anr. v.V.P.K. Prathapan and Ors.S. Varadarajan and Anr. v. Udhayem Leasing and Investments Pvt. Ltd.Mahendra Sahai and Ors. v. Dhruv Theatres and Productions P. Ltd. and Ors.IT Cube Inc v. IT Cube India P. Ltd.Kamal Kumar Dutta v. Ruby General Hospital Ltd. (f) M.S. Sukumaran and Anr. v. S.S.M. Processing Mills Ltd. and Ors.; (g) R.S. Jalan v. Deccun Pvt. Ltd; and (h) Dr. T.N. Raghunath and Anr. v.Lakeside Medical Centre (P) Ltd. and Ors. (supra), dealing with the essential requirements of valid allotment of shares. The petitioner cannot, therefore, disown those allottees as strangers and cannot impugne the appointment of directors for any reason.

10. The complaint of the petitioner on the wrongful collection of the amounts due to M/s. Legend Designers, the partnership firm, from one of the customers, namely. HAL towards the account of the Company by the second respondent without his knowledge though serious in nature, despite the justification putforth by the second respondent, does not survive any more consequent upon withdrawal of such complaint made with HAL. There is no material to suggest that any pressure was brought on the petitioner to withdraw the complaint, made in relation to

wrongful appropriation of the funds of the partnership by the second respondent.

KSFC in furtherance of the default committed by the partnership firm, took possession of the unit of the partnership, leading to its closure and ultimate sale of the property of the firm, after causing public notices on several occasions, as elaborated by Shri Murari, learned Counsel, in favour of the fourth respondent, being the highest bidder for Rs. 97 lakhs, in the presence of the petitioner and the second respondent. Any irregularity on account of sale of the unit of the partnership by KSFC, as suggested by the petitioner, cannot arise in a Section 397/398 proceeding. In this background, the charges relating to diversion of business of the partnership firm having already come to an end, for the aforesaid reason, require no order for any remedial measures. Furthermore, there is no scope under Section 397/398 to agitate the grievances on account of diversion of the funds or business of the partnership firm to the Company, especially when such grievances are not in relation to the affairs of the Company. It may be observed that in order to attract the provisions of Section 397/398, one of the essential requirements as found necessary in *Arun Kumar Mohta v. Ganesh Commercial Co. Ltd.* (supra) is that the complaint must necessarily be in relation to the affairs of the Company. Any complaint against the second respondent in the affairs of the partnership firm cannot be entertained by the CLB.11. The foreign remittance of US \$ 1092 is found to be made by the second respondent on account of purchase of a laptop for the Company as evidenced by an invoice dated 14.11.2004, a fax copy of which was made available before the Bench, has not been repudiated by the petitioner and, therefore, his claim that the foreign remittance was made to Singapore for the benefit of the second respondent's son is misconceived. The letters of guarantee given by the Company at the instance of the second respondent for his son's education abroad are only supported by copies of unsigned guarantee letters, without any evidentiary value and furthermore, prejudice if any, suffered by the Company on account of such guarantee transactions has not been established by the petitioner. The bank statement of the Company comprising of a large number of pages having been obtained by the petitioner at the cost of the Company does not evidence any financial irregularities reportedly indulged by the second respondent and the petitioner's vague allegations regarding the financial irregularities in the affairs of

the Company will not hold good. There is no material to substantiate the claim that the business of the Company is being conducted with intent to defraud its creditors or members or any other persons, or otherwise for a fraudulent purpose or the respondents are guilty of fraud, or misfeasance or other misconduct towards the Company or any of its members, warranting an order of investigation into the affairs of the Company. The petitioner, therefore, cannot draw any support from the decision in Barium Chemicals Ltd. v. CLE (supra).

12. The rival claims on account of the impugned allotment of shares in favour of MJR and the subsequent transfer of his shares in favour of the second respondent are being seriously agitated in the present proceedings. MJR reported in his communication dated 02.05.2006 and further affirmed in his affidavit on 18.04.2007 that - (a) MJR has not remitted any amount in favour of the Company by way of subscription to its share capital; (b) remittance of US \$ 10000 made on 31.07.2001 was meant to be an unsecured loan; (c) MJR received back his amount from the Company after 40 months of remittance; (d) MJR neither applied for any shares nor received any share certificate from the Company; (e) MJR never submitted any application to the Reserve Bank of India for the transfer of shares to the second respondent; (f) MJR has not signed any transfer deed in favour of the second respondent and the transfer deed produced before the Bench does not contain his signature. The network message dated 31.07.2001 of State Bank of India, Chicago, produced by the petitioner discloses the remittance of Rs. 4.60 lakhs by way of 'customer transfer' from MJR to the account of the Company. This message evidencing the transfer of funds does not specify the purpose of such remittance and it cannot, therefore, conclusively be said that the amounts were remitted by MJR by way of loan in favour of the Company, as claimed by the petitioner. The RBI by its communication bearing No. EC.HG.FID No. 4763/21.06.01/2001-02 dated 13.12.2001 advised the Company "to submit the Non-repatriation undertaking (NRU-a copy enclosed for ready reference) from the NRI for the amount invested in your company against allotment of 15000 equity shares. Further, you are advised to confirm about the excess amount to be refunded or to keep in the share application money account of the Company." in response to which MJR is found to have submitted the following non-repatriation undertaking: In consideration of the Reserve Bank of India having agreed to permit

me/us to invest an amount of Rs. 4,60,000/- (Rupees Four lakhs sixty thousand only) in M/s. Legend Technologies (India) Pvt.

Ltd. I/We, Mr. Jithender Reddy Mandapati, son of Mr. Latchi Reddy Mandupati, Residing at 960, Fairway Drive, Apt # 04, Naperville, IL -60563, USA do hereby agree and undertake that I/we will not at any time, seek repatriation of the capital invested or the dividends/profits/income earned thereon. This undertaking will also be binding on my/our own heirs, executors, successors and assigns and they will not be entitled to seek repatriation of any capital invested by me/us or any dividend/profits/income earned thereon.

The genuiness of the aforesaid correspondence can neither be questioned nor challenged either by the petitioner or MJR. The probabilities of the foreign remittance towards subscription of share capital of the Company are further brought out by the materials made available before the Bench. Form No. 2 dated 10.09.2001 would disclose the allotment of 15000 shares in favour of MJR. The share certificates Nos. 024 & 025 both dated 10.09.2001 comprising of 10000 and 5000 shares respectively are found to be issued under the signature of the petitioner and the second respondent, in favour of MJR. The shareholding of MJR is reflected in the annual report for the years made upto 30.09.2002 as; well as 30.09.2003, to which the petitioner is also a party. KSFC while sanctioning a term loan of Rs. 50 lakhs to the Company by its communication dated 03.07.2001 has imposed a number of conditions, one of which shall include that the Company should produce a letter from all NR1 shareholders of the' Company not to dispose of their holdings without prior approval of the Corporation. This would indicate that the Company has allotted shares in favour of NRI shareholders including MJR. MJR has denied signing of any transfer deed and disowned his signature in respect of 15000 shares in favour of the second respondent, without, however, either asking for inspection of the original transfer deed or verifying the same. MJR has admittedly got back the amount invested by him in the Company. The board of directors of the Company at the meeting held on 28.01.2005 approved the transfer of 15000 shares by MJR in favour of the second respondent and the petitioner is a party to such board resolution, approving the impugned transfer, in terms of the relevant attendance sheet, signed by the petitioner. The impugned transfer of

15,000 shares by the petitioner to the second respondent, registered on 28.01.2005 is found disclosed in the annual return made upto 30.09.2005. All these materials would prima facie establish the investment of MJR towards share capital of the Company, the consequent allotment of 15000 shares in his favour by the Company and the subsequent transfer of 15000 shares by the MJR to the second respondent, pursuant to the application made before the RBI for transfer of shares, which is reportedly not a legal requirement. The complaint that the instrument of transfer executed in favour of the second respondent is not in compliance with the mandatory provisions of Section 108(1A) of the Act, cannot successfully be made in a Section 397/398 proceeding, in which case, the decision in Smt Claude-Lila Parulekar v. Sakal Properties P. Ltd. (supra), on the mandatory requirement of Section 108 will have no application to the present facts.

The transfer of 28500 shares in favour of the second respondent is yet another issue to be resolved in the light of the rival claims of the parties. The transfer deed in respect of those shares, is said to have been executed on 11.06.2002 by the petitioner, whereas the share certificate No. 044 comprising of 4500 shares in the name of the petitioner, came to be issued only on 30.09.2002, long after execution of the disputed instrument of transfer. Similarly, the impugned transfer of 28500 shares includes 10,000 shares comprised in the share certificate No. 18, which even according to the respondents, stood pledged in favour of TDB as early as on 21.07.2001. It is, therefore, beyond doubt that the petitioner could not have and could never have transferred the aforesaid 14500 shares in favour of the second respondent. The consideration for 28500 shares, as claimed by the second respondent has been settled from and out of his substantial credits available with the Company, without however producing any concrete evidence in this behalf. No details whatsoever on the availability of credits with the Company or appropriation of such credits towards consideration of the shares transferred in favour of the second respondent are made available. The discrepancies pointed out by the petitioner though substantial and serious in nature, remain unexplained by the respondents. These sequence of events would justify the apprehension of the petitioner that the respondents have misused the blank instrument of transfer said to have been executed by the former at the time of availing the financial

assistance from TDB. The second respondent cannot claim ownership over the impugned shares, merely on the strength of the board minutes, approving the transfer, especially when the minutes do not conclusively establish the validity of any such resolution, in terms of Section 195 of the Act.

13. The directors at the board meeting held on 11.08.2004, apart from/considering the appointment of additional directors, Chairman and Managing Director of the Company, authorised the second respondent solely to operate the bank accounts maintained in the name of the Company in supersession of the earlier resolution passed by the board.

While the petitioner has admitted the convening of the board meeting on 11.08.2004, stoutly denies any resolution having been passed in relation to the operation of the bank account. It is on record that the Company's banker, namely, the fifth respondent herein, had received a letter dated 23.11.2005 signed by one of the directors of the Company, obviously the petitioner, instructing that henceforth all the cheques and other relevant documents should be honoured only with the joint signature of (i) the petitioner and (2) the second respondent. The strong protest made by the petitioner against the sole operation of the bank account by the second respondent would categorically establish the passing of resolution at the board meeting held on 11.08.2004 authorising the second respondent solely to operate the bank account in the name of the Company, in the absence of which, such an instruction would not have flown from the petitioner. The protest made against the sole operation of the bank account, led to authorising the second respondent to operate the bank account solely by means of a circular resolution No. 01/2005-06 dated 16.12.2005, by the directors namely, the second respondent, Dr. Sivakumaraswamy, Shri M.K. Shanmugam and Shri P.V. Menon. The petitioner however, has not approved this circular resolution. The minutes of the board meeting dated 12.01.2006 would reveal that the resolution circulated among the directors on 16.12.2005 was placed before the board for giving fresh mandate to the bank. The board noticed that except the petitioner all other directors approved the circular resolution and as a taken of their approval, signed individually on the aforesaid resolution. The board confirmed the same and it was taken on record by it. The petitioner having attended the board meeting on

12.01.2006, which is evident from the attendance sheet signed by all the directors including the petitioner, cannot raise any dispute on confirmation of the circular resolution made on 12.01.2006.

It cannot, therefore, be contended that the directors including the second respondent have acted in any way oppressive of the petitioner or any other shareholder of the Company, especially when the directors in their wisdom authorised the petitioner solely to operate the bank account, of which I do not see any irregularity, as sought to be claimed by the petitioner. It is for the same reason, it does not lie in the mouth of the petitioner that the fourth respondent has not been appointed as additional director of the Company at the board meeting held on 12.01.2006 and therefore, the filing of form No. 32 regarding the appointment of the fourth respondent as additional director of the Company, cannot be challenged.

14. The deletion of Clause 18(b) of the articles of association of the Company, disentitling the petitioner and the second respondent from, holding the office of director for life time is a bone of contention between them. The petitioner has stoutly denied any move for deletion of Article 18(b) in the past, which must be tested in the light of various records before the Bench. KSFC in its sanction letter dated 03.07.2001 while extending the financial assistance in favour of the Company stipulated inter-alia for deletion of the relevant Clause contained in the articles providing life time directorship for the first directors. It is not the case of the petitioner that the Company did not avail any term loan in terms of the sanction letter dated 03.07.2001 of KSFC. The hypothecation deed dated 05.09.2002 securing the term loan of Rs. 50 lakhs pursuant to the aforesaid sanction letter, has been undisputedly executed both by the petitioner and the second respondent. It is, therefore, clear that the Company ought to have complied with the condition regarding deletion of Article 18(b) before availing the term loan facility from KSFC. The minutes of the extra ordinary general meeting of the shareholders of the Company dated 20.03.2002 would show that the relevant Clause of Article 18(b) came to be deleted, thereby omitting the entitlement of the petitioner and the second respondent to hold the office of director for life time, in accordance with the stipulation imposed by KSFC. The search report as at 17.10.2005 disclosing Form No. 23 dated 20.03.2002 on deletion of Clause 18(b)

and registration of document by the Registrar of Companies on 03.04.2002, has not been disputed by the petitioner. But on the other hand, the petitioner, in his communication dated 11.01.2005 requested the Registrar of Companies not to take on record or register the documents filed after 01.08.2004. This would conclusively establish that the petitioner has not challenged any of the documents filed before the Registrar of Companies by the Company prior to 01.08.2004.

The petitioner cannot successfully challenge the action of the Company, initiated in March 2002, for deleting the relevant Clause of Article 18(b). Furthermore, it is a settled proposition of law that permanent directors can be removed in strict compliance with the provisions of Section 284 of the Act as held in *Tarlok Chand Khanna and Anr. v. Raj Kumar Kupoor and Ors.* (supra), save those are built into the Section itself, and, therefore, the deletion of Clause 18(b) of the Articles of association by itself cannot constitute an act of oppression in the affairs of the Company, notwithstanding the fact that such deletion of the article is not found reflected in the notices of the subsequent annual general meetings. Whether the removal of the petitioner from the office of director, in the facts of the present case, would be unfair, harsh and oppressive of the petitioner, is yet another contentious issue, required to be considered with reference to the relevant provisions of the Act and copies of the records produced before the Bench. The fourth respondent being a member of the Company gave a notice dated 26.12.2005 to the Chairman and Managing Director pursuant to Section 284(2) of the Act, of his intention to propose a resolution for removal of the petitioner from the office of director, as an ordinary resolution at the extra ordinary general meeting of the Company and further requested for convening an extra ordinary general meeting at the end of the January, 2006. The latter part of this request to conduct an extra ordinary general meeting shall be deemed to have been given only under Section 169 of the Act. The notice dated 26.12.2005 has been followed by yet another notice dated 12.01.2006 given by the fourth respondent under Section 284(2), of the Act proposing an ordinary resolution to remove the petitioner from the post of director at the extra ordinary general meeting of the Company to be held on 30.01.2006. It is the prerogative of the board and not of the fourth respondent to decide the date of the meeting. By virtue of Section 169 of the Act, an extra ordinary general meeting may be called on requisition of members holding at least one-tenth of the

paid up capital of the Company, and having a right to vote at the date of the deposit of the requisition on the matter to be discussed at the meeting and, therefore, it is abundantly clear as approved by the Apex Court in *Life Insurance Corporation of India v. Escorts Ltd.* (supra) that every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements to requisition an extra ordinary general meeting in accordance with the provisions of the Act. This mandatory requirement is found lacking in view of the admitted position that the fourth respondent did not possess one-tenth of the paid up capital of the Company as on the date of lodgement of his requisition convening an extra ordinary general meeting. That is why, to my mind, the second notice issued on 12.01.2006 conspicuously does not contain any request for convening an extra ordinary general meeting of the Company, thereby avoiding the embargo contained in Section 169. Sub-section (2) of Section 284 stipulates that special notice shall be required of any resolution to remove a director under this section. In view of this, when any special notice is required of a resolution, notice of the intention to move the resolution, as contemplated in Section 190(1), shall be given to the company not less than 14 days before the meeting at which it is to be moved, exclusive of the day on which the notice is served or deemed to be served and the day of the meeting. These Sections must be read together, in order to know the intention of the legislature, as held in *Amar Natli Malhotra v. MCS Ltd.* (supra). At the board meeting held on 12.01.2006. the directors resolved to convene an extra ordinary general meeting on 30.01.2006 for removing the petitioner from the post of director of the Company. It is found that the Company has on 12.01.2006, informed the petitioner regarding the special notice of a resolution received from the fourth respondent for removal of the petitioner from the office of director at the extra ordinary general meeting held on 30.01.2006. The special notice dated 26.12.2005 having comprised of the notice issued under Section 284(2) and the notice under Section 169, any action taken by the Company in pursuance of such invalid notice under Section 169, without any doubt is contrary to law, as rightly pointed out by Shri Sivasankaran, learned authorised representative representing the petitioner. The minutes of the board meeting dated 12.01.2006 would reveal that the second respondent placed before the board, the requisition received from the fourth respondent to move an ordinary

resolution at the extraordinary general meeting to be convened not later than 30.01.2006, the date convenient for him to attend the meeting seeking removal of the petitioner, upon which the directors present resolved to call for an extraordinary general meeting on 30.01.2006, in order to remove the petitioner from his office as director of the Company. The petitioner in response to the notice dated 12.01.2006 convening an extraordinary general meeting of the members of the Company on 30.01.2006 for the purpose of removing the petitioner from directorship, requested the Managing Director to postpone the meeting at least by three weeks enabling him to offer his explanation on the charges levelled against him on health grounds. The relevant portion of this communication runs as under: The Doctor advise me to take rest at least for four (4) days and not to travel at least for fifteen (15) days. In case of the proof of ailment, the same will be sent on hearing from you.

Under such circumstances, by considering my long association with the company, postpone the meeting at least by three (3) weeks enabling me to attend the meeting and putforth my answers. I hope you will consider my request favourable and oblige. In the meanwhile, I look forward for the copies of minutes duly attested by you.

15. The respondents have nowhere at any point of time denied the genuineness of the reasons putforth by the petitioner for the postponement of the meeting. The minutes of the extraordinary general meeting are not before the Bench to ascertain the details of the proceedings, whereas the second respondent simply advised the petitioner in his letter dated 09.02.2006 that at the extraordinary general meeting the shareholders of the Company have passed necessary resolution removing the petitioner from the office of director and forwarded a copy of Form No. 32 filed with the Registrar of Companies, recording the cessation of his directorship. These events would clearly indicate that the directors present at the board meeting held on 12.01.2006 succumbed to the pressure exerted by the fourth respondent to fix the date of the extra ordinary general meeting as per his dictates, and sacrificed the interest of the petitioner, irrespective of the merits of the charges levelled against him, thereby declining adequate opportunity to the petitioner for answering the charges levelled against him. While the board of directors considered the

convenience of the fourth respondent having miniscule 6500 shares, they did not even deem it appropriate to entertain the request of the petitioner for postponement of the meeting on medical grounds. The justification on the part of the Company that it had received the request of the petitioner for postponement of the meeting only on 28.01.2006 and that the succeeding two days being holidays, the extra ordinary general meeting was held on 30.01.2006 has not been brought to the notice of the petitioner and may be an after thought, as brought out by the subsequent developments. This Bench is not questioning the collective wisdom of the members present at the extraordinary general meeting held on 30.01.2006 in having declined the prayer of the petitioner, yet, such act of the members, in my considered view, is not only against the spirit of Section 284(4), but also oppressive, harsh and unfair, notwithstanding the alleged behaviour of the petitioner at the earlier board meetings, in terms of mere copies of certain communications said to have been sent by certain directors of the Company without however supported by any materials. The petitioner's removal from the directorship without affording adequate opportunity of being heard as envisaged in Section 284 of the Act, is bad in law as held in *Capt. Manmohan Singh Kohli v. Venture India Properties Pvt.*

Ltd. and Ors. (supra). This action of the respondents, pursuant to the invalid notice of the fourth respondent and contrary to the mandatory requirement of Section 284 of the Act, ultimately resulted in improper removal of the petitioner from directorship of the Company. The genuine grievances regarding directorship are always recognised in a closed held company as held in (i) *J.C. Augustine v. Remanika Silks Pvt. Ltd.* (ii) *Gautam Kupur and Ors. v. Limrose Engineering Works P. Ltd. and Ors. (supra)*.

It is relevant to point out that the fourth respondent was appointed as an additional director at the board meeting held on 12.01.2006, wherein it was further resolved to convene an extra ordinary general meeting on 30.01.2006 to remove the petitioner from the office of director and accordingly the petitioner was removed from directorship, not in conformity with the procedure laid down in the Act, as already found and therefore, such removal being bad in law must be set aside, as held in *Giridhar Gopal Gupta and Ors. v. AAR Gee Board Mills P. Ltd. and Ors.*

(supra). Thus, the respondents enjoying majority control in the board of the Company, in my view, brutally exercised their powers and deliberately deprived the rights of the petitioner, one of the promoters, and first directors of the Company, to take part in the management, thereby constituting an act of oppression. This is definitely oppressive and harsh, prejudicing permanently the interest of the petitioner.

16. The petitioner being a prudent technocrat engaged in the affairs of the partnership as well as the Company for over a decade is not found to be diligent in reportedly signing blank annual reports, balance sheets, transfer deeds, statutory returns and other business papers relating to the Company, on account of the blind faith reportedly reposed in the second respondent. The petitioner even though carried out a search of charges of the Company from the records of the Registrar of Companies as early as in October 2005, he never raised the plea of blank signature affixed to the records of the Company at any point of time till initiation of the present proceedings before the CLB and therefore no credentials can be attached to such belated contentions raised by the petitioner.

17. The petitioner does not hesitate to be in the joint management, while the respondents have no objection for the petitioner continuing to be a shareholder but not as a director of the Company. Nevertheless, the petitioner with a view to sever his business connection, thereby ending the on going disputes with the respondents offered either to sell his shares for a consideration of Rs. 3.5 crores or purchase the shares of the respondents for the very same amount on the basis of the prevailing market value of the landed property owned by the Company, which is not acceptable to the respondents mainly on the ground that - (a) the land has been allotted by Government of K.arnataka for manufacturing activities; and (b) the parties cannot go by the present market value of the neighbouring land being acquired for real estate development purposes. In this connection, Clause 12 of the articles of association provides necessary mechanism for arriving at fair value of the shares, which shall be determined by the auditor of the Company.

Accordingly, no shares shall be transferred to any person who is not a member of the Company so long as any member is willing to purchase the same at the fair

value which shall be determined by the auditor of the Company. The respondents have produced in the course of the proceedings, a report by the Company's auditor, valuing the shares of the Company at Rs. 3.38 crores, without recourse to the petitioner, which is admittedly in great variance from the offer made by the petitioner. The petitioner, no doubt made an offer at the bar to acquire the shares of the respondents for an amount of Rs. 3.5 crores, but never attempted to establish his creditworthiness for such huge amount, which assumes relevance in the light of his failure to salvage the partnership firm from the forced sale by KSFC and subscribe to the shares offered by the Company on rights basis. The petitioner in an application under Section 397/398, while seeking equitable relief must approach the CLB with clean hands and in good faith, as held in (a) Srikanta Datta Narasimharaja Wadiyar v. Sri Venkateswara Real Estate Enterprises Pvt. Ltd. and Ors. & (b) Sangramsingh P. Gaekwad and Ors.

v. Shantadevi P. Gaekwad and Ors. (supra). The host of contradictions in the conduct of the petitioner elucidated elsewhere would show the lack of good faith in him, who approached the CLB without a clean record. I am not, therefore, inclined to exercise my discretion in favour of the petitioner, for acquiring the shares of the respondents, as offered by him. The Company is already been found to be a quasi partnership with equal status between the partners. Nevertheless, in the context of the existing state of affairs, it could never be possible any more for the petitioner and the second respondent to carry on together the affairs of the Company. The feasibility of division of the landed property as urged by the petitioner, weighing their rival claims, appears to be rather remote and therefore, this Bench cannot exercise the power to order division of the property of the Company, as has been ordered in T. Ramesh U. Pai and Ors. v. Canara Land Investments Ltd. and Ors. (supra) in the facts of that case. The removal of the petitioner though found to be oppressive, his restoration to the office of director would not be meaningful, in view of the majority control of the management in the hands of the respondents and at best the petitioner could only be a mute spectator, without any effective participation in the affairs of the Company. If on the other hand, the petitioner is directed to sell his shares, it would amount to rewarding the oppressors namely, the respondents, which is not the objective of Section 397/398. In these circumstances, the equity would warrant the exit process to be thrown open to

both the parties, under the supervision of the CLB, without giving option to any specific group of shareholders. Towards this end, the group quoting its price higher than one quoted by the other group shall have the first option to buy the shares : of the other group, thereby giving equal opportunity to both the groups to acquire the shares of each other, which would simultaneously bring to an end the matters complained of in the company petition. This course of action would be in the interest of the Company and its shareholders.

18. In view of my foregoing conclusions and in exercise of the powers under Sections 397 and 398 read with Section 402 of the Act and with a view to regulate the conduct of the Company's affairs, the following orders is/passed.

(i) The transfer of 28500 shares by the petitioner in favour of the second respondent is hereby set aside and the Company shall appropriately rectify its register of members by substituting the name of the petitioner in the place of the second respondent, in respect of the impugned shares, within thirty days of the receipt of the order and file an affidavit of compliance, within ten days thereafter;

(ii) N. Nityananda & Co., Chartered Accountants, Bangalore- 560004, (Mobile No. 9844022328) are appointed to determine the price of each share in the Company as at 31.03.2006, being the date approximate to the company petition, after verifying the books of account and other records of the Company and on considering the submissions of the contesting parties on valuation of the shares of the Company. The Valuer shall submit his report within 30 days, under copy to the parties, upon which each group shall quote in sealed cover before the CLB, the competitive price of each share in the Company at the price higher than the price determined by the Valuer, agreeing to buy or sell the shares of other group at the aforesaid higher price, within 15 days thereafter. The parties are directed to be present on 25.04.2008 at 2.30 PM for consequential directions in furtherance of the offers which may be submitted by them and no seisin is retained over any of the other contentious issues involved in the main petition. The Company will bear the remuneration of the Valuer.

19. With the above directions, the main petition and the company applications stand disposed of. In view of this, all the interim orders are vacated. No order as to

costs.

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