

IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPEAL NOS. 1 to 7 of 2015

COMPANY APPEAL No. 1/2015

1. Anju Timblo, Managing Director of Fomento Resorts & Hotels Ltd., having her office at Hotel Cidade de Goa, Vainguinim Beach, Goa - 403 004.

(Original Respondent No. 12)

... Appellant

Versus

1. Dilip Timblo, Son of late Shri Modu Timblo, Major in age, Indian National, Residing at "Zaiwanti", Fr. Agnelo Road, Cupangal, Gogol, P.O. Fatorda, Margao, Goa.
(Original Petitioner)
2. Sociedade De Fomento Industrial Private Limited, a Company incorporated under the Companies Act, 1956, and having its registered office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
(Original Respondent No. 1)
3. Auduth Timblo, Son of late Shri Modu Timblo, Major in age, Indian National, Managing Director of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
(Original Respondent No. 2)
4. Prashant Timblo, Son of late Shri Modu Timblo, Former Joint Managing Director of Respondent No. 2, Presently residing at 29, Parajat, 95,

Marine Drive, Mumbai - 400 002.
(Original Respondent No. 3)

5. Fransico Lume Pereira, Indian National, Director of Respondent No. 2., having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
(Original Respondent No. 4)
6. Y.S. Reddy, Indian National, Director of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
(Original Respondent No. 5)
7. M.A. Hajare, Indian National, Chief Accountant and Financial Controller of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
(Original Respondent No. 6)
8. H.K. Aparanji & Co., a partnership firm of Chartered Accountants, registered under the Indian Partnership Act, 1932 and having its head office at No. 3, 2nd Floor, Corporation Building, Lamington Road, Hubli and Branch office at 2nd Floor, D'Silva Building, Erasmo Carvalhi Road, Margao.
(Original Respondent No. 7)
9. Fomento Resources Pvt. Ltd., A Company incorporated under the Companies Act, 1956 and having its registered office at Casa Del Sol, Casa 3-325, Next to Goa Marriott, Miramar, Panaji, Goa - 403 001.
(Original Respondent No. 8)

10. Infrastructure Logistics Pvt. Ltd., a Company incorporated under the Companies Act, 1956 and having its registered office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa.
(Original Respondent No. 9)

11. Ambar Timblo, Indian National, residing at F-1 & F-2, Dona Paula Apartments, Palm Grove Colony, Near Ocean Heights, Dona Paula, Goa.
(Original Respondent No. 10)

12. Fomento Resorts & Hotels Limited, A Company registered under the Companies Act, 1956 and having its registered office at Hotel Cidade de Goa, Vainguinum Beach, Dona Paula, Goa.

... Respondents

Shri Rafiq Dada, Senior Advocate with Shri Gurudutt Mallya, Shri Aashdin Chivalwala and Ms. Daksha Lotlikar, Advocates for the Appellant.

Shri Joseph Kodian Thara, Senior Advocate with Shri Eric Coriea and Shri Rohit Bras de Sa, Advocates for the Respondent no.1.

Company Appeal No. 2/2015

1. Fomento Resorts & Hotels Ltd., A Company incorporated under the Companies Act, 1956 and having its Registered office at Cidade de Goa, Vainguinum Beach, Goa - 403 004.
(Original Respondent No. 11)

... Appellant

Versus

1. Dilip Timblo, Son of late Shri Modu Timblo, Indian National, Residing at "Zaiwanti", Fr. Agnelo Road, Cupangal, Gogol, P.O. Fatorda, Margao, Goa.
(Original Petitioner)
2. Sociedade De Fomento Industrial Private Limited, a Company incorporated under the Companies Act, 1956, and having its registered office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
(Original Respondent No. 1)
3. Auduth Timblo, Indian National, Managing Director of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
(Original Respondent No. 2)
4. Prashant Timblo, Former Joint Managing Director of Respondent No. 2, Presently residing at 29, Parajat, 95, Marine Drive, Mumbai - 400 002.
(Original Respondent No. 3)
5. Fransico Lume Pereira, Indian National, Director of Respondent No. 2., having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
(Original Respondent No. 4)
6. Y.S. Reddy, Indian National, Director of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
(Original Respondent No. 5)
7. M.A. Hajare, Indian National, Chief

Accountant and Financial Controller of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
(Original Respondent No. 6)

8. H.K. Aparanji & Co., a partnership firm of Chartered Accountants, registered under the Indian Partnership Act, 1932 and having its head office at No. 3, 2nd Floor, Corporation Building, Lamington Road, Hubli and Branch office at 2nd Floor, D'Silva Building, Erasmo Carvalhi Road, Margao.
(Original Respondent No. 7)
9. Fomento Resources Pvt. Ltd., A Company incorporated under the Companies Act, 1956 and having its registered office at Casa Del Sol, Casa 3-325, Next to Goa Marriott, Miramar, Panaji, Goa - 403 001.
(Original Respondent No. 8)
10. Infrastructure Logistics Pvt. Ltd., a Company incorporated under the Companies Act, 1956 and having its registered office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa.
(Original Respondent No. 9)
11. Ambar Timblo, Indian National, residing at F-1 & F-2, Dona Paula Apartments, Palm Grove Colony, Near Ocean Heights, Dona Paula, Goa.
(Original Respondent No. 10)
12. Anju Timblo, Managing Director of Fomento Resorts & Hotels Ltd., having her office at Hotel Cidade de

Goa, Vainguinim Beach, Goa - 403
004.

(Original Respondent No. 12)

... Respondents

Shri Rafiq Dada, Senior Advocate with Shri Gurudutt Mallya, Shri Aashdin Chivalwala and Ms. Jocelyn Godinho, Advocates for the Appellant.

Shri Joseph Kodian Thara, Senior Advocate with Shri Eric Coriea and Shri Rohit Bras de Sa, Advocates for the Respondent no.1.

Company Appeal No. 3/2015

1. Auduth Timblo, son of late Shri Modu Timblo, major in age, Indian National, residing at La Marvel Colony, Dona Paula, Goa.

... Appellant

Versus

1. Dilip Timblo, Son of late Shri Modu Timblo, major in age, Indian National, Residing at "Zaiwanti", Fr. Agnelo Road, Cupangal, Gogol, P.O. Fatorda, Margao, Goa.
2. Sociedade De Fomento Industrial Private Limited, a Company registered under the Companies Act, 1956, and having its registered office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
3. Prashant Timblo, son of late Shri Modu Timblo, major in age, residing at "Samudhra Darshan", Cakra, Bambolim, P.O. Goa University, Goa - 403 206.
4. Fransico Lume Pereira, major in age,

Indian National, Director of Respondent No. 2., having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.

5. Y.S. Reddy, major in age, Indian National, Director of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
6. M.A. Hajare, major in age, Indian National, Chief Accountant and Financial Controller of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
7. H.K. Aparanji & Co., a partnership firm of Chartered Accountants, registered under the Indian Partnership Act, 1932, having office at 2nd Floor, D'Silva Building, Erasmo Carvalho Street, Margao, Goa.
8. Fomento Resources Private Limited, a Company registered under the Companies Act, 1956 and having its registered office at Casa Del Sol, Casa 3-325, Next to Goa Marriott, Miramar, Goa - 403 001.
9. Infrastructure Logistics Private Limited, a Company registered under the Companies Act, 1956 and having its Registered office at Hotel Cidade de Goa, Vanguinum Beach, Dona Paula, Goa.
10. Ambar Timblo, major in age, Indian National, residing at F-1 & F-2, Dona Paula Apartments, Palm Grove

Colony, Near Ocean Heights, Dona Paula, Goa.

11. Fomento Resorts & Hotels Limited, a Company registered under the Companies Act, 1956 and having its registered office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa.
12. Anju Timblo, Managing Director of Respondent No. 11 and having her office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa.

... Respondents

Shri Rafiq Dada, Senior Advocate with Shri Gurudutt Mallya, and Shri Vledson L. Braganza, Advocates for the Appellant.

Shri Joseph Kodian Thara, Senior Advocate with Shri Eric Coriea and Shri Rohit Bras de Sa, Advocates for the Respondent no.1.

Company Appeal No. 4/2015

Infrastructure Logistics Private Limited, a Company registered under the Companies Act, 1956 and having its Registered office at Hotel Cidade de Goa, Vainguinum Beach, Dona Paula, Goa.

... Appellant

Versus

1. Dilip Timblo, Son of late Shri Modu Timblo, major in age, Indian National, Residing at "Zaiwanti", Fr. Agnelo Road, Cupangal, Gogol, P.O. Fatorda, Margao, Goa.
2. Sociedade De Fomento Industrial

Private Limited, a Company registered under the Companies Act, 1956, and having its registered office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.

3. Auduth Timblo, son of late Shri Modu Timblo, major in age, Indian National, residing at La Marvel Colony, Dona Paula, Goa.
4. Prashant Timblo, son of late Shri Modu Timblo, major in age, residing at "Samudhra Darshan", Cakra, Bambolim, P.O. Goa University, Goa - 403 206.
5. Fransico Lume Pereira, major in age, Indian National, Director of Respondent No. 2., having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
6. Y.S. Reddy, major in age, Indian National, Director of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
7. M.A. Hajare, major in age, Indian National, Chief Accountant and Financial Controller of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
8. Fomento Resources Private Limited, a Company registered under the Companies Act, 1956 and having its registered office at Casa Del Sol, Casa 3-325, Next to Goa Marriott, Miramar, Goa - 403 001.

9. H.K. Aparanji & Co., a partnership firm of Chartered Accountants, registered under the Indian Partnership Act, 1932, having office at 2nd Floor, D'Silva Building, Erasmo Carvalho Street, Margao, Goa.
10. Ambar Timblo, major in age, Indian National, residing at F-1 & F-2, Dona Paula Apartments, Palm Grove Colony, Near Ocean Heights, Dona Paula, Goa.
11. Fomento Resorts & Hotels Limited, a Company registered under the Companies Act, 1956 and having its registered office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa.
12. Anju Timblo, Managing Director of Respondent No. 11 and having her office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa. ... Respondents

Shri J.E. Coelho Pereira, Senior Advocate with Shri Aashdin Chivalwala and Shri Abhijit M. Naik, Advocates for the Appellant.

Shri Joseph Kodian Thara, Senior Advocate with Shri Eric Coriea and Shri Rohit Bras de Sa, Advocates for the Respondent no.1.

Company Appeal No. 5/2015

1. Fomento Resources Private Limited, a Company registered under the Companies Act, 1956 and having its registered office at Casa Del Sol, Casa 3-325, Next to Goa Marriott, Miramar, Goa - 403 001. ... Appellant

Versus

1. Dilip Timblo, Son of late Shri Modu Timblo, major in age, Indian National, Residing at "Zaiwanti", Fr. Agnelo Road, Cupangal, Gogol, P.O. Fatorda, Margao, Goa.
2. Sociedade De Fomento Industrial Private Limited, a Company registered under the Companies Act, 1956, and having its registered office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
3. Auduth Timblo, son of late Shri Modu Timblo, major in age, Indian National, residing at La Marvel Colony, Dona Paula, Goa.
4. Prashant Timblo, son of late Shri Modu Timblo, major in age, residing at "Samudhra Darshan", Cakra, Bambolim, P.O. Goa University, Goa - 403 206.
5. Fransico Lume Pereira, major in age, Indian National, Director of Respondent No. 2., having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
6. Y.S. Reddy, major in age, Indian National, Director of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
7. M.A. Hajare, major in age, Indian National, Chief Accountant and Financial Controller of Respondent

No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.

8. H.K. Aparanji & Co., a partnership firm of Chartered Accountants, registered under the Indian Partnership Act, 1932, having office at 2nd Floor, D'Silva Building, Erasmo Carvalho Street, Margao, Goa.
9. Infrastructure Logistics Private Limited, a Company registered under the Companies Act, 1956 and having its Registered office at Hotel Cidade de Goa, Vainguinum Beach, Dona Paula, Goa.
10. Ambar Timblo, major in age, Indian National, residing at F-1 & F-2, Dona Paula Apartments, Palm Grove Colony, Near Ocean Heights, Dona Paula, Goa.
11. Fomento Resorts & Hotels Limited, a Company registered under the Companies Act, 1956 and having its registered office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa.
12. Anju Timblo, Managing Director of Respondent No. 11 and having her office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa.

... Respondents

Shri J.E. Coelho Pereira, Senior Advocate with Ms. Asmita Tirodkar, Advocate for the Appellant.

Shri Joseph Kodian Thara, Senior Advocate with Shri Eric Coriea and Shri Rohit Bras de Sa, Advocates for the Respondent no.1.

Company Appeal No. 6/2015

1. Prashant Timblo, son of late Shri Modu Timblo, major in age, residing at "Samudhra Darshan", Cakra, Bambolim, P.O. Goa University, Goa - 403 206.

... Appellant

Versus

1. Dilip Timblo, Son of late Shri Modu Timblo, major in age, Indian National, Residing at "Zaiwanti", Fr. Agnelo Road, Cupangal, Gogol, P.O. Fatorda, Margao, Goa.
2. Sociedade De Fomento Industrial Private Limited, a Company registered under the Companies Act, 1956, and having its registered office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
3. Auduth Timblo, son of late Shri Modu Timblo, major in age, Indian National, residing at La Marvel Colony, Dona Paula, Goa.
4. Fransico Lume Pereira, major in age, Indian National, Director of Respondent No. 2., having his office at Villa Flores De Silva, Erasmo Carvalho Street, Margao, Goa.
5. Y.S. Reddy, major in age, Indian National, Director of Respondent No. 2, having his office at Villa Flores De Silva, Erasmo Carvalho Street, Margao, Goa.

6. M.A. Hajare, major in age, Indian National, Chief Accountant and Financial Controller of Respondent No. 2, having his office at Villa Flores De Silva, Erasmo Carvalho Street, Margao, Goa.
7. H.K. Aparanji & Co., a partnership firm of Chartered Accountants, registered under the Indian Partnership Act, 1932, having office at 2nd Floor, D'Silva Building, Erasmo Carvalho Street, Margao, Goa.
8. Fomento Resources Private Limited, a Company registered under the Companies Act, 1956 and having its registered office at Casa Del Sol, Casa 3-325, Next to Goa Marriott, Miramar, Goa - 403 001.
9. Infrastructure Logistics Private Limited, a Company registered under the Companies Act, 1956 and having its Registered office at Hotel Cidade de Goa, Vainguinum Beach, Dona Paula, Goa.
10. Ambar Timblo, major in age, Indian National, residing at F-2, Dona Paula Apartments, Palm Grove Colony, Near Ocean Height, Dona Paula, Goa.
11. Fomento Resorts & Hotels Limited, a Company registered under the Companies Act, 1956 and having its registered office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa.
12. Anju Timblo, Managing Director of Respondent No. 11 and having her

office at Hotel Cidade de Goa,
Vainguinim Beach, Dona Paula, Goa.

... Respondents

Shri J.E. Coelho Pereira, Senior Advocate with Shri Somnath B. Karpe and Ms. Sana Shaikh, Advocates for the Appellant.

Shri Joseph Kodian Thara, Senior Advocate with Shri Eric Coriea and Shri Rohit Bras de Sa, Advocates for the Respondent no.1.

Company Appeal No. 7/2015

1. Ambar Timblo, major in age, Indian National, residing at F-1 & F-2, Dona Paula Apartments, Palm Grove Colony, Near Ocean Heights, Dona Paula, Goa.

... Appellant

Versus

1. Dilip Timblo, Son of late Shri Modu Timblo, major in age, Indian National, Residing at "Zaiwanti", Fr. Agnelo Road, Cupangal, Gogol, P.O. Fatorda, Margao, Goa.
2. Sociedade De Fomento Industrial Private Limited, a Company registered under the Companies Act, 1956, and having its registered office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
3. Auduth Timblo, son of late Shri Modu Timblo, major in age, Indian National, residing at La Marvel Colony, Dona Paula, Goa.
4. Prashant Timblo, son of late Shri Modu Timblo, major in age, residing

at "Samudhra Darshan", Cakra, Bambolim, P.O. Goa University, Goa - 403 206.

5. Fransico Lume Pereira, major in age, Indian National, Director of Respondent No. 2., having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
6. Y.S. Reddy, major in age, Indian National, Director of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
7. M.A. Hajare, major in age, Indian National, Chief Accountant and Financial Controller of Respondent No. 2, having his office at Villa Flores Da Silva, Erasmo Carvalho Street, Margao, Goa.
8. H.K. Aparanji & Co., a partnership firm of Chartered Accountants, registered under the Indian Partnership Act, 1932, having office at 2nd Floor, D'Silva Building, Erasmo Carvalho Street, Margao, Goa.
9. Fomento Resources Private Limited, a Company registered under the Companies Act, 1956 and having its registered office at Casa Del Sol, Casa 3-325, Next to Goa Marriott, Miramar, Goa - 403 001.
10. Infrastructure Logistics Private Limited, a Company registered under the Companies Act, 1956 and having its Registered office at Hotel Cidade de Goa, Vainguinum Beach, Dona

Paula, Goa.

11. Fomento Resorts & Hotels Limited, a Company registered under the Companies Act, 1956 and having its registered office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa.
12. Anju Timblo, Managing Director of Respondent No. 11 and having her office at Hotel Cidade de Goa, Vainguinim Beach, Dona Paula, Goa.

... Respondents

Shri J.E. Coelho Pereira, Senior Advocate with Shri Vinod Korgaonkar, Advocate for the Appellant.

Shri Joseph Kodian Thara, Senior Advocate with Shri Eric Coriea and Shri Rohit Bras de Sa, Advocates for the Respondent no.1.

CORAM :- C. V. BHADANG, J.

Reserved on : 23rd July, 2015

Pronounced on : 6th August, 2015

JUDGMENT :

Heard the learned Counsel for the parties.

2. Admit.

3. Mr. Rohit De Sa, the learned Counsel waives service for the respondents.

4. Heard finally with the consent of the learned Counsel for the parties.

5. These appeals under Section 10F of Companies Act, 1956 (the Act, for short) arise out of the order dated 18/05/2015, passed by the Company Law Board (CLB), New Delhi on C.A. No.5/C.1/2013 and C.A. No.58/C.1/2013 in C.P. No. 87/2006. All the appeals involve common and connected questions of law and as such, they are being disposed of by this common judgment.

6. The facts, necessary for the disposal of the appeals, may be stated thus :

Sociedade de Fomento Industrial Private Ltd. (SFIPL) is a Company incorporated under the Act. The said Company was promoted by late Shri Modu Timblo (MT) in the year 1956. The Company is engaged in the business of mining in Goa and is considered as one of the best mining Corporations. The Company is said to be flagship of Fomento Group of Companies. It is holding shares and is in direct and indirect control of other group Companies. MT left behind his widow Sushila Timblo (ST) and 3 sons, namely Dilip Timblo (DT), Auduth Timblo (AT) and Prashant

Timblo (PT). According to the first respondent Dilip Timblo (the original petitioner), under a family arrangement and settlement entered into by the family members on 18/11/1994, AT (original respondent no.2) was appointed as the Managing Director, while PT (original respondent no.3) was appointed as Joint Managing Director of the Company. Further, according to the first respondent (the original petitioner), due to his ill health, he did not insist for a place on the Board of Directors and in good faith, allowed AT and PT to manage the affairs of the Company. He was assured that all the transactions would be carried out fairly and transparently, without prejudice to his interest and other shareholders. The first respondent was for some time working as the Special Economic Adviser to the Company.

7. The authorised share capital of the Company is Rs.1 Crore shares divided into 50,000/- equity shares of Rs.100/- each and 50,000/- unclassified shares of Rs.100/- each. The paid up share capital of the Company is Rs.25 Lakhs. The first respondent holds 5000 equity shares of the Company constituting 20 % of the paid up share capital. AT holds 10000 equity shares, which includes 5000 equity shares purchased from PT, thus constituting 40 % of the paid up share capital of the Company.

8. In or about November, 2003, PT had offered to sell his entire shareholdings of 6667 shares (comprising of 5000 shares owned and 1667 shares inherited) in the Company to the first respondent at a consideration of Rs.42.09 Crores, which offer was accepted. On 22/12/2003, an agreement was entered into between the first respondent and PT, against which the first respondent had paid an advance of Rs.13.80 Crores to PT, which was duly acknowledged. The sale transaction was to be completed by 21 June, 2005. However, during the subsistence of the said agreement, AT prevailed upon PT and bought all the said shares for an undisclosed consideration. This, according to the first respondent, was a clear attempt by AT to consolidate his position and to acquire monopoly in the Company. Subsequently, disputes also arose between AT and PT, which led PT to file a Company Petition being C.P. No.3/2005 before the CLB. That petition was filed alleging oppression and mismanagement under Section 397 and 398 of the Act. According to the first respondent, there was an unequivocal understanding by the family members that no outside members, except professionals, would be inducted on the Board of Directors of the Company. However, in total disregard of the same, AT appointed Francisco Lume Pereira (original respondent no.4) and Y. S. Reddy (original respondent no.5) as Directors of the Company. It is contended that these respondents

are the employees and trusted hands of AT. This was again an attempt to take the control of the Company and to gain absolute majority on the Board of Directors.

9. Mr. M. A. Hajare (original respondent no.6) is the Chief Accountant and Financial Controller of the Company, while Aparanji and Company, which is a Partnership Firm of Chartered Accountants (original respondent no.7), is the statutory Auditor of the Company. Prime Minerals Private Ltd (PMPL) (original respondent no.8) and Infrastructural Logistics Private Ltd (ILPL) (original respondent no.9) are said to be the Companies, managed by Ambar Timblo (original respondent no.10), who is the son of AT and Anju Timblo, the proposed respondent no.12 and the appellant in Company Appeal No.1/2015. In short, according to the first respondent, AT in collusion with the respondent nos.4 and 5, is acting against the interest of the Company, with a view to promote the interest of his son Ambar Timblo and his Companies i.e. PMPL and ILPL, controlled by the respondent no.10. The details of the same are set out in paragraph 16 onwards of the petition, filed before the CLB. It was, in these circumstances, that the first respondent had approached the CLB, with a petition under Sections 397 and 398 of the Act, with the following reliefs :

“(a) All appropriate orders be passed as this Hon'ble Bench thinks fit and proper to put an end to the oppression of the rights and interests of Petitioner No.1 Company in respondent No.1 Company.

(b) Respondent Nos. 2, 4 and 5 be removed from the Board of Directors of the Company.

(c) An administrator or independent Directors be appointed to conduct the business and affairs of the Company.

(d) Independent Auditors be appointed to make an investigation into the affairs of the Company and make a report to this Hon'ble Bench.

(e) Respondent nos. 1, 2, 4 and 5 be restrained from giving or transferring any business or any other benefits of the Company to respondent nos. 8 and 9 or any other associate company of respondent nos.2 and 10, in any manner whatsoever.

(f) Respondent nos.1, 2, 4 and 5 be restrained from advancing loans to any of his or respondent no.10's companies, relatives and associates.

(g) Respondent No.2 be ordered and directed to reimburse to the Company the loss which is so far disclosed and which might be disclosed as a result of investigation.”

10. PT and the other respondents contested the petition before the CLB. It is undisputed that the matter was finally heard before the Chairman, CLB. However, on account of the retirement

of the Chairman, the same could not be decided. It is further undisputed that the matter was also finally heard by the present incumbent. It is, at this stage, that the first respondent filed two applications being CA.No.5/2013, which is an application for amendment, under order VI, rule 17 of C.P.C., read with Regulations 44 and 46 of the Company Law Board Regulations (Regulations, for short) and Company Application No.58/2013 for impleading the following as party respondents :

Respondent No.	Party Name
Respondent No.11	Fomento Resorts & Hotels Ltd., (FRHL) a company incorporated under the provisions of Companies Act, 1956 and having its registered office at Cidade De Goa, Vainguinim Beach, Goa-403004.
Respondent No.12	Anju Timblo, Managing Director of Fomento Resorts & Hotels Ltd having her office at Hotel Cidade De Goa, Vainguinim Beach, Goa-403 004.
Respondent No.13	Fomento Resources Pvt. Ltd.(FRPL) Casa Del Sol, Casa 3-325, Next to Goa Marriott, Miramar, Panaji, Goa-403001.
Respondent No.14	Sushila Modu Timblo, W/o Late Mr. Modu Ganesh Timblo, Residing at "Zaiwanti", Fr. Agnelo Road, Behind Chowgule College Cupangal, Gogol, P.O. Fatorda, Margao, Goa-403602.

11. The applications were opposed on behalf of the appellants herein, on various grounds. It appears that during the course of hearing of these applications, amendments as proposed

in paragraph 24T and paragraph 6 of the application, were not pressed. Similarly in so far as C.A. No.58/2013 is concerned, the prayer as regards impleadment of Sushila Timblo (proposed respondent no.14) was also given up.

12. The first respondent sought amendment of the petition on the following counts:

“(a) Amendments arising out of new information obtained/ relating to subsequent events.

(b) Amendments arising out of the withdrawal of Company Petition No.3/2005.

(c) Amendments arising out of clerical / typographical error/ addition of new parties.

(d) Amendments to the prayer clause.”

Out of this, the appellants had no objection in so far as the amendments arising out of the clerical/ typographical errors are concerned. The CLB, by an order dated 18/05/2015, had allowed the amendment as also the impleadment of the respondent nos.11 to 13. The respondent nos.11 to 13 were directed to file response within four weeks from filing of the amended petition. Feeling aggrieved, these appeals are filed.

Company Appeal No.1/2015 is filed by Anju Timblo (proposed respondent no.12). FRHL (proposed respondent no.11), of which Anju Timblo is the Managing Director, has filed Company Appeal No.2/2015, while FRPL (proposed respondent no.13) has filed Company Appeal No.5/2015. The original respondent nos.2, 3, 9 and 10 have respectively filed Company Appeal Nos.3/15, 6/15, 4/15 and 7/15.

13. I have heard the learned Counsel for the parties. With the assistance of the learned Counsel for the parties, I have perused the record and the impugned order.

14. It is submitted by Shri Rafiq Dada, the learned Senior Counsel for the appellants in Company Appeal Nos.1, 2 and 3 of 2015 that the amendments on account of alleged subsequent events and withdrawal of Company Petition No.3/2005 could not have been allowed, moreso, at a belated stage, when the matter was being finally heard. It is submitted that the provisions of Order VI, Rule 17 of C.P.C. or principles akin thereto, would always apply to a Company Petition. The learned Senior Counsel has referred to proviso to Rule 17 of Order VI of C.P.C., in order to submit that an element of the concerned party acting with due diligence, has necessarily to be imported. Thus, the finding by the

CLB that proviso to Rule 17 of Order VI of C.P.C. is not attracted, is not correct. It is submitted that the Regulations do not exclude the application of the provisions of the C.P.C. The learned Senior Counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Public Service Commission Vs. Mamta Bisht**, reported in (2010)12 SCC 204, in which the Hon'ble Supreme Court had applied C.P.C. to Writ Petition although Section 141 in terms states that the Code shall not apply to petitions under Article 226 of the Constitution of India. It is submitted that while the Regulations do not provide for application of C.P.C. to the proceedings before CLB, the same applies in terms of Rule 6 of the The Company (Court) Rules, 1959 to the proceedings before the 'Court'. It is submitted that in such a case, an anomalous situation would be created, namely while the proceedings before the Tribunal, would not be governed by the Code, but the Court having appellate jurisdiction, would be governed by the Code. Reliance is placed on an unreported decision of this Court in **Major Retired Keharsingh Vs. Velentino Xavier Pereira**, (W.P.No.302&300/2010, 3, 409 and 435 of 2011, order dated 11/09/2012), in this regard. Reliance is placed on the following observations in paragraph 15 of the said order :

“15. There is thus, no doubt that the power of amendment has been expressly conferred on the authorities which are empowered to decide the appeals under the Rent Control Act. It was rightly submitted on behalf of the applicants that it would be indeed anomalous if the law permitted the amendment of pleadings at the appellate stage but not at the original stage. We find that this is also one of the reasons given by the learned Single Judge for disagreeing with the view in Panduronga Timblo Industries case (supra). This contention deserves to be upheld. Indeed, it cannot be countenanced that the parties have no right to apply for amendment of their pleadings when their matter is being tried by the authorities in the first instance, but they have such a right of applying for amendment before the Appellate

Authority before whom normally evidence is not led. It would be extremely anomalous if this position is upheld, since the parties would be obliged to wait till the matter goes in appeal before applying for amendment and then seek remand to the original authorities to lead evidence. We are, therefore, of the view that both the authorities original and appellate, under the Rent Control Act, have the power to permit amendments of the pleadings.”

15. It is next submitted that the transfer of shares of the Company to FRHL cannot be said to be transfer of business as

such. The learned Senior Counsel submitted that under the Depositories Act, 1996 (under the new regime), the shares are held in a dematerialised (demat form). It is submitted that, it is only in the form of a fungible security. The learned Senior Counsel would submit that it is the depository, which is the registered owner of the shares. As such, it cannot be said that the shares were transferred to the appellant Anju Timblo.

16. It is submitted that the first respondent was all along aware of the transfer of the shares right from 2004 and as such, the amendment cannot be said to be based on any subsequent events. It is submitted that any amendment takes effect from the date of the filing of the main petition unless otherwise stipulated. In the present case, the amendment would relate back to the year 2006, when the petition was filed. This, on one hand, would tantamount to allowing a claim on time barred cause of action and on the other hand, would prejudice the appellants as they would be handicapped in raising the defence of the amendment being time barred as it relates back to the date of filing of the petition.

17. In so far as the amendment based on withdrawal of Company Petition No.3/2005 is concerned, it is submitted that the petitioner had picked up four grounds out of the said Company

Petition and incorporated them in the amendment. It is submitted that the first respondent had opposed the withdrawal of Company Petition No.3/2005. After the withdrawal was allowed, the same was challenged before this Court in Company Appeal No.11/2012, which was dismissed on 11/10/2013. The first respondent filed a review petition no.19/2013, which was also dismissed on 13/12/2013. It is submitted that once the first respondent has unsuccessfully objected to the withdrawal of the Company Petition No.3/2005, now he cannot be permitted to incorporate the same on the grounds raised in the said company Petition, by way of an amendment.

18. It is submitted that the proposed respondents would be neither necessary nor proper parties to the petition. Thus, the impugned order, allowing the amendment as well as the impleadment, is clearly illegal, requiring interference. Shri Rafiq Dada, the learned Senior Counsel for the appellants in Company Appeal Nos.1, 2 and 3 of 2015, has placed reliance on the following decisions :

- (i) ***Sampat Kumar Vs. Ayyakannu and another***, reported in (2002)7 SCC 559.
- (ii) ***C. G. Holdings P. Ltd and another Vs. Cheran Enterprises P. Ltd and others***, reported in

(2007)138 Comp Cas 454 (CLB).

(iii) **M/s. Gharda Chemicals Limited Vs. Jer Rutton Kavasmanek alias Jer Jawahar Thadani**, (Company Appeal(L) No.45 of 2012 in CLB Company Application No.73 of 2012).

(iv) **Major Retired Keharsingh Vs. Velentino Xavier Pereira**, (W.P.No.302&300/2010, 3, 409 and 435 of 2011)

19. Shri Pereira, the learned Senior Counsel for the appellants in Company Appeal Nos.4, 5, 6 and 7 of 2015, has adopted the submissions of Shri Rafiq Dada, the learned Senior Counsel for the appellants in Company Appeal Nos.1, 2 and 3 of 2015.

20. On the contrary, it is submitted by Shri Kodian Thara, the learned Senior Counsel for the first respondent that the appeal as framed and filed, is not maintainable. The learned Senior Counsel has placed reliance on the decision of **Dirak Dieter Ramsauer Konstruktion-selemente Gmbh and another Vs. S. D. Chakravarthy and another (No.2)**, reported in 2010 SCC OnLine Kar 5028, in order to submit that an appeal under Section 10F of the Act would lie only against the final order and not

against an interim order. It is submitted that even otherwise, the appeal does not involve any question of law, which is a *sine qua non* for entertaining the appeal. It is submitted that the provisions of C.P.C. or principles akin thereto, cannot be imported in a Company Petition before the CLB. It is submitted that the learned Chairman of CLB has rightly held that proviso to Rule 17 of Order VI of C.P.C. or principles akin thereto, would not be attracted in this case.

21. The learned Senior Counsel has submitted that the amendment was necessitated as the first respondent became aware of certain facts, in pursuance of an application filed under RTI as also from the website of the Ministry of Company Affairs (MCA) and also of Bombay Stock Exchange. It is submitted that the documents in support of the said subsequent developments are produced before the CLB. It is submitted that the CLB has rightly held that it is not necessary to look into the merits of the amendment at this stage.

22. The learned Senior Counsel has referred to the judgment of this Court in Company Appeal No.11/2012, confirming the order of permitting withdrawal of C.P. No.3/2005, in order to submit that one of the reasons on account of which the challenge

to the withdrawal was negated, was that the application for amendment filed by the first respondent was pending before the CLB. It is submitted that thus, this Court was conscious that the possible prejudice to the first respondent on account of permitting withdrawal of C.P. No.3/2005, can be adequately taken care of by the amendment in the Company Petition. It is submitted that in the petition filed by the first respondent, there was a reference to the C.P. No.3/2005 and thus, the contents of C.P. No.3/2005 were part and parcel of the petition filed by the first respondent. It is submitted that C.P.No.3/2005 was withdrawn on 16/05/2012. Thus, till that date, the respondent no.1 had no reason to separately incorporate the challenges, which was necessitated only on withdrawal of the said petition. It is submitted that the CLB has rightly come to the conclusion that the amendment does not change the nature of the petition and would be necessary to decide the real controversy in question and to do complete justice. It is submitted that thus, the amendment as also the impleadment is rightly allowed. The learned Senior Counsel specifically submitted that no reliefs are claimed against the respondent nos.11 to 13, which are only proper parties. It is submitted that the presence of the respondent nos.11 to 13 is necessary, in order to show the diversion of the funds of the Company. He, therefore, submitted that the appeal be dismissed.

23. Shri Kodian Thara, the learned Senior Counsel for the first respondent has also placed reliance on the following decisions :

(i) ***Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited***, reported in (2010)7 SCC 417.

(ii) ***Central Bank of India Ltd., Vs. Gokal Chand***, reported in (1967)1 SCR 310.

(iii) ***M/s. Gharda Chemicals Limited and others Vs. Jer Rutton Kavasmanek @ Jer jawahar Thadani and others***, (Judgment dated 20/12/2012 in Company Appeal no.45/2012)

(iv) ***Gurpartap Singh V. Vista Hospitality Pvt. Ltd.***, reported in 2013 SCC OnLine Del 3537.

(v) ***Union of India Vs.R. Gandhi, President Madras Bar Association***, reported in (2010)11 SCC 1.

24. In view of the rival circumstances and the submissions made, the following points arise for my determination in this appeal. I have recorded my findings against the same for reasons

which follow :

“1. Whether an appeal under Section 10F of the Act would lie against an interim order ?

2. Whether the provisions of the Code of Civil Procedure and in particular, proviso to Rule 17 of Order VI would be applicable to the proceedings before the CLB.? If not, whether the principles analogous to proviso to Rule 17 of Order VI of C.P.C. can apply to such proceedings?

3. Whether the impugned order, allowing amendment/ impleadment needs interference in exercise of jurisdiction available under Section 10F of the Act

4. What order ? ”

25. At the outset, it may be mentioned that the amendments, which were in the nature of correction of clerical/ typographical errors, are not opposed. Similarly, the first respondent had not pressed for the amendments in paragraph 24T and 6 of the applications and of the impleadment of Sushila Timblo. Thus, dispute, which survives is as under :

Amendments arising out of new information obtained, relating to subsequent events	Paragraphs 24A to 24M
Amendments arising out of withdrawal of C.P. No.3/2005	Paragraph 24N to 24S (excluding Paragraph 24T).
Amendment to prayer clause	Impleadment of FRHL (respondent no.11), Anju Timblo (respondent no.12) and FRPL (respondent no.13)

26. The perusal of the impugned order would show that the amendment/ impleadment has been allowed mainly on the following grounds :

- (i) Merits of the amendment is not to be gone into at the stage while considering whether the amendment is to be allowed or not.
- (ii) The proposed amendments were not divorced from the allegations of siphoning off funds and diversion of business opportunities. Thus, by the proposed amendment, no new case was sought to be introduced.
- (iii) Sections 397 and 398 envisage a continuing cause while seeking relief in respect of oppression and mismanagement. Thus, the subsequent events would be relevant.
- (iv) The remedy under Section 397 of the Act is in the

nature of an alternative relief to winding up. In a proceeding under Sections 397 and 398 of the Act, a primary duty is cast on the CLB to make such orders as it thinks fit to bring to an end the matters complained of. This would include not only the matters, which were initially forming part of the Company Petition, but would also include, such continuing cause of siphoning off funds and diversion of business.

(v) A Company is a corporate personality, formed normally to foster economic growth of the country. The provisions of Sections 397 and 398 are a step towards ensuring that the Companies formed for this purpose do not get derailed on account of lack of probity, etc.

(vi) Due diligence clause, introduced by proviso to Order VI, Rule 17 of C.P.C. cannot be imported while dealing with a Company Petition. Regulation no.46 of the Company Regulations provides that all such amendments, as are necessary to decide the real controversy, can always be allowed.

(vii) The opposition of the first respondent to withdrawal of Company Petition No.3/2005 was overruled and, therefore, permission to bring on record the events therein is necessary and lastly,

(viii) The amendment/ impleadment (of proper parties) is

necessary to do complete justice.

27. POINT NO.1 :-

It hardly needs to be stressed that an appeal under Section 10F of the Act lies only on a question of law. In order to appreciate the rival submissions, it would be necessary to reproduce Section 10F of the Act which reads as under :

“10F. Appeals against the orders of the Company Law Board- Any person aggrieved by any decision or order of the Company Law Board [made before the commencement of the Companies (Second Amendment) Act, 2002] may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”

It can, thus, be seen that the Section does not speak of final order alone, which can be challenged by way of an appeal.

The Section speaks of any decision or order of the CLB, without qualifying that such decision or order has to be a final order, so as to be amenable to challenge. In view of the plain language of Section 10F, it is difficult to hold that it is only the final order, which can be challenged by way of an appeal. Reliance, in this regard, is placed on the Division Bench decision of Karnataka High Court in ***Dirak Dieter Ramasauer Konstrucktionselemente GmbH*** (supra). The order, which was subject matter of challenge therein was one passed on an application filed under Section 403 of the companies Act by the respondent Company in the main petition, seeking vacating of the earlier ex-parte interim order that had been passed by the CLB. In that case, an office objection was raised as to the maintainability of such an appeal under Section 10F of the Act. The Division Bench held thus in paragraphs 10 and 11 of the judgment :

“10. Though this office objection is sought to be explained away by Mr. Nandish, learned counsel appearing for the appellant, by explaining that a question regarding maintainability arose only in a connected appeal that had been filed by the very appellant in O.S.A. No. 15 of 2009, which was directed against an order passed by the Company Law Board, on an application filed by the appellants under section 8 of the Arbitration and Conciliation Act, 1996 and in

fact, the present appellant had succeeded in that appeal in terms of the orders passed by this court on December 18, 2009 (Dirak Dieter Ramsauer Konstrucktionselemente GmbH v. S.D. Chakravarthy (No. 1), [2010] 154 Comp Cas 332) and the matter was remanded to the Company Law Board for re-examination of the application under section 8, etc., and such a situation as to whether Appeal No. 15 of 2009, was one filed under section 37 or an appeal under section 10F of the Act, does not arise in this appeal, but, it was peculiar to the facts and circumstances of Company Appeal No. 15 of 2009 and the maintainability of the present appeal does not admit any ambiguity or doubt, we are, prima facie, of the view that the appeal under section 10F of the Companies Act can only be against the main order passed by the Company Law Board on a petition and not against all or any order passed on every application filed in a pending petition before the Company Law Board.

11. Be that as it may, we are inclined to examine the merits of this appeal keeping open the question as to whether an appeal of the present nature under section 10F of the Act is tenable as against the orders passed by the Company Law Board on an interim application and during the pendency of the main application which can be examined in a case where it is directly in issue and parties make it an issue and particularly if the respondent who is put on notice, were to join issue on the maintainability of the appeal.

(Emphasis supplied)

Thus, while observations in paragraph 10 would show that what was expressed was a prima facie view, paragraph 11 would make it explicit that the question was kept open while the Court examined the appeal on merit. Thus, the judgment would be of no assistance to the first respondent. Thus, it cannot be said that the appeal under Section 10F of the Act can be confined only to final orders and not to any other orders, that may be passed by the CLB in a Company Petition. The point is accordingly answered in the affirmative.

28. POINT NOS. 2 AND 3 :-

The main thrust of the challenge to the impugned order is based on the ground that amendment / impleadment sought was at a very belated stage. Reliance in this regard is placed on the proviso to Rule 17 of Order VI of C.P.C. The said proviso was introduced by Act No.22 of 2002 with effect from 01/07/2002 and reads as thus :

“17. Amendment of Pleadings.- the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments

shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

29. It is the alternate submission that even if the provisions of the Code would not be strictly applicable to the proceedings before the CLB, the principles underlying and analogous to the Code would always apply. In order to examine the question, it would be necessary to notice subsection (4C), (4D), (5) and (6) of Section 10(E) of the Act as under :

"10E. Constitution of Board of Company Law Administration. -

4(C) Every Bench referred to in sub- section (4B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908 , (5 of 1908), while trying a suit, in respect of the following matters, namely:-

- (a) discovery and inspection of documents or other material objects producible as evidence;*
- (b) enforcing the attendance of witnesses and requiring the deposit of their expenses;*

- (c) *compelling the production of documents or other material objects producible as evidence and impounding the same;*
- (d) *examining witnesses on oath;*
- (e) *granting adjournments;*
- (f) *reception of evidence on affidavits.*

4(D) Every Bench shall be deemed to be a civil court for the purposes of section 195 and ¹ Chapter XXVI of the Code of Criminal Procedure, 1973], (2 of 1974). and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code.] (45 of 1860).

(5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law Board shall in the exercise of its powers and the discharge of its functions under this Act or any other law be guided by the principles of natural justice and shall act in its discretion.

(6) Subject to the foregoing provisions of this section, the Company Law Board shall have power to regulate its own procedure"

30. The CLB, in exercise of the powers under subsection 6 of Section 10E of the Act, has framed the regulations. The Regulation No.46 reads as under :

“46. General power to amend - A Bench may, at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.”

31. It can thus, be seen that under Section 4(C) of Section 10E of the Act, the CLB is vested with powers of the Code under C.P.C. while trying a suit in respect of the matters, which are specifically enumerated in clauses (a) to (f) thereof. Subsection 5 of Section 10E of the Act would show that the CLB shall exercise its powers and discharge its functions and while doing so, shall be guided by the principles of natural justice and shall act in its discretion. Under subsection 6 of Section 10E of the Act, the CLB can regulate its own procedure, which is done by framing the Regulations.

32. A conjoint reading of Section 4(C), 5 and 6 of Section 10E of the Act would show that the CLB is principally to be guided by the principles of natural justice and can act in its discretion. Albeit, it would be a judicial discretion. Every power is conceded to the CLB to regulate its own procedure. Subject to this, subsection 4(C) of Section 10E only enumerates the various

powers, which the CLB can exercise, which are available to a Court while trying a suit and which powers are enumerated in clauses (a) to (f) of subsection 4(C) of Section 10E. Thus, the legislative intent is clear that a certain free play is given to the CLB in the matter of regulating its own procedure and generally, the CLB has to be guided by the principles of natural justice and shall act in its discretion. It is, thus, clear that the provisions of the Code would not be *stricto sensu* applicable to the proceedings before the CLB. Had the legislature intended it to be so, nothing prevented it from saying that the proceedings before the CLB shall be governed by the Code of Civil Procedure. Thus, while enumerating specific enabling provisions under subsection 4(C) of Section 10E of the Act, subsections 5 and 6 leave no manner of doubt that the CLB can regulate its own procedure and has done so by framing the regulations.

33. Coming to the Regulation No.46, a comparison of the same with Order VI, Rule 17 of C.P.C. would show that, two ingredients, which are common, are that (i) amendment can be allowed at any stage of the proceeding and (ii) all such amendments, which are necessary for purpose of determining the real question/ controversy, have to be allowed. The proviso to Rule 17 of Order VI of C.P.C., has to be read in the context of the

substantive provisions contained in Rule 17 of Order VI of C.P.C. The embargo placed by the said proviso in entertaining any application for amendment after the trial has commenced, is also not absolute. Thus, in a case, where the Court comes to the conclusion that in spite of due diligence, the party could not raise the matter before the commencement of trial, such amendment can always be allowed and the proviso would not come in the way.

34. Even before the proviso was introduced in the year 2002, the considerations of delay and laches in filing the application for amendment and possible prejudice to the opposite party, entered into the consideration of the Court, while deciding an application for amendment. In appropriate cases, imposition of costs was also considered by the Courts. Thus, the proviso cannot be said to be an entirely new addition as to the considerations, which are relevant, while deciding the application for amendment. The considerations, in this regard, have now been codified in the form of the proviso. In view of Section 10E of the Act, the CLB has to be guided by the principles of natural justice and that CLB shall act in its discretion and further having regard to the fact that the CLB can regulate its own procedure and has done so by framing regulations, it is difficult to hold that proviso to Rule 17 of Order VI of C.P.C., would be applicable to the proceedings before the

CLB. In an appropriate case, depending upon the fact and circumstances, the CLB can apply principles analogous to proviso to Rule 17 of Order 6 of C.P.C. I would hasten to add that while doing so, the essential difference between a petition alleging oppression and mismanagement under the Companies Act and a suit, which can be entertained by a Civil Court, has to be kept in mind. In the later case, the Court is essentially concerned with an adversarial litigation, unlike in a petition under Section 397 of the Act, where there is a duty cast on the CLB to act in the interest of the minority shareholders and the Company as a whole.

35. The decision in the case of **Major Retd. Keharsingh** (supra), in my view, cannot come to the aid of the appellants. In that case, the question whether the authorities under the Goa, Daman and Diu (Lease, Rent and Eviction) Control Act, 1968 have jurisdiction to allow amendment of the applications / replies, filed in the proceedings under the Act, was referred to the Division Bench. In that case, it was held in paragraph 15 that it is inconceivable that the Court of the first instance would have no jurisdiction to allow amendment while the Appellate Court would have such a jurisdiction. It is apparent that the said case arose in the context of the provisions of the Rent Control Act. In the present case, it cannot be said that the CLB has no jurisdiction to

allow amendment. Regulation No.46 confers powers on the CLB to entertain an application for amendment. Thus, the case of **Major Retired Keharsingh** (supra), would be distinguishable on facts. For the reasons aforesaid, point no.2 is answered in the negative, with the rider that the CLB can, in appropriate case, consider the effect of any delay and laches, while allowing a prayer for amendment and would consider the same in the facts and circumstances of each case. However, proviso to Rule 17 of Order VI of C.P.C. or the principles underlying the same, cannot apply with the same rigor to the proceedings before the CLB, as they would apply to Courts governed by the Civil Procedure Code.

36. I now propose to briefly deal with various other submissions advanced on behalf of the appellants, while assailing the impugned order.

In the case of **Sampat Kumar** (supra), the Hon'ble Supreme Court *inter alia* held that the doctrine of relation back, would apply to the amendment of pleading under Order VI, Rule 17 of C.P.C. Thus, the amendment, after its incorporation, relates back to the date of the suit. However, the Court can direct otherwise. In the present case, the CLB has not stipulated anything to indicate that the amendment would not relate back to

the date of its incorporation. As noticed earlier, the substantive amendments (except the prayer clause) are essentially on two counts, namely, the amendments arising out of information obtained relating to subsequent events and the amendments arising out of withdrawal of Company Petition No.3/2005. The CLB has found that the amendments are not divorced from the allegations of siphoning of funds and diversion of business opportunities and no new case was sought to be introduced. It has also been found that Section 397 and Section 398 of the Act envisage continuing cause and subsequent events would be relevant. It has also been found that the amendment is necessary to decide the real controversy in question and has thus to be allowed. It was argued on behalf of the appellants that the respondent was aware of certain events right from the year 2005 as he was also party in C.P.No.3/2005. However, the fact remains that C.P. No.3/2005 was allowed to be withdrawn in the year 2012 after overruling the objection by the first respondent to the withdrawal. The first respondent had challenged the same before this Court unsuccessfully when the review petition was dismissed on 13/12/2013. A perusal of paragraph 6 of the judgment dated 11/10/2013 in Company Appeal No.11/2012 would show that this Court had found that the first respondent (appellant in Company Appeal No.11/2012) can agitate the substantial issues raised by

him in Company Petition No.3/2005 in Company Petition No.87/2006, (out of which the present appeals arise.) Both these petitions, namely C.P.Nos.3/2005 and 87/2006 were tagged together. It has been held that the first respondent (appellant in Company Appeal No.11/2012) would not be prejudiced or suffer any harm or damage as he would be entitled to agitate the issues in Company Petition No.87/2006. Thus, the submission, in this regard, on behalf of the appellants has to be negated.

37. Even so far as the submissions based on prejudice on account of the fact that the amendment would be effective retrospectively is concerned, this can be appropriately considered by the CLB at the time of final disposal of the Company Petition. However, it needs to be mentioned here that in the specific submission, on behalf of the first respondent, the proposed respondent nos.11 to 13 are only proper parties and no relief, as such, is claimed against them. The amendment is effected only to substantiate the allegations of diversion of funds and business opportunities to the original respondent nos.8,9 and 10. Even in the case of **Sampat Kumar** (supra), it has been held that the question of prejudice to the opposite party (on account of any amendment at a belated stage), shall have to be answered with reference to the fact and circumstances of each individual case

and no strait-jacket formula can be laid down. It has further been held that mere delay cannot be a ground for refusing a prayer for amendment.

38. This takes me to the submissions based on the provisions of Depositories Act, 1996. At the outset, it needs to be mentioned, that at this stage, the CLB was concerned with the merits of the amendments. The submission is that it is the depository, which is the registered owner of the shares, which are in dematerialised (Demat form). Such shares are essentially in the nature of a fungible security and thus, it cannot be said that there is any transfer of shares in favour of the appellant Anju Timblo. In my considered view, the contention although attractive, cannot be accepted for more reasons than one. In the first instance, the submission based on Depositories Act was not advanced before the CLB, which is done for the first time before this Court. Secondly, CLB was not concerned with the merits of the amendment at this stage. Thirdly, Section 10(1) of the Depositories Act would show that a depository shall be deemed to be a registered owner only for the purposes of effecting transfer of ownership of security on behalf of the beneficial owner. Thus, it is the beneficial owner in whom the ownership of shares vests. It would be, further, clear from the fact that, under Section 10(2), the depository as a

registered owner does not have any voting rights or any other rights in respect of the securities held by it. Under subsection (3) of Section 10, it is the beneficial owner, who is entitled to all rights and benefits and subject to all the liabilities in respect of his securities, held by depository. Fourthly, the shares / securities are in fungible form only as long as they are held in dematerialised form in a depository. Section 14 of the Depositories Act gives an option to the beneficial owner to opt out in respect of any security. If the beneficial owner decides to opt out in respect of any such security, the issuer has to issue the share certificate/s to the beneficial owner or the transferee as the case may be in physical form, subject to conditions contained in Section 14(3) of the Depositories Act. For these reasons, the submissions based on the provisions of Depositories Act cannot be accepted.

39. The CLB in its discretion has allowed the amendments and impleadment of the parties, which in my considered view, does not call for any interference under Section 10F of the Act. In the result, the appeals are without any merit and are hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA