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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CO.A(SB) 17/2007

AJAY PALIWAL & ORS.

Through

..... Appellants

Mr. Arun Kathpalia, Advocate
with Mr. Saurabh Kalia,
Advocate.

versus

SANJAY PALIWAL & ORS.

Through

..... Respondents

Mr. Jayant K. Mehta,
Advocate for respondents.
Mr. Pankaj Batra, Advocate
for Registrar of Companies &
Regional Director.

WITH

+ CO.A(SB) 18/2007

M/S PALIWAL HOTELS
PVT. LTD & ORS.

Through

..... Appellants

Mr. Arun Kathpalia, Advocate
with Mr. Saurabh Kalia,
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versus

SANJAY PALIWAL

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Mr. Pankaj Batra, Advocate
for Registrar of Companies &
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Reserved on : 9th January, 2012
Date of Decision: 16th January, 2012

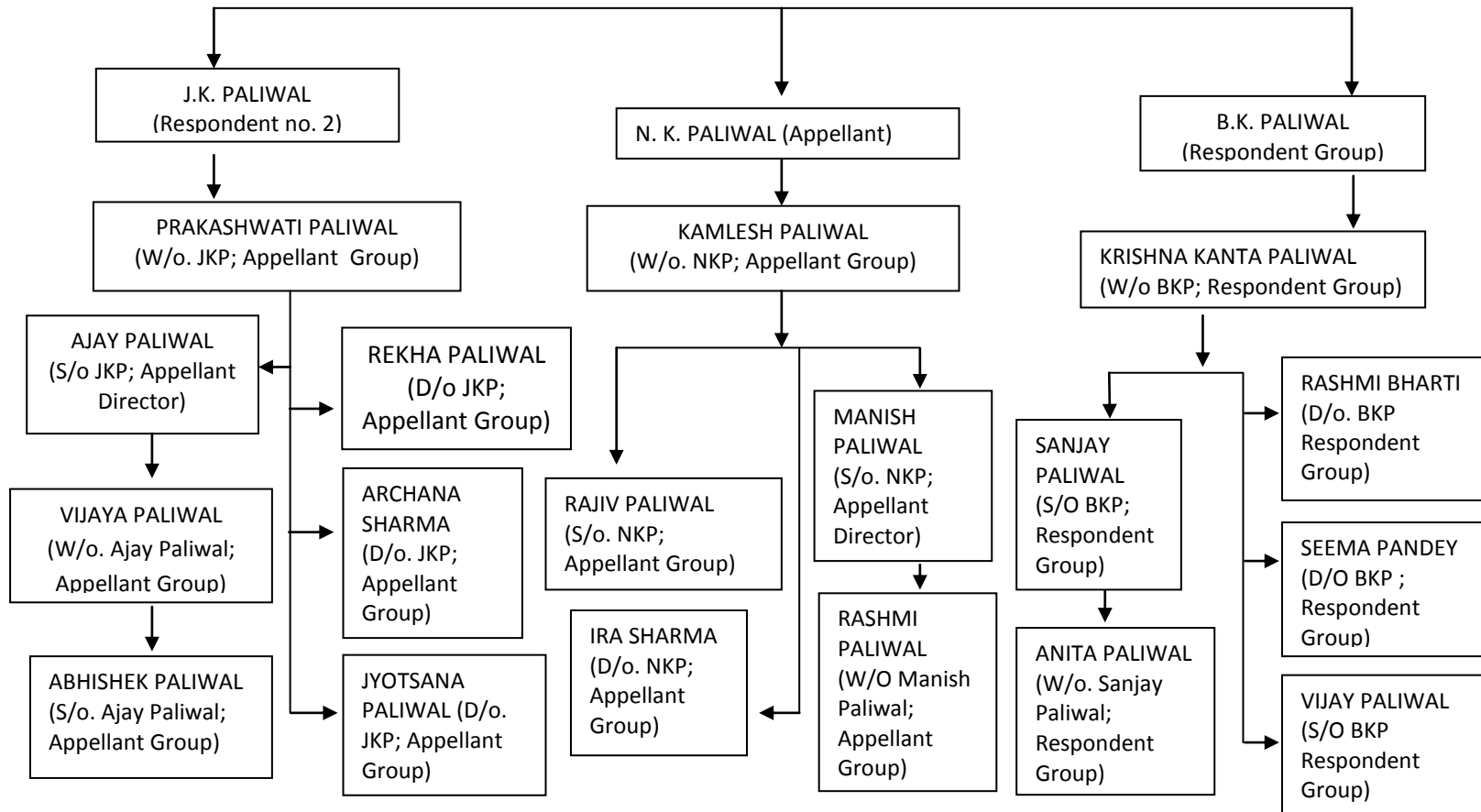
CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J :

1. Present two appeals have been filed under Section 10F of the Companies Act, 1956 (for short 'Act') against the impugned order/judgment dated 31st May, 2007 passed by Company Law Board (for short 'CLB') in Co. Pet. 78/2005 filed by the respondents-petitioners therein.
2. The relevant facts of these two cases are that on 11th October, 1985, M/s. Paliwal Hotels Private Limited, the appellant No.1 company in Co.A(SB) 18/2007 was incorporated as a Private Limited Company with the Registrar of Companies, Delhi and Haryana. The Paliwal family comprising three brothers namely, Mr. J.K. Paliwal, Mr. N.K. Paliwal and Mr. B.K. Paliwal, owned this company. The chart showing the Paliwal family structure is reproduced hereinbelow:-

PALIWAL HOTELS PVT. LTD.



3. In September, 2005, a Company Petition under Sections 397 and 398 of the Act was filed before the CLB by the respondents No.1 and 2 namely, Mr. Sanjay Paliwal, son of Mr. B.K. Paliwal and Mr. J.K. Paliwal, father of Mr. Ajay Paliwal. The said petition was registered as Co. Pet. 78/2005.

4. Since the Paliwal family, on the date the petition was filed before the CLB was divided into two groups, the appellants' faction for convenience sake is referred to as Ajay Paliwal faction. The admitted shareholding in the appellant-Paliwal Hotel Company as on 30th September, 2004 was as under:-

APPELLANTS (MR. AJAY PALIWAL) GROUP

Particulars & Folio in the register of Members	Father's/Husband's Name	No. of Shares
1. Sh. N.K. Paliwal 205, Adishwa Apts., 34, Feroz Shah Road	Sh. D.S. Paliwal	5100
2. Smt. Kamlesh Paliwal 205, Adishwa Apts., 34, Feroz Shah Road	Sh. N.K. Paliwal	2000
3. Sh. Ram Lal Sharma Village Badkali, Distt. Muzaffarnagar		5
4. Ms. Aditi Paliwal Flat No. 18, North Wing Revera Apartments, Mall Road, New Delhi		8
5. Master Abhishek Paliwal		8

Flat No. 18, North Wing Revera Apartments, Mall Road, New Delhi		
6. Sh. A.K. Paliwal Flat No. 18, North Wing Revera Apartments, Mall Road, New Delhi	Sh. J.K. Paliwal	105
7. Smt. Vijaya Paliwal Flat No. 18, North Wing Revera Apartments, Mall Road, New Delhi	Sh. A.K. Paliwal	8
8. Smt. Parakaswati Paliwal, 310, Ansari Road, Muzaffarnagar		500
9. N.K. Paliwal & Sons 205, Adishwar Apts. 34, Feroz Shah Road		8
	TOTAL	7742
	%age of total	38.71%

RESPONDENTS HEREIN

Particulars of the Members	Father's/Husband's Name	No. of Shares
1. Sh. J.K. Paliwal 310, Ansari Road Muzaffarnagar	Sh. D.S. Paliwal	5100
2. Sh. Sanjay Kr. Paliwal 32, Ahata Aulia Muzaffarnagar	Sh. B.K. Paliwal	5
Total		5105
Percentage of paid-up Capital		23.53%
OTHERS SUPPORTING THE RESPONDENTS		
1. Sh. B.K. Paliwal 32, Ahata Aulia Muzaffarnagar	Sh. D.S. Paliwal	5100

2. Smt. Krishana Kanta Paliwal 32, Ahata Aulia Muzaffarnagar	Sh. B.K. Paliwal	2000
3. Sh. J.K. Paliwal & Sons 310, Ansari Road Muzaffarnagar		8
4. Smt. Anita Paliwal 32, Ahata Aulia Muzaffarnagar	Sh. S.K. Paliwal	8
5. Sh. Vijay Paliwal 32, Ahata Aulia Muzaffarnagar	Sh. B.K. Paliwal	5
6. Sh. B.K. Paliwal & Sons 32, Ahata Aulia Muzaffarnagar		8
7. Master Vinayak Paliwal 32, Ahata Aulia Muzaffarnagar		8
8. Master Vinayak Paliwal 32, Ahata Aulia Muzaffarnagar		8
TOTAL		7145
% of total		35.72%
	GRAND TOTAL	12250
	%age of total	61.25%

OTHERS

Particulars & Folio in the register of Members	Father's/Husband's Name	No. of Shares
Smt. Prakashwati Paliwal, jointly with Smt. Kamlesh Paliwal Smt. Krishna Kanta Paliwal		8
	TOTAL	8
	%age of total	0.04%

5. From the pleadings on record before the CLB and before this Court, it is apparent that the disputes between the parties pertain to the Board meetings dated 01st December, 2004 as well as 1st March, 2005, AGM dated 30th May, 2005, allegation of siphoning off funds of appellant-company, allotment of 4250 shares by the Ajay Paliwal faction on 3rd February, 2005, alleged transfer of 5000 shares by Mr. J.K. Paliwal to his son, Mr. Ajay Paliwal and removal of Mr. Sanjay Paliwal from the Board of the appellant-company. It is pertinent to mention that while it was the Ajay Paliwal faction's case that on 01st December, 2004, 550 shares had been allocated to itself and three additional Directors had been appointed from their faction, the respondents' case was that in the said Board meeting, 4800 shares were allocated to themselves and three additional Directors from their faction had been appointed.

6. The findings rendered by the CLB in the impugned order are reproduced hereinbelow:-

“29. Having held that the preliminary objections are not tenable, next I come to the other allegations of the petitioners on merit. I find that the respondents have not been able to refute the same. As regards the petitioners allegation of appointment of R-4,5 and 6 as Directors on 1.12.2004 without complying with the provisions of law and whereby the respondents created a new majority of which, if

the petitioners were given due notice to attend the meeting were unlikely to allow the appointment of directors as the same has resulted in an oppression to the majority shareholders, the respondents contention is that the meeting on 1.12.2004 is admitted by the petitioners, the respondents have produced certified copies of Form 32 filed with the ROC whereas the so called Form 32 produced by the petitioners is alleged to be false and fabricated making use of the same receipt number whereby the respondents had filed the so called genuine form 32, of which the petitioners are allegedly set to be fully aware. On considering these contentions, I find the petitioners are on a sound ground as simply fabricating documents and filing with the ROC and getting a certified copy cannot change chronology of events and give a stamp of genuineness unless it is established that the appointment was done following the due procedure and law in accordance with the provisions of the Act, no evidence is given to prove that the so called meeting on 1.12.2004 was held in compliance with the provisions of the Act. The respondents contention that the two out of the three directors have confirmed the meeting is not acceptable as majority cannot turn black into white. As regards the petitioners' allegation of removal of petitioner No. 1 for the reason that a loan of Rs. 64.50 lacs was given to the relatives in the year 2002 this action also has not been justified by the respondents and the allegations stand unrefuted. The respondents contentions are not borne out from the records. The petitioners admittedly hold more than 60% shares. By removing P-1 their representation on the Board is reduced and this action is oppressive besides being irregular and illegal. It has not been in compliance with the provisions of Sections 190 and 284 of the Act. If the AGM had been held it was unlikely that P-1 would have allowed removal. The circumstances that the respondents themselves are not sure of the date of AGM whether it was 13.5.2005 or 30.5.2005 only indicate falsification and fabrication of record. Besides, the R-3 has admitted that notice was sent by ordinary post. He is silent about sending notices to the shareholders. Other respondents have admitted in their reply that formal notices were not sent only oral communication was made. Thus it is admitted position that no proper notice as per provisions of

Section 284 of the Act has been given. There is obvious violation of Section 284 of the Act while removing P-1. Moreover, the fact that the reason given for removal, that the P-1 had advanced a loan of Rs. 64.50 lakhs to his relatives does not find place in the notice for the AGM only establishes that it is an afterthought. As regards advancing of loan in the year 2002, as pointed out earlier by the petitioners, the advances were given with the consent of all the directors and the respondents have been consistently signing the annual accounts which reflect these loans year after year till 2003-2004. Furthermore, there is no mention of the removal of P-1 in the Directors' Report. In these circumstances it is difficult to rely on the respondents' version and accept it as true. On the other hand P-1 has established that even subsequent to the date on which he is shown to have been removed, he has issued cheques and signed on other documents as Director.

30. As regards the shareholding of the parties there are serious allegations and counter allegations. The respondents allege that P-2 had transferred 5000 shares to R-3 (his son), the transfer is valid in the eyes of law as it was made with due knowledge and concurrence of the petitioner in accordance with mandatory provisions in relation of transfer of shares. The consideration of Rs. 5 lacs for transfer of these shares was paid by R-3 as is reflected in the bank account of P-2. On the other hand, P-2 had taken a strong objection to this pointing out that no shares were transferred by him, the respondents have failed to produce any transfer deeds in original till May 2006 despite several opportunities provided to them. However, only certified copies of transfer deeds, certified by notary public without any supporting affidavit and index were produced. These certified copies of transfer deeds suffered from various discrepancies and defects as pointed out by the petitioners in their contentions given above. Furthermore, the P-2 has alleged that his signatures have been forged on Form No. 2 wherein his shares numbering 5001 have been shown as 0100 and R-3's shareholding of 3255 shares has been shown as 8255 by fabrication of record. It is the respondent who have committed forgery by changing the shareholding by converting 5001 to 0100 and 3255 to 8255. The respondents

reliance on handwriting expert's report regarding P-2's signatures which he has denied also cannot be accepted in view of the several discrepancies pointed out in the expert's report by the petitioners. There is no endorsement on the certified share transfer deeds produced before me approving or rejecting the share transfers. The petitioners' contention regarding non payment of stamp duty on the alleged transfers is also found to be correct. The respondents have not been able to relate the sale consideration as allegedly reflected in the bank pass book of P-2. The bank pass book reflects several other entries as well. Further, it is not understood as to how a letter dated 7.3.2005 of Bhagwati Castings Pvt. Ltd. Calcutta addressed to P-2 of Muzaffarnagar could reach him the same day making it probable to acknowledge a receipt of cheques dated 7.3.2005 on the same day.

31. As regards allotment of 4250 shares by the respondents for which Form No. 2 was also filed with the ROC and certified copy obtained to claim genuineness of the transaction, the petitioners contentions in this regard are found to be correct and true. No further allotment of shares could take place without increasing the authorised share capital which stood exhausted as on that date. Besides, the Return in Form No. 2 is patently incorrect as the date of allotment on page 39 is 1.12.2004 whereas at page 40 it is 1.9.2004, further, the number of shares allotted to Mrs. Kamlesh Paliwal as per para 14 (b) of R-3's reply does not match with this certified copy of return of allotment. Besides, the petitioners' contentions in this regard cannot be dismissed as these point out that there are discrepancies in the dates of the AGM, in the number of shares and even in respect of the so called transferees of these shares.

32. Furthermore, I find that the respondents have not been able to meet the petitioners' allegations regarding siphoning off of funds approximately to the extent of Rs. 40 lacs. The allegations have been met with bald denial with a stony silence regarding specific entries. Further, the petitioners' allegations that annual accounts, statements filed with the ROC as on 30.6.2005 do not reflect the true state of affairs are also found to be correct in view of the facts that the final

accounts could not be prepared in the absence of complete account books and statutory records. Account books for the part period were in the possession of the petitioners and hence the Annual Returns filed with the ROC are incorrect and null and void.

33. *In this case I notice that the respondents have breached their fiduciary duties as directors. On the role of Directors, the law is well settled. In some respects, Directors resemble trustees. Equity prohibits a trustee from making any profit by his management, directly or indirectly. The power to issue shares in this case has been exercised with an improper motive. It is objectionable to use such power simply or solely for the benefit of directors or merely for an extraneous purpose like maintenance or acquisition of control over the affairs of the company. Directors are required to act on behalf of a company in a fiduciary capacity and their acts and deeds have to be exercised for the benefit of the company. The fiduciary capacity within which Directors have to act enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in the interest of the company they represent. They have a duty to make full and honest disclosure to the shareholders regarding all important matters relating to the company. And in the matter of issue of additional shares, the directors owe a fiduciary duty to issue shares for a proper purpose. The respondents have been oppressive to the petitioners by appointing R-4, 5 and 6 as directors and by removing P-1 from the directorship. Creating new majority by way of representation on Board of the R-1 and by way of further share allotment and remaining P-1 illegally are acts of continuous oppression to the petitioners. The respondents' conduct has been burdensome, harsh and wrongful. Besides, the affairs of the company have been mismanaged as pointed out above.*

34. Keeping these circumstances in view, to do substantial justice between the parties, I hereby order as follows:

- i. Appointment of Respondent Nos. 4,5 and 6 as directors is hereby declared null and void and status quo ante is restored. Form No. 32 dated 1.3.2005 filed with the ROC is also declared null and void.

- ii. Form No. 32 filed with the ROC regarding removal of P-1 as director is declared null and void. The resolution regarding his removal is hereby set aside and P-1 is restored as director on the Board of the R-1 company forthwith.
- iii. Resolution given to Respondent Nos. 8,9 and 10 (Bankers) for change in authorised signatories is hereby declared null and void and status quo ante is restored.
- iv. Allotment of 4250 equity shares to R-3 (3000 equity shares) and R-8 (1250 equity shares) and Form No. 2 filed with the ROC in this regard are declared null and void and status quo ante is restored.
- v. The Annual Accounts of the R-1 company for the year ended 31st March, 2005 including the notice, Directors' Report, Compliance Certificate filed with the ROC are declared null and void.
- vi. The Annual Return filed with the ROC dated 30.6.2005 is hereby declared null and void.
- vii. The respondents are directed to restore the amounts siphoned off from the R-1 company's accounts forthwith.
- viii. The R-1 company is hereby directed to give consequential effects in implementing the directions contained in (i) to (vii) above forthwith."

(emphasis supplied)

7. Mr. Arun Kathpalia, learned counsel for the appellants contended that the factual findings rendered by CLB in the impugned order were contrary to record.

8. Mr. Kathpalia submitted that though there was no challenge to the appointment of three Directors, namely, Mr. Abhishek Paliwal, Mrs. Prakash Wati Paliwal and Mrs. Kamlesh Paliwal on 1st

December, 2004 or to the allotment of 550 shares to Mr. Ajay Paliwal faction, yet the CLB in the impugned order had set aside not only the appointment of the aforesaid Directors but also the allocation of said shares.

9. Mr. Kathpalia pointed out that in the company petition filed by the respondents herein before CLB, the first contention urged was that the appointments of Mr. N.K. Paliwal, Mrs. Rashmi Paliwal and Mr. Vijay Paliwal had been made on 1st December 2004 w.e.f. 1st March, 2005. He stated that the respondents herein had also urged that these appointments had been made with an intent to create a new majority in the Board of Directors inasmuch as at that point of time, Mr. B.K. Paliwal and Mr. J.K. Paliwal families held more than 60% shares of the appellant-company and it was unlikely that they would allow the said appointments. Mr. Kathpalia submitted that the CLB failed to appreciate that Mr. N.K. Paliwal, Mrs. Rashmi Paliwal and Mr. Vijay Paliwal had not been appointed on 1st December, 2004 but on 1st March, 2005. He also submitted that the directors appointed on 1st March, 2005 had been appointed after following due process as provided in the Act.

10. In respect of the appointments of Mr. Abhishek Paliwal, Mrs. Prakash Wati Paliwal and Mrs. Kamlesh Paliwal as Directors on 1st December, 2004, Mr. Kathpalia pointed out that on that date majority of the Board of Directors was that of the appellants comprising Mr. Ajay Paliwal and Mr. Manish Paliwal. He submitted that only certified copies of Form Nos. 2 and 32 from the record of the ROC had been filed by the appellants and therefore their version should be believed and accepted.

11. Mr. Kathpalia also submitted that the finding rendered by the CLB that there was no meeting on 1st December, 2004 was contrary to record as it was nobody's case that a Board Meeting had not been held on 1st December, 2004. According to him, the finding in the impugned order was also contradictory as the CLB had proceeded to accept the alleged allotment of 4800 shares to Mr. B.K. Paliwal faction by the Board of Directors in a meeting held on 1st December, 2004. Mr. Kathpalia further submitted that there was no reason given by the CLB as to how the documents filed by the appellants with the ROC were fabricated.

12. Mr. Kathpalia submitted that without any pleadings, the CLB had held that the appellants had siphoned off ₹ 40.5 lacs. He also submitted that the aforesaid finding of CLB was in violation of principles of natural justice inasmuch as the allegation of siphoning off ₹ 40 lacs approximately was for the first time taken in the written submission filed by the respondents herein before CLB after the conclusion of arguments.

13. Mr. Kathpalia further contended that the CLB had erroneously set aside the allocation of 4250 shares to Mr. Ajay Paliwal and Mrs. Kamlesh Paliwal on 3rd February, 2005 on the sole ground that the authorised share capital of the appellant-company had been exhausted.

14. Though Mr. Kathpalia admitted that the removal of Mr. Sanjay Paliwal was in violation of Sections 190 and 284 of the Act, he stated that Mr. Sanjay Paliwal was removed because the loan of ₹ 64.50 lacs advanced to his in-laws family had not been returned to the appellant-company. He stated that though there was no dispute with regard to advancement of aforesaid loan, yet CLB while holding his removal to be wrongful, had not even considered it appropriate to direct him to bring back the aforesaid amount.

15. Mr. Kathpalia lastly submitted that the CLB's finding with regard to transfer deed of 5000 shares alleged to have been executed by Mr. J.K. Paliwal in favour of his son Mr. Ajay Paliwal on 1st February, 2005 was erroneous. He stated that the aforesaid transfer deed was neither forged nor fabricated and that the same should be examined by CFSL. He stated that full stamp duty had been paid and the same was reflected in the transfer deed. Mr. Kathpalia referred to the passbook of Mr. J.K. Paliwal to show receipt of consideration of ₹ 5 lacs by him on 1st February, 2005, i.e., the date of transfer. He contended that the CLB's finding that the appellants had failed to produce the transfer deed despite several opportunities, was contrary to record as the appellant had never been asked to produce the said deed. He referred to the original transfer deed which had been placed on record in the present appeal.

16. Mr. Kathpalia also stated that there was no forgery in annual return dated 30th May, 2005 as signatures on the said document were that of Mr. Ajay Paliwal – who had not denied the same. He contended that the CLB's finding that Form 2 had been forged, was incorrect as there was no Form 2 in respect of said transfer. He also

stated that the finding of interpolation given by the CLB with regard to 5100 shares as 100 and 3255 shares as 8255 was *ex facie* incorrect and irrelevant.

17. At the outset, Mr. Jayant Mehta, learned counsel for the respondents submitted that the present appeals deserved to be dismissed as they sought to raise and reopen questions of fact.

18. Mr. Mehta pointed out that while it was the respondents' case before the CLB that the factum of appointment of three additional directors and issuance of 4800 shares in their favour was confirmed by Form Nos. 2 and 32 filed under receipt no. 606742, it was the appellants' case that factum of issuance of 550 shares and appointment of three additional directors belonging to Mr. Ajay Paliwal faction was confirmed by Form Nos. 2 and 32 filed under receipt no. 606762. In this connection, he placed reliance on the appellants' own pleading in Co. A.(SB) 18/2007 wherein the appellant-company had stated as under:-

“3(IV)(a) Further, it is evident from the various forms in question that the receipt attached by the respondents being receipt no. 606762 along with the forms filed by them and the receipt attached by the appellants being no. 606762 on the certified copies of the forms filed by the appellants is the same.”

19. Mr. Mehta stated that the Registrar of Companies had clarified vide its letter dated 13th October, 2009 that there was no record of any receipt No. 606762. The letter dated 13th October, 2009 of Registrar of Companies is reproduced hereinbelow:-

"No.Misc/2009-10/paliwal/6913

Date 13/10/09

To,

*Shri Sanjay Paliwal,
Paliwal Hotels (P) Ltd.
32, Ahata Aulia ji,
Muzaffar Nagar, Uttar Pradesh.*

Sub: ROC receipt no. 606762 dated 13.12.2004

Sir,

I am directed to refer to your letter dated 10.8.2009 vide which you have asked as to in which company name the receipt no. 606762 dated 13.12.2004 was issued. In this connection it is informed that it is not known that in respect of which company, the receipt no. 606762 dated 13.12.2004 was issued.

However, as per records of this office relating to Paliwal Hotels (P) Ltd., it has been noticed that on 13.12.2004, two documents i.e. Form-32 and Form-2 were filed in the name of Paliwal Hotels (P) Ltd. for which an amount of Rs. 500/- + Rs. 500/- were paid vide receipt no. 606742.

Hence, it is clear from the above that no document vide receipt no. 606762 dated 13.12.2004 has been filed in the name of M/s. Paliwal Hotels (P) Ltd., Delhi.

Yours faithfully

Sd/-

(ATMA SAH)

Asst. Registrar of Companies"

(emphasis supplied)

20. Mr. Mehta pointed out that the counterfoil of receipt no. 606762 had never been produced by the appellants, whereas the respondents have not only produced the payment vouchers but also copies of Form Nos. 2 and 32 along with the original receipt No. 606742. Consequently, according to him the copy of Form No. 2 filed on record by the respondents herein under receipt No. 606742 reflected the actual decision of the Board of Directors of the appellant-company on 01st December, 2004.

21. Mr. Mehta submitted that it was wrong for the appellants to claim that the only ground on which the CLB had faulted with the allotment of 4250 shares on 3rd February, 2005 was exhaustion of authorised share capital. According to him, the CLB had faulted with the issuance of the aforesaid shares on an additional ground that the contentions of the respondents in this regard were true and correct.

22. Mr. Mehta vehemently denied that three additional directors had been appointed by the appellants on 1st March, 2005. He contended that the appellants failed to show notice of the alleged board meeting to respondent No.1 namely, Mr. Sanjay Paliwal. He stated that as the appellants had failed to produce on record minutes of the said Board

meeting, this Court should not sustain the appointment of the three additional directors. Mr. Mehta further stated that as the minutes of the AGM dated 30th May, 2005 had not been placed on record, the three additional directors appointed by the appellants should be deemed to have vacated their office.

23. Mr. Mehta referred to the impugned order to contend that the appellants denial of siphoning off funds was bald and that the appellants had maintained a '*stony silence*' on the said issue.

24. Mr. Mehta specifically denied the appellants' allegation that respondents herein had siphoned off ₹ 64.50 lacs from the accounts of the appellant-company. He stated that the aforesaid amount had been advanced in 2002 by the appellant-company to the in-laws of Mr. Sanjay Paliwal. He pointed out that even according to the appellants' version, there was no dispute and difference between the parties at that stage. According to Mr. Mehta, if it were to be a case of siphoning off, it is inconceivable that the appellants would have remained silent for over four years.

25. Mr. Mehta submitted that the transfer of 5000 shares by Mr. J.K. Paliwal to Mr. Ajay Paliwal was fraudulent. He pointed out

inconsistencies in the share transfer form, namely, absence of Folio number, visible differences in the signature of Mr. J.K. Paliwal, absence of seal/stamp of appellant-company, overwriting etc.

26. Mr. Mehta stated that the contention of Mr. Ajay Paliwal that 5000 shares had been sold to him as well as to Mrs. Rashmi Paliwal, wife of Mrs. Manish Paliwal by Mr. J.K. Paliwal was contradicted by the transfer form itself. Mr. Mehta referred to the extract of the passbook of Mr. J.K. Paliwal to show that there were number of entries between the father and the son with regard to a sum of ₹ 5 lacs. Therefore, according to him, the CLB rightly concluded that appellants had not been able to relate the entries in the passbook of Mr. J.K. Paliwal with the alleged sale consideration. Mr. Mehta also pointed out that in the annual report dated 30th May, 2005 there were interpolations/over-writings in the holding of Mr. J.K. Paliwal which was artificially reduced from 5100 to '0100' ('5' changed to '0', thus making '5100' to '0100') and the shares of Mr. Ajay Paliwal had been claimed to be 8255 wherein the digit '3' had been converted into '8'.

27. In rejoinder, Mr. Arun Kathpalia submitted that number of the receipt under which Form Nos. 2 and 32 had been jointly filed on 01st

December, 2004 was unclear and therefore, the appellants had wrongly mentioned the receipt No. as 606762 before the CLB and in the present appeal. He reiterated that as the appellants alone had filed certified copy of Form No.2 dated 01st December, 2004, the appellants' version of the Board meeting dated 01st December, 2004 should be accepted. He also stated that additional Directors appointed on 01st March, 2005 had not been interfered with by the CLB.

28. Having heard the parties at length, this Court is of the view that it is necessary to first outline the jurisdiction of this Court in an appeal filed under Section 10F of the Act. It is clear that Section 10F permits an appeal to the High Court from an order of the CLB only on a question of law i.e. the CLB is the final authority on facts unless such findings are perverse, based on no evidence or are otherwise arbitrary. It is settled law that this Court while exercising its appellate jurisdiction under Section 10F of the Act does not entertain, review or reopen questions of fact save on the ground of perversity. (See: *V.S. Krishnan & Ors. vs. Westfort Hi-tech Hospital Ltd. & Ors. (2008) 3SCC 363* and *Dale and Carrington Investment P. Ltd. & Anr. vs. P.K. Prathapan 2004 122 CC 161*). Consequently, keeping in view

the aforesaid mandate of law, this Court will examine the rival arguments of both the parties.

29. As far as the Board meeting dated 01st December, 2004 is concerned, both the parties have given their own version as to what transpired in the said meeting. But, none of the parties have produced on record the agenda, notice or the resolution passed in the said Board meeting. Though a certified copy of Form No.2 has been produced by the appellants before this Court, yet the same does not bear any date on which it was issued. The discrepancy with regard to the receipt No. is sought to be explained by the appellants that they could not read the number on the certified copy and therefore, they mentioned a wrong receipt number in their pleadings before the CLB and this Court. However, this Court is of the view that as it is the appellants' case that they filed Form Nos.2 and 32 under a joint receipt, the onus is on them to produce the original receipt – which they failed to produce. Moreover, the first page of the certified copy of Form No.2 produced by the appellants shows that the shares allotment has been made on 01st December, 2004, but the second page of the same certified copy shows allotment of shares on 01st September, 2004! It is pertinent to mention

that the Registrar of Companies had produced before this Court the original file maintained by it with regard to the appellant company. The said file contains only the Memorandum and Articles of Association of the appellant company as well as its certificate of incorporation. Consequently, this Court is of the opinion that both the parties have failed to prove the minutes of meeting dated 1st December, 2004. Accordingly, the allocation of additional shares and appointment of three additional Directors by both the appellants and respondents are set aside.

30. The Board Meetings dated 3rd February, 2005 and 1st March, 2005 wherein 4250 shares were alleged to have been allocated to Mr. Ajay Paliwal faction and three additional directors had been appointed are set aside on the ground that appellants have failed to prove service of notice of the said Board Meetings upon Mr. Sanjay Paliwal, even though admittedly, on the said dates, he was a director of the appellant company. Non-issuance of notice to Mr. Sanjay Paliwal constitutes a violation of Section 286 of the Act. Consequently, the allocation of 4250 shares and appointment of three additional Directors by the appellants in the aforesaid meetings are also set aside.

31. In any event, even if appellants' versions with regard to Board Meetings dated 1st December, 2004, 3rd February, 2005 and 1st March, 2005 are accepted to be true and correct, then also the said decisions are liable to be set aside as constituting oppression and mismanagement. This Court is of the opinion that the appellants, who constitute a minority shareholding cannot abuse their majority on the Board by completely excluding the respondents from the affairs of the appellant-company and further by converting the majority shareholders into minority.

32. There is also no violation of principles of natural justice as allegation regarding siphoning off funds of approximately ₹ 4.15 lacs was made by the respondents herein in the initial company petition and another allegation of siphoning off funds of approximately of ₹ 3.35 lacs was made during the course of the proceedings before the CLB. However, except a bald denial of siphoning off funds, neither of the appellants gave any explanation in the CLB with regard to withdrawal of the said fund and/or their usage. Consequently, in the opinion of this Court, the CLB rightly concluded that the denial by the appellants of the allegation of siphoning off funds was bald, lacking in particulars

and thus constituted an admission of siphoning off funds on their part.

33. Further, this Court is of the opinion that the inconsistencies pointed out by respondents' counsel with regard to annual return dated 30th May, 2005 are significant. The said inconsistencies, sought to be explained by appellants' counsel as typographical errors, are not singular. Even the appellants' stand with regard to service of notice of AGM dated 30th May, 2005 is contradictory inasmuch as appellant nos. 2 and 4 have claimed that oral notice was given (page 285 of Co. A.(SB) 18/2007), whereas appellant no. 3 (in Co. A.(SB) 18/2007) has claimed that notice was sent by ordinary process (pages 361-362 of Co. A.(SB) 18/2007).

34. Quite apart from the inconsistencies pointed out by learned counsel for the respondents, no notice of AGM or resolution passed by the AGM had been placed on record by the appellants despite the fact that admittedly the appellants were in control of all statutory documents and records of the appellant-company by the time said AGM was held.

35. Since learned counsel for the appellants has conceded that the removal of Mr. Sanjay Paliwal from the Board of Directors of

appellant-company was illegal, the relief granted by the CLB requires no interference.

36. This Court is also of the opinion that as the loan of ₹ 64.50 lacs advanced by the appellant-company to Mr. Sanjay Paliwal's in-laws are reflected in the balance sheet of the appellant-company duly signed by the appellants, it cannot be said that the said amount has been siphoned off by the respondents. It is pertinent to mention that till date no proceedings have been filed by the appellants for recovery of alleged amount of ₹ 64.50 lacs. In the opinion of this Court, allegation of siphoning off funds by the respondents has been raised by the appellants only to protract the proceedings.

37. This Court is also in agreement with the finding of CLB that alleged transfer deed with regard to transfer of 5000 shares by Mr. J.K. Paliwal to Mr. Ajay Paliwal is a forged and fabricated document. Mr. J.K. Paliwal in his petition filed before CLB had made a categorical statement that he had never signed a transfer deed nor any other document to give effect to the said transfer of 5000 shares to his son Mr. Ajay Paliwal. The averment in company petition filed before CLB by Mr. J.K. Paliwal is reproduced hereinbelow:-

“(c) A transfer of 5000 equity shares from Shri J.K. Paliwal Petitioner no. 2 to Shri Ajay Paliwal Respondent no 3 dated 01.03.2005 had been shown. The Petitioner no 2 wish to state that he has never signed any transfer deed nor any other documents to give effect to this transfer nor was this ever discussed or contemplated.”

38. In fact, Mr. J.K. Paliwal in his statement recorded under oath by this Court in the Co. A.(SB) 17/2007 on 16th September, 2008 had stated as under:-

“16.09.2008

Statement of Mr. J.K. Paliwal, son of late Shri Devi Sahai Paliwal r/o. 32, Ahata Aulia, Muzaffarnagar, U.P. on SA.

I am married to Smt. Parkashwati Paliwal. From our wedlock we have been blessed with three daughters and one son. Our son is named Ajay Kumar Paliwal, who is present in court today.

I had built a property known as the Paliwal House at Civil Lines (North), Ansari Road, Muzaffarnagar (U.P.) where I was residing with my wife, son and his family. I was forced to leave my residence on account of disputes created by son. My son had lastly told me that I had to do what he dictated, otherwise I would be thrown out of the house.

Even since I am residing in my ancestral home at 32, Ahata Aulia, Muzaffarnagar, U.P. My younger brother Shri Bimal Kishore Paliwal and his family are residing in the same premises. They are providing my day-to-day needs.

I am residing at my ancestral home of my own volition. There is no pressure or force of any kind on me and I am living there as a free person. No action on my part has been dictated by my brother Mr. Vimal Kishore Paliwal or any member of his family. I stand by all pleadings made by him before the Company Law Board and courts.

I have no apprehension or threat to my life at the hands of my brother Shri Bimal Kishore Paliwal or his family.

RO & AC

*Sd/-
(J.K. Paliwal)
September 16, 2008”*

*Sd/-
GITA MITTAL, J.*

39. Further this Court has compared the original admitted signatures of Mr. J.K. Paliwal on the company petition filed before CLB as well as on the aforesaid statement recorded by this Court on 16th September, 2008 with the original form produced by the appellants and this Court is of view that there are significant differences in signatures of Mr. J.K. Paliwal on the transfer deed produced by the appellants. Consequently, the finding of the CLB with regard to this issue requires no interference.

40. Keeping in view the aforesaid discussion, the directions given by the CLB in sub-paras (ii), (iii), (iv), (v), (vi) and (viii) of para 34 of

the impugned order are upheld. Instead of directions (i) and (vii) of para 34 of the impugned order, the appellants are directed to restore only the amount of ₹ 7.50 lacs siphoned off from the company's account forthwith. Further, the shareholding of the appellant company shall revert back as it stood as on 30th September, 2004 as mentioned hereinabove. From today the Board of the company shall constitute of two members of the appellant group and two members of the respondent group. In case of any deadlock, the matter in issue shall be referred to the shareholders in a General Meeting. The Board constituted in the above terms shall continue till the next Annual General Meeting.

41. With the aforesaid directions, present appeals stand disposed of, but with no order as to costs.

MANMOHAN,J

JANUARY 16, 2012

rn/js