

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Co.Appeal.No. 4 of 2013

**ORDER DATED 05-02-2013 IN CP 30/2003 OF COMPANY LAW BOARD, PRINCIPAL
BENCH, NEW DELHI**
.....

APPELLANT(S)/2ND PETITIONER:

**BOBBY KURIAKOSE,
S/O.LATE T.O.KURIAKOSE, AGED 50 YEARS,
THOTTATHIL PUTHENPURA, THURUTHICAD P.O., THIRUVALLA,
KERALA STATE.**

**BY SRI.T.KRISHNAN UNNI, SENIOR ADVOCATE
SRI.JOSEPH KODIANTHARA, SENIOR ADVOCATE
ADVS. SRI.P.HARIDAS
SRI.SAJU S.A.
SHEEJA P.A.
SMT.MEENA A.**

RESPONDENT(S)/RESPONDENTS & PETITIONERS 1, 3 & 4:

- 1. M/S. ST.MARY'S HOTELS PVT.LTD, THIRUVALLA,
MUTHOOR P.O., TIRUVALLA, PIN - 689 107.**
- 2. T.O.ABRAHAM, S/O.LATE KURUVILA UNNITHAN,
THOTTATHIL (MALIYEKKAL), THURUTHIKKADU P.O.,
THIRUVALLA, PIN - 689 597.**
- 3. BINU ZACHARIA, S/O.LATE T.S.SCARIA,
THURUTHIKKADU P.O., THIRUVALLA, PIN - 689 597.**
- 4. THOMAS SCARIA,
S/O.LATE T.S.SCARIA, THURUTHIKKADU P.O., THIRUVALLA,
PIN - 689 597.**
- 5. STEPHEN BABY, S/O.LATE T.O.BABY,
MARY SADANAM, THURUTHIKKADU P.O., THIRUVALLA,
PIN - 689 597.**

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6. BINOJ BABY, S/O.LATE T.O.BABY,
MARY SADANAM, THURUTHIKKADU P.O., THIRUVALLA,
PIN - 689 597.

7. T.O.ALEYAS, S/O.LATE KURUVILA UNNITHAN,
THOTTATHIL HOUSE, MUTHOOR P.O., TIRUVALLA,
PIN - 689 107.

8. ABRAHAM BABY, S/O.LATE T.O.BABY,
MARY SADANAM, THURUTHIKKADU P.O., THIRUVALLA,
PIN - 689 597.

9. GIGY KURIAKOSE, S/O.LATE KURIAKOSE,
THOTTATHIL PUTHENPURA, THURUTHIKKADU P.O.,
THIRUVALLA, PIN - 689 597.

* ADDITIONAL R10 IMPEADED.

10. KOTTAYAM DISTRICT CO-OPERATIVE BANK LIMITED,
DISTRICT CO-OPERATIVE BANK BUILDINGS, P.B.NO.140,
KOTTAYAM - 686 001, REPRESENTED BY
ITS GENERAL MANAGER.

* IS IMPEADED AS PER ORDER DTD. 31.3.2015 IN IA.739/2013.

R1 & R2 BY ADVS. SRI.BECHU KURIAN THOMAS
SRI.SABU

R3 BY ADV. SRI.B.RAGUNATHAN
SRI.G.GOPALAKRISHNA PILLAI
SRI.R.SRINATH

R5 BY ADV. SRI.M.R.RAJESH

R6 BY ADV. SRI.SABU GEORGE

R7, R8 & R9 BY ADV. SMT.M.R.SREELATHA
SRI.ARUN MATHEW VADAKKAN

R10 BY ADV. SRI.GEORGE POONTHOTTAM

THIS COMPANY APPEAL HAVING BEEN FINALLY HEARD ON
09-03-2015 ALONG WITH COA. 6/2013, THE COURT ON 31-03-2015,
DELIVERED THE FOLLOWING:

msv/

Co.Appeal.No. 4 of 2013

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE I : TRUE COPY OF THE POSSESSION NOTICE DTD.17.9.2009.

**ANNEXURE II : TRUE COPY OF THE ORDER PASSED BY THE TRIBUNAL IN
IA.NO.357/11 IN AIR (SA) NO.230 OF 2011 DTD.9.5.2011.**

**ANNEXURE III : TRUE COPY OF THE ORDER PASSED BY THE HON'BLE SUPREME
COURT IN WRIT PETITION (CIVIL) NO.367 OF 2011 DTD.9.9.2011.**

**ANNEXURE A : TRUE COPY OF SALE NOTICE PUBLISHED IN MATHRUBHUMI DAILY
DTD.1.6.2014 PUT UP BY THE KOTTAYAM DISTRICT CO-OPERATIVE
BANK LTD., AS APPEARING IN MALAYALAM AND ENGLISH.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

“CR”

Ashok Bhushan, C.J. & K.Vinod Chandran, J.

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Co.Appeal Nos.4 & 6 of 2013

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Dated this the 31st day of March, 2015.

JUDGMENT

Vinod Chandran, J.

1. Sibling rivalry, history reveals, has been the major cause of downfall of kingdoms and empires; which remains the bane of the empires of the modern world - the business empires. Kuruvila Onnittan, formed a business group, under the name of 'St.Mary's Group', which diversified into various business ventures. His five sons, though some initially engaged in other vocations, followed his foot-steps in business and set up various businesses. Three of the said sons of Kuruvila Onnittan are no more. The remaining two with the progeny of the deceased three, are now orchestrating the dissolution of their business empire, which include the St.Mary Hotels Private Limited (for

brevity SMHPL), T.O.Abraham & Co. Engineers & Contractors Pvt. Ltd. (for brevity ACECPL), M/s. Cavunal Rubber Estate, St.Mary's Motors, Travancore Bankers and so on and so forth.

2. The five sons of Kuruvila Onnittan are T.O.Kuriakose, T.O.Zachariya, T.O.Baby, T.O.Abraham and T.O.Aleyas, in order of their birth. Only the youngest two are alive now and they belong to two different groups. One son of deceased T.S.Zachariya aligns with T.O.Abraham. All the other children of the three deceased sons of Kuruvila Onnittan align with T.O.Aleyas. The two groups are referred to as Abraham group and Aleyas group herein. The major player in the Aleyas group is Bobby Kuriakose. S/o.T.O.Kuriakose, who has filed one of the appeals against the order of the Company Law Board, Principal Bench, New Delhi (for brevity 'CLB') C.P.30/03 (CHE). The other appeal is filed by the other petitioners in the Company

Petition. The Company Petition was connected with another Company Petition, dealing with ACECPL with which we are not concerned, since, the order of the 'CLB', with respect to that company, is not under challenge.

3.C.P.30/03 is concerned with the affairs of SMHPL, which is engaged in running two hotel projects, situated in Kottayam under the name, “The Lake Village” and “Windsor Castle”. Whether the said company was formed with the joint effort of the five families and if not, whether there was any intention to share equally in the said company, is the issue raised. The Aleyas group asserts uniformity in shareholding to five groups, each comprising the children of the three deceased brothers and the two surviving brothers, as the ultimate goal. However, the Abraham group refutes the same and contends for the position that they have the major shareholding in the company, with no

intention of the brothers' families having equal share. The Aleyas group itself is a negligible minority; by the voluntary act of Bobby Kuriakose, who transferred his shares to T.O.Abraham, is their case.

4. It is not disputed that, at the time of incorporation of the company, the subscribers to the Memorandum of Association (MOA), were the first directors of the company, viz., T.O.Abraham, T.O.Aleyas and Binu Zachariya, each with one thousand shares. On the further allotment of shares, specifically issued on 19.10.2001, Bobby Kuriakose also became a shareholder of the company. T.O.Aleyas and T.O.Abraham were allotted an additional 2.99 lakh shares each, taking their total holding to three lakh shares. Binu Zachariya was allotted 4.99 lakh shares, thus making him the highest shareholder, with five lakh shares. Bobby Kuriakose was allotted four lakh shares. So

much is admitted by all parties.

5. It is to be noticed that, none of the minutes of the Board of Directors of the company is available and both sides allege that, the other is instrumental in destroying or suppressing the same. Conflicting allegations are made as to the management of the company, the appointment of the Managing Director, as also the various proceedings in the civil courts. The Aleyas group is alleged to have initiated three suits in all, one at Thiruvalla and two at Ernakulam, in a desperate attempt to get hold of the management. The two suits at Ernakulam were filed in a Court without jurisdiction. An ex-parte injunction was obtained against T.O.Abraham and Binu Zachariya; on whose appearance, the same stood vacated and transferred to the court, having jurisdiction. All of these suits are said to have been withdrawn subsequently.

6. On the strength of the ex-parte injunction, the Abraham group allege, the Aleyas group forcefully removed the books, kept in the registered office of the Company. Aleyas group, on the other hand, allege that they were ousted unceremoniously from the management and only when the injunction was sought to be enforced through police, they were confronted with a minutes of the Board meeting of the Directors held on 17.4.2002, wherein, the shareholding of the Aleyas group was reduced to a minority. Bobby Kuriakose, who had four lakh shares, after the transfer said to have been made on 17.4.2002, was reduced to holding a mere 10,000 shares. A subsequent extra-ordinary general body meeting, said to have been convened on 25.4.2003, resolved to amend the MOA and Articles of Association (AOA) of the company, so that, the Managing Director holds office for life and is not liable to retire by rotation. This placed T.O.Abraham in

that position for life. A Board Meeting held on 3.6.2003 removed T.O.Aleyas, Abraham Baby, Bobby Kuriakose and Gijy Kuriakose from the Directors' post. Aleyas group too convened a board meeting, where T.O.Abraham was removed as the Managing Director of the company. The decisions asserted by the Abraham group are said to have been duly registered with the Registrar of Companies. On an overview, after hearing the learned Senior Counsel Sri.Joseph Kodianthara, on behalf of the Aleyas group and learned Senior counsel Sri.P.S.Raman for the Abraham group, we are of the opinion that, the allegations and counter allegations need not be gone into in the present appeal, filed under Section 10F of the Companies Act, which is confined to a decision on the question of law arising from the order of the 'CLB'.

7. The petition before the 'CLB' was under Sections 397, 398 and

402 read with Section 111 of the Companies Act 1956. The petitioners therein, being the Aleyas Group, alleged oppression and mis-management, insofar as the transfer of 2.20 lakh shares from Bobby Kuriakose to T.O.Abraham, the Managing Director, at the Board Meeting, held on 17.4.2002. The EOGBM held on 25.4.2003 and 30.6.2003 and the Board Meeting dated 3.6.2003 were challenged again, on the ground of oppression and mismanagement. Earlier the claim was allowed by the 'CLB' and the same was set aside by this Court and remanded for fresh consideration. The remand order was affirmed by the Honourable Supreme Court in a Special Leave Petition.

8. The appeal is filed from an order of the 'CLB', which affirms the Board resolution on 17.4.2002, wherein the Aleyas group was reduced to a minority. However, the subsequent decisions, of the Extra-Ordinary General Body Meetings (EOGBM) and that of

the Board of Directors, was set at naught. There was also a further direction, appointing a Chartered Accountant to value the shares of the company and Abraham group was directed to purchase the shares, held by Aleyas group, in terms of the Valuer's report, to bring quietus to the issue.

9. Learned Senior Counsel for the Aleyas group, would contend that, the transfer of shares, were without any consideration and there were no minutes at all to evidence the decision. It is the specific case of the Aleyas group that, after 19.10.2001, at which point, admittedly, T.O.Abraham and T.O.Aleyas held three lakh shares each, Bobby Kuriakose and Binu Zachariya, four lakhs and five lakhs respectively, the avowed intention of all the shareholders was to distribute equally the shares among the five families of the sons of Kuruvila Onnittan. The intention is said to have crystalized into a decision of the Board in a meeting held

on 28.11.2001. The decision taken evidences Bobby Kuriakose's intention to transfer 1,70,000 shares to Gijy Kuriakose, his own brother and respectively 20,000 and 80,000 shares to Binoj Baby and Stephen Baby, sons of deceased T.O.Baby. The said transfer would leave Bobby Kuriakose with 1,30,000 shares. Binu Zachariya is alleged to have agreed to transfer 1,40,000 shares to Abraham Baby and 60,000 shares to Binoj Baby. A further transfer of 1,30,000 shares to Thomas Zachariya, his own brother, would leave Binu Zachariya with 1,60,000 shares. The parity and uniformity would thus be achieved in each branch holding three lakh shares each. This is asserted as a family arrangement, reduced to a resolution and adopted by the Board in its meeting on 28.11.2001, by the Aleyas group. However, contrary to the earlier decision, in the Board Meeting on 17.4.2002, though Binu Zachariya transferred 1,40,000 shares to

Abraham Baby, the other transfers were not effected. Bobby Kuriakose, however, was alleged to have transferred 1,70,000 shares to his brother Gijy Kuriakose and 2,20,000 shares to T.O.Abraham, the Managing Director. Only T.O.Abraham, Binu Zachariya and T.O.Aleyas are seen to have participated in the said meeting. Aleyas group denies such participation by T.O.Aleyas.

Sri.Joseph Kodianthara, learned Senior Counsel relied on the decision in *Dale & Carrington Investment (P) Ltd. v. P.K.Prathapan [(2005) 1 SCC 212]*, which affirms the decision of a Division Bench of this Court in *P.K.Prathapan and another v. Dale and Carrington Investments Pvt.Ltd. and others (2002 Vol.111 CC 425 (Ker))*, to contend that, the decision taken on 17.4.2002 cannot be said to be in the interest of the company nor was there any emergency which warranted such transfer of shares. Transfer

of shares can never be made by the Managing Director to himself and it can only be in an emergency, when the existence of the company itself is threatened and such transfer enures to the benefit of the company. There was no threat to the existence of the company nor can the transfer be said to be for the benefit of the company. The unilateral decision of the Managing Director to transfer the shares to himself, without even seeking the consent of the other shareholders, would fall foul of Clause 9(b) and 13 (e) of the Articles of Association. The mere fact that a major shareholder was reduced to a rank minority would raise serious questions on the *bona fides* of the Abraham group, is the argument. It was also contended that the fiduciary capacity of the Managing Director was infringed, insofar as the transfer of shares being made to himself. Reliance to that end was also placed on *Gluko Series Pvt. Ltd., In re* [1987 Vol. 61 CC 227

(Cal)].

10.As for the aspect of limitation in Section 111, highlighted by the respondents, the learned Senior Counsel relied on a Division Bench decision of this Court in ***Duroflex Ltd. v. Johnny Mathew (2007 (1) KLT 865)*** and two decisions of the Delhi High Court and the Madras High Court in ***Escorts Ltd. v. Sai Autos and others. (1991 (72) CC 483)*** and ***N.S.Nemura Consultancy India P. Ltd. v. A.Devarajan [2010 (155) CC 175]***.

11.Learned Senior Counsel for the Abraham group would, however, raise allegations of *mala fides* against the Aleyas group, on the basis of the three suits, filed first at Thiruvalla and then two at Ernakulam, different courts, with the sole intention of taking over the management. Family arrangement, said to have been arrived at, on 28.11.2001, was never substantiated and such an arrangement contrary to the AOA is not binding on the

company or its shareholders [*AIR 1992 SC 453 V.B.Rangaraj Vs V.B. Gopalakrishnan*]. The photocopy of the minutes of the Board on 28.11.01 was merely put across the bar, before the Company Law Board, without any pleading to that effect in the company petition or the rejoinders filed to the objections of the respondents. The fact that, such document was tendered late, that too a photocopy, which was never pleaded, reveals the dubious manner in which the Aleyas group has sought to get control of the company, in which they had at best a minimal share-holding. T.O.Abraham and Binu Zachariya were always in control of the company. Bobby Kuriakose was a late entrant. The AOA, makes no restriction of shareholding and the proceedings taken under Section 111 of the Companies Act is belated. The transfer, having been registered by the Registrar of Companies, there was no reason why the Company Law Board

should interfere and the findings, on that count, are sought to be supported.

12. Sri.P.S.Raman, learned Senior Counsel, relied on the decision in ***Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt.Ltd. [(1998) 7 SCC 105]*** as to the jurisdiction conferred under Section 111. It is contended that the same is a summary procedure in which disputed questions of fact or an elaborate consideration of fraud and manipulations as raised herein could not be taken up. The petitioners, if at all should be relegated to the civil court, is the compelling argument. Reliance was also placed on the decision in ***Standard Chartered Bank v. Andhra Bank Financial Services Ltd. (AIR 2006 SCC 3626)***. The transfer of shares having been effected by a valid resolution and the same having been registered with the Registrar of Companies, the transfer is complete and concluded and there

could be no rectification sought, contends learned Senior counsel relying on *Vasudev Ramchandra Shelat v. Pranolal Jayanand Thaker (AIR 1974 SC 1728)*. Reliance was also placed on: *M/s.Howrah Trading Co.Ltd. v. Commissioner of Income-tax, Central, Calcutta (AIR 1959 SC 775)*, *Prabodh Jamnadas Kothari v. Vikram Jamnadas Kothari (2012 SCC Online Bom.1628)*.

13.The undisputed fact is the shareholding of the company, as on 19.10.2001. The Aleyas group relies on an alleged meeting held on 28.11.2001, wherein, the following decisions are said to have been taken.

“Minutes of the 28th meeting of the Directors of the Company held at 10.30 AM on Friday, the second day of November, 01.

Present: Sri.T.O.Abraham, Managing Director in the chair.

Sri.T.O.Aleyas, Director.

Sri.Binu Zachariya, Director.

The notice convening the meeting and the minutes of the previous meeting were read out and approved. The Chairman explained the working of the hotel and Resort and other relevant matters.

Sri.Binu Zachariah, Director then expressed his desire to transfer a portion of his share holdings to his brothers and step brothers, viz., Thomas Zachariah, Abraham Baby and Binoj Baby and offered the existing members the shares at the face value. The matter was discussed in detail. The other members present stated that they were not interested in purchasing the shares offered by Sri.Binu Zachariah and consented to the proposal. The Chairman then announced that instruments of transfer duly signed by the transferor has been delivered to the company with the Share Certificate.

Resolved that the transfer of shares as mentioned below be recorded in the registers of the company.

1) 1,30,000 fully paid up shares of Rs.10/- each to Sri.Thomas Zachariah, S/o.T.S.Skariah bearing distinctive numbers from 770001 to 900000.

2) 1,40,000 fully paid up shares of Rs.10/- each to Sri.Abraham Baby, S/o.T.O.Baby, Mary Sadanam, Thuruthicad P.O., Mallappally, Pathanamthitta.

3) 60,000 fully paid up shares of Rs.10/- each to Sri.Binoj T.Baby, S/o.T.O.Baby, Mary Sadanam, Thuruthicad P.O., Mallappally, Pathanamthitta of bearing Sl.Nos. from 1040001 to 1100000.

The Chairman then announced that another shareholder, viz., Bobby T. Kuriakose has expressed his desire to transfer a portion of his holdings to 3 other persons including his brother and 2 step brothers. As unanimously consented by T.O.Abraham, T.O.Aleyas and Binu Zachariah, it is resolved to make effect the transfer of shares as desired by Bobby T.Kuriakose and instruments of transfers duly signed by the transferor has been delivered to the company with the Share Certificate. He also has offered the shares for sale of the shares at the face value to the existing members. All the existing members being not willing for the purchase, the following resolution was passed unanimously.

Resolved that the transfer of shares as mentioned below be recorded in the registers of the company.

- 1) 1,70,000 shares bearing distinctive Sl.Nos. from 1230001 to 1400000 to Sri.Gigy Kuriakose, Thottathil House, Thuruthicad P.O., Mallappally.*
- 2) 20000 shares bearing Sl.Nos.1400001 to 14200000 to Sri.Binoj T.Baby, S/o.T.O.Baby, Mary Sadanam, Thuruthicad P.O., Mallappally, Pathanamthitta Dt.*
- 3) 80000 shares bearing Sl.Nos. from 14200001 to 1500000 to Sri.Stephen Baby, S/o.T.O.Baby, Mary Sadanam, Thuruthicad P.O., Mallappally, Pathanamthitta Dt.*
- 4) Sri.Binu Zachariah, Director suggested that the number of Directors may be enhanced to five and Abraham Baby and Gigi Kuriakose may be appointed as Directors. After discussions*

resolved that Abraham Baby and Gigy Kuriakose be and hereby appointed as Directors of the Company for a period till the conclusion of the next Annual General Meeting.

All the resolutions were carried unanimously. The meeting concluded at 2 PM with a vote of thanks to the chair.”

14.Abraham group denies those decisions. Neither was such a meeting convened nor a resolution so taken and there was absolutely no intention to divide the shares, among the children of the three deceased sons of Kuruvila Onnittan. They, on the other hand, rely on the minutes of the Board of Directors, said to have been held on 17.4.2002, which took the following decisions:

“Minutes of the Board of Directors of St.Mary's Hotels (P) Ltd. held on Wednesday, the 17th day of April, 2002 at the registered office of the company at Ramanchira, Thiruvalla at 10 AM.

Present: Sri.T.O.Abraham, Managing Director in the chair.

Sri.T.O.Aleyas.

Sri.Binu Zachariah.

The Chairman read out the notice convening the meeting that the minutes of the previous meeting and were approved.

The Chairman then explained the working of the Hotel and Lake Resort . Part of the shares held by M/s.Binu Zachariah and Bobby T.Kuriakose was sought to be transferred to M/s.T.O.Abraham, Abraham Baby and Gigi Kuriakose. Notice of lodgement of transfer were issued to the transferors and transferees and no objections have been received within 2 weeks of the receipt of the notice.

After discussions, the following resolutions were carried unanimously.

1) Resolved that approval be and is hereby given to the undernoted transfers.

<i>Trnsfer No.</i>	<i>No. of shares</i>	<i>Transferor</i>	<i>Transferee</i>
1	140000 (960001-1100000)	<i>Binu Zachariah, Door No.VIII/369, Thottathil House, Thuruthicad P.O., Pathanamthitta Dt.</i>	<i>Abraham Baby, Mary Sadanam, Thuruthicad P.O., Mallappally.</i>
2	170000 (1110001 to 1260000)	<i>Bobby T.Kuriakose, Urumbikunnel, Thuruthicad P.O., Mallappally.</i>	<i>Gigi Kuriakose, Urumbikunnel, Thuruthicad P.O., Mallappally.</i>

<i>Trnsfer No.</i>	<i>No. of shares</i>	<i>Transferor</i>	<i>Transferee</i>
3	220000 (1280001 to 1500000)	Bobby T.Kuriakose, Urumbikunnel, Thuruthicad P.O., Mallappally.	R.P.Abraham, Maliyackal House, Thuruthicad P.O., Mallappally.

Resolved that M/s.Abraham Baby and Gigi Kuriakose be and is hereby appointed as Directors of the Company for a period till the conclusion of the next Annual General Meeting.

Resolved that the transferees may be directed to take delivery of the share certificates.

The meeting concluded at 1 PM in the vote of thanks to the Chair.”

15.Both groups, however admit that, the company was promoted by T.O.Abraham, T.O.Alias and Binu Zachariya, and the hotel project could be completed, only by raising loans from banks and financial institutions and by raising unsecured loans from the said promoters, as also Bobby Kuriakose. Bobby Kuriakose had been allotted 4 lakhs shares in the Board Meeting dated 19.10.2001. The transfer effected of 2,20,000 shares to T.O.Abraham, was for valuable consideration, is the contention

of the Abraham group. However, no such consideration is proved before the Company Law Board and the Abraham group has also taken an inconsistent stand that the consideration was in the form of purchase of immovable property, in favour of Bobby Kuriakose. No details are forthcoming.

16.It is to be specifically noticed that the passing of consideration and the right to be allotted shares would not be an issue, which could be decided in a petition under Sections 397 and 398 read with Section 402. What would be relevant is the consideration of conflicting claims made by the Abraham group and Aleyas group, on the strength of two different resolutions said to have been taken by the Directors of the Company in a meeting of the Board of Directors. Whether the resolutions, evidenced only by photocopies and not substantiated by the minutes of the Board Meetings, could be taken as decisions validly taken by the Board

as per the provisions of the Companies Act and if so, whether the decision on 17.4.2002 would amount to an act of oppression of the minority by the majority, would be the clinching resolution of the dispute.

17.The 'CLB' found that, till the dispute arose, there was an amount of trust between the parties and in such circumstance, it has to be found that Bobby Kuriakose had entrusted the share certificates with blank forms to T.O.Abraham. The company itself was initially promoted by only three persons and Bobby Kuriakose having joined subsequently, it was found that there was no evidence to show that the shareholders had an intention to distribute the shares between the children of the deceased sons of Kuruvila Onnittan so as to make a family arrangement with parity in holding, of all the five branches. It was also found that there was nothing to show that the respondent company herein

was formed from the proceeds of the family business started by Kuruvilla Onnittan or the one commenced by T.O.Kuriakose, the eldest son or even the construction business commenced by T.O.Abraham. The 'CLB' found that the theory of parity of shareholding among the five branches of the family as propounded by the Aleyas group was never pleaded in the past; in any of the suits.

18.Aleyas group, which had been consistently before the civil courts, did not, in any of the said suits, plead that there was an intention of a uniformity in the shareholding of the subject company. The decision taken on 28.11.2001 said to be taken by the Board of Directors, providing for parity in the shareholding was never pleaded. The same was first pleaded in C.P.No.30 of 2003 before the 'CLB'. As is revealed from the Company Petition, SMHPL, was incorporated as a Private Limited

Company on 8.4.1997. Aleyas group, who were the petitioners before the 'CLB', specifically averred that ACECPL was incorporated as a partnership and supplementary deed was created on 22.4.2003, evidencing that, the members of the five branches were partners in the firm. Similarly, it was contended that, M/s.Travancore Bankers formed by a deed of partnership dated 20.6.1991 also had the representatives of the five families as partners. M/s.Cavunal Rubber Estates, was one other partnership firm where the families of sons of Kuruvilla Onnittan, were represented. However, when SMHPL was incorporated, only three; T.O.Abraham, T.O.Aleyas and Binu Zachariya alone were the shareholders. That alone would demolish the claim of uniformity set up by the Aleyas group.

19.The only material placed is the alleged board resolution of 28.11.2001 which was extracted herein before. The Aleyas group

would rely on the decision taken on 17.4.2002 wherein Binu Zachariya has transferred 1,40,000 shares to Abraham Baby as was decided on 28.11.2001. However, it is clear that the other decisions said to have been taken on 28.11.2001 were not acted upon even by Binu Zachariya. There is no material to substantiate the contention of a board resolution taken on 28.11.2001. As was noticed by the 'CLB', the Aleyas group has never pleaded in the earlier litigations that there was such a uniformity intended, to which end the board had taken a decision on 28.11.2001. The minutes book obviously is no longer available and the 'CLB' and this Court has only the assertion and counter assertion made with respect to the decisions taken by the Board.

20.It is also the admitted fact that the hotel project proceeded *inter alia*, on the loans availed from the said promoters and also on the

loans, advanced by Bobby Kuriakose. Allotment of shares to Bobby Kuriakose is also admitted. The MOA and AOA do not indicate any parity in shareholding nor does the facts commend any inference that, such parity was the intention in the formation of the company. The decision in *V.B.Rangarajan (supra)* is squarely applicable. There could be no rectification under Section 111 ordered, so as to concede 20% of the shares to each family, merely on the ground of a family arrangement. But for the photocopy of a resolution alleged to have been taken on 28.11.2001, nothing further is available. We do not find any reason to upset the findings of the 'CLB', that there is discernible no intention for uniformity of share-holding by the five families; in SMHPL.

21. Now we come to the decision of the Board on 17-04-2002. In *Gluko Series Pvt. Ltd. (supra)*, two individuals promoted a

company in which they were respectively the Chairman and the Managing Director. The Chairman had the majority shares in the company and on his death, it was revealed that the Managing Director had by subterfuge, behind the back of the Chairman, convened a Board Meeting in which shares were issued reducing the Chairman, till then a majority shareholder, to a rank minority. The legal heirs of the Chairman challenged the same and a learned Single Judge of the Calcutta High Court followed a decision of the Supreme Court in *Nanlal Zaver v. Bombay Life Assurance Co. Ltd. [1950] 20 CC 179; AIR 1950 SC 172*, which held as follows:

“It is well established that Directors of a Company are in a fiduciary position vis-a-vis the company and must exercise their power for the benefit of the company. If the power to issue further shares is exercised by the Directors not for the benefit of the company but simply and solely for their personal aggrandisement and to the detriment of the

company, the court will interfere and prevent the Directors from doing so. The very basis of the court's interference in such a case is the existence of the relationship of a trustee and of cestui que trust as between the Directors and the company.....

If the Directors exercise the powers for the benefit of the company and at the same time they have a subsidiary motive which in no way affects the company or its interests or the existing shareholders, then the very basis of interference of the court is absent....the court of equity only intervenes in order to prevent a breach of trust on the part of the Directors and to protect the cestui que trust, namely, the company and possibly the existing shareholders. If as between the Directors and the company and the existing shareholders, there is no breach of trust or bad faith, there can be no occasion for the exercise of the equitable jurisdiction of the court”.

22. *Dale and Carington (supra)* was also a similar case in which the majority shareholder was rendered a minority without following the provisions under the Companies Act. One Ramanujam had, on behalf of one Prathapan and his wife

acquired a hotel with the funds given by Prathapan and constituted a company in which Prathapan was a majority shareholder and Ramanujam and his wife in a minority; with Ramanujam acting as the Managing Director. The Company's authorized capital was increased from Rupees 15 lakhs to Rupees 25 lakhs and thereafter to Rupees 35 lakhs without the knowledge of Prathapan in an alleged meeting of the Board of Directors of the Company. Ramanujam is said to have informed the Board of Directors about a loan outstanding in his name, amounting to Rs.6,86,500/- and got himself allotted 6,865 equity shares of Rs.100 each. Prathapan challenged the validity of issuance of equity shares, as in the present case, in a petition before the 'CLB' under Sections 397, 398 and 402. It was specifically found by the Honourable Supreme Court that the Directors, through whom, the company, a juristic person, acts,

are in a fiduciary capacity. No individual director has the power to act on behalf of the company and there should be a collective decision taken by the Board of Directors. It was held that-

“The Directors of companies have been variously described as agents, trustees or representatives, but one thing is certain that the Directors 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. They are agents of the company to the extent they have been authorised to perform certain acts on behalf of the company. In a limited sense they are also trustees for the shareholders of the company. To the extent the power of the Directors are delineated in the Memorandum and Articles of Association of the company, the Directors are bound to act accordingly. As agents of the company they must act within the scope of their authority and must disclose that they are acting on behalf of the company. The fiduciary capacity within which the 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. It follows that in the matter of issue of additional shares, the Directors owe a fiduciary duty to issue shares for a proper purpose. This duty is owed by them to the shareholders of the company. Therefore, even though Section 81 of the Companies Act, 1956 which contains certain requirements in the matter of issue of further share capital by a company does not apply to private limited companies, the Directors in a private limited company are expected to make a disclosure to the shareholders of such a company when further shares are being issued. This requirement flows from their duty to act in good faith and make full disclosure to the shareholders regarding affairs of a company. The acts of Directors in a private limited company are required to be tested on a much finer scale in order to rule out any misuse of power for personal gains or ulterior motives. Non-applicability of Section 81 of the Companies Act in case of private limited companies casts a heavier burden on its Directors. Private limited companies are normally closely held i.e. the share capital is held within members of a family or within a close-knit group of friends. This brings in considerations akin to those applied in cases of partnership where the partners owe a duty to act with

utmost good faith towards each other. Non-applicability of Section 81 of the Act to private companies does not mean that the Directors have absolute freedom in the matter of management of affairs of the company. In the present case Article 4(iii) of the Articles of Association prohibits any invitation to the public for subscription of shares or debentures of the company. The intention from this appears to be that the share capital of the company remains within a close-knit group. Therefore, if the Directors fail to act in the manner prescribed above they can in the sense indicated by us earlier be held liable for breach of trust for misapplying funds of the company and for misappropriating its assets.”

After so declaring the law, in paragraph 20, it was unequivocally held that *“when powers are used merely for an extraneous purpose like maintenance or acquisition of control over the affairs of the company, the same cannot be upheld”*.

23. On facts, it was found that the issuance of share capital by the Managing Director in his own favour was not justified since it was not shown that it was for the benefit of the company nor was

it shown that the proper procedure was followed in allotting the additional share capital. It was held so in paragraph 29 :

“Conclusion is inevitable that neither was the allotment of additional shares in favour of Ramanujam bona fide nor was it in the interest of the company nor was a proper and legal procedure followed to make the allotment. The motive for the allotment was mala fide, the only motive being to gain control of the company. Therefore, in our view, the entire allotment of shares to Ramanujam has to be set aside.”

24.The power of this Court under Section 10F of the Companies Act was also elaborately considered which will be noticed shortly.

25.As in the case of *Dale & Carrington (supra)*, in the present case also, there is absolutely no averment as to the reason why, the share transfer of Bobby Kuriakose was effected in favour of the Managing Director T.O.Abraham. Bobby Kuriakose contended that there was a transfer intended, but for the purpose of bringing uniformity in the shareholding with respect to all the

five branches of the family represented by the sons of Kuruvila Onnittan. This Court has already found that there is nothing on record to indicate that such a uniformity was intended and not at all as per the MOA or AOA.

26.The substantiation, as to the decision of 17.04.2002, is as vague as with respect to the decision taken on 28.11.2001 for reason of the minutes book being not available for perusal. The Abraham group, while refuting the decision taken on 28.11.2001 has, in their counter affidavit, specifically contended that the decision taken on 17.4.2002 was not in consonance with the alleged decisions of 28.11.2001 (Para 61). Paragraph 22 of the counter affidavit, while asserting that there is no provision in the AOA that the share in the company shall be allotted to members of all families in any proportion or with any parity, admits that the only restriction in transfer of shares is that the transferor shall first

offer shares to the existing shareholders before selling the shares to a non-shareholder. The specific clause in the AOA is at Clause 9, the relevant portion is sub-clause (b), which reads as follows:

“Whenever a shareholder wants to transfer his shares, he shall first offer them to the existing shareholders at a price proposed by the transferor and approved by the Board, before selling them to an outsider. In case the Board do not agree to the price proposed by the transferor, reference shall be made to the Auditor of the Company appointed under Section 224 of the Act, whose decision on the reference shall be final and binding on both the transferor and the Board.”

27.Relevant also would be Clause 13(e) of the AOA which is also extracted hereunder:

“All the decisions taken at a Meeting of the Board shall be recorded in a minutes book maintained for the purpose and signed by all the Directors present at the meeting.”

28.True, there is a restriction only in the transferee offering his

shares to the existing shareholders when the transfer is intended to an outsider. The share-holders, as on the date of the alleged decision on 17.4.2002 were T.O.Abraham, T.O.Alias, Binu Zachariya and Bobby Kuriakose. T.O.Aleyas denies that he was present on the said day though the photocopy of the resolution, indicates his presence. It is to be noticed that Binu Zachariya had transferred shares to an outsider and there was no offer made to the other shareholders. The Abraham group merely asserts in paragraph 23 of the counter statement that the authorized share capital was fully subscribed and shares were allotted before 17.4.2002. It was contended that what was done on 17.4.2002 is the acceptance and approval of the transfer of shares in accordance with which resolution, the transfer of shares were intimated to the Registrar of Companies. It was also contended in paragraph 24 that transfer was for valuable consideration. No

avermment as to what was the quantum of consideration or how the same was paid are seen taken in the counter affidavit. It was also contended that the consideration was with respect to the earlier transactions in which T.O.Abraham had purchased immovable property for the benefit of Bobby Kuriakose. The said dispute does not give rise to any question of law under Section 10F of the Companies Act.

29.Aleyas group denies the decision taken on 17.4.2002 and Bobby Kuriakose specifically contends that there was absolutely no intention to transfer 2,20,000 shares to the Managing Director. Bobby Kuriakose contends that, his share certificates and blank transfer forms were handed over to T.O.Abraham for transfer to be effected as per the decision taken on 28.11.2001. T.O.Abraham declines the position of, either the share certificates of Bobby Kuriakose or the other shareholders being

in his possession and denies that a blank transfer form was handed over (Para 61).

30.It is specifically pleaded before the 'CLB' that the share certificate of the second petitioner, i.e., Bobby Kuriakose, is not in the custody of the second respondent, as alleged (paragraph 61). It is not known as to how the shares of Bobby Kuriakose were transferred by the company in the name of its Managing Director, if the certificates were not surrendered to the company. The assertion in the very same paragraph of the counter affidavit is that the minutes of the board meeting dated 17.4.2002 has been intimated to the Registrar of Companies on 8.5.2002. It is further contended in paragraph 62 that the issue and transfer of shares, having been intimated to the Registrar of Companies, the decision taken in the Board has to be taken as valid, as per the provisions of the Companies Act.

31. Binu Zachariya, as per the admission of the Abraham group, has transferred 1,40,000 shares to Abraham Baby, without consent being taken from the other shareholders on 17.4.2002. When the decision allegedly taken on 28.11.01, is disputed, and this Court having found in favour of such denial; then, necessarily, when shares are transferred to an outsider, it has to be with the consent of the other shareholders, as per 9(b) of the AOA. Abraham Baby can only be considered as an outsider and any transfer effected to an outsider, as per the specific terms of the AOA, can be done only with the prior consent of the other shareholders. There is nothing to indicate that such consent was taken by Binu Zachariya before the transfer of shares were effected and the same was approved by a resolution of the Board of Directors on 17.4.2002.

32. Then again, Clause 13(e) of the AOA provides that the minutes

are to be signed by all the Directors of the Company. Though there are conflicting claims of consideration and intention of the parties, this Court is not called upon to consider the same in an appeal under Section 10F of the Companies Act from an order of the 'CLB'. Those matters would be best agitated in a civil forum and the constitution of the 'CLB' under the Companies Act is not a complete bar to the jurisdiction of the civil court and acts as a bar only in respect of any matter, which the 'CLB' is empowered to determine by or under the Companies Act or any other law for the time being in force. The power conferred on the 'CLB' is clearly delineated in the Act and whether there was consideration for the transfer of shares, would be a matter, which could be addressed before the civil court. Herein, this Court is concerned about the decision taken by the Board, affirming the action of the Company, in transferring the share from one of the Directors to

the Managing Director and also the intimation to the Registrar of Companies, under the Act.

33.The transfer of shares is regulated by the provisions of Section 108 of the Act. The registration of such transfer is to be done by the company and only when a proper instrument of transfer, duly executed by or on behalf of the transferor and by and on behalf of the transferee, being delivered to the company, along with the certificate relating to the shares or in the absence of such a certificate, the letter of allotment of such shares. Hence, the transfer so registered by the company, has to be only on a proper instrument of transfer being submitted to the Company, along with the share certificate or the letter of allotment of shares. The transfer of shares, so registered, has to be intimated to the Registrar of Companies, in the proper form. The Hon'ble Supreme Court in *Mannalal Khetan v. Kedar Nath Khetan*

[1977] 47 CC 185] emphasised the mandatory character of Section 108(1). The negative words used in the provision strengthened the mandatory character, was the finding. An endorsement made by the Registrar of Companies only evidences that, such transfer has been registered by the company itself. It does not provide any sanctity, otherwise than evidencing the factum of registration by the company. When suspicion arises or an allegation is raised, as herein, about the genuineness of such transfer, which is also on the ground of oppression of minority shareholders, then, necessarily, the same has to be proved by other evidence.

34. **Vasudev R. Shelat** (*supra*) considered the question whether the mere purported gift of certain shares, without actual registration with the Company; would create a right on the donee. The Hon'ble Supreme Court drew a distinction, relying

on a Privy Council decision; between “the title to get on the register” and “the full property on the shares” (sic para 8). The first having been proved, the second was held to be only an enforcement of the antecedent right acquired. It was held so in Paragraph 10.

“The donation of such a right, as a form of property, was shown to be complete so that nothing was left to be done so far as the vesting of such a right in the donee is concerned. The actual transfers in the registers of the companies concerned were to constitute mere enforcements of this right. They were necessary to enable the donee to exercise the rights of the shareholder. The mere fact that such transfers had to be recorded in accordance with the company law did not detract from the completeness of what was donated”.

The establishment of the antecedent right is absent herein and hence no sanctity can be attached to the registration made of the transfer to the Managing Director.

35. On that count, reference can be usefully made to Sections 193

to 195 of the Companies Act. Section 193 provides that, every company shall cause the minutes of all the proceedings of General Body Meetings and Board Meetings to be kept, by making entries in books kept for the purpose with pages consecutively numbered. Though sub-section 1A provides for initialling or signature on the last page of recorded proceedings of each meeting by the Chairman herein, the AOA specifically provides that, the minutes are to be signed by all the Directors. Section 194 deems such minutes, maintained as provided in the Act to be evidence of the proceedings recorded therein. Section 195 draws a presumption, insofar as such proceedings are deemed to be valid, unless contrary is proved. In the present case, there is no warrant for this Court to draw such presumption, since, the minutes are absent.

36.It is the contention of both parties that the minutes were kept in

the ordinary course as per Section 193 and in accordance with the AOA. But, the fact remains; both have not produced the same and allege that the other had suppressed it. Obviously, conflicting contentions are made as to the intention to have parity in shares and the ultimate control being on the Abraham group. One of which, definitely would stand disproved, on production of the minutes.

37. We have already found that, the intention of parity is not evident from any evidence on record, but for a photocopy of the resolution. We are afraid that, even the Board meeting said to have been carried on, on 17.4.2002 and the decision taken is supported by only a photocopy of the said decision. The share transfer form though executed is disputed. The registration of transfer itself is suspect, for the share certificates originally issued is not available, nor an allotment letter; without surrender

of which the registration is not permissible. No minutes of the Board meeting kept in accordance with Section 193 is produced and the mere fact that intimation was given to the Registrar of Companies does not prove the factum of transfer. The transfer, having been made by the Company, the proceedings of which has been authenticated by the Managing Director as per Section 54 of the Act, an intimation has been sent to the Registrar. This only evidences the registration of share transfer by the Company and not the factum of transfer.

38.***Dale & Carrington (supra)*** assumes significance in the above context. The transfer said to have been effected on 17.4.2002, is from a Director to the Managing Director himself. For such transfer, there is no bar under Clause 9(e) of the AOA, since, it is between the shareholders themselves. However, there is nothing to show that such transfer was motivated by an emergent

necessity or on an expedient measure taken in the interest of the company. The claim of voluntary transfer is seriously disputed and the transferee but for making vague statements does not even assert, much less prove, what in effect was the consideration. The transferee, being the Managing Director, the second respondent herein, but for raising a plea of consideration, having passed and immovable properties having been purchased in the name of Bobby Kuriakose, does not put anything on record to substantiate the same. The Managing Director does not also have a case that the transfer was necessitated in the interest of the company and that but for such transfer, the very existence of the company was threatened. Further the transfer of Binu Zachariya to Abraham Baby, though within the family, is to an outsider, as far as the company is concerned, since, Abraham Baby is not a shareholder in the company. It is evident that Binu

Zachariya has not got the consent of the other shareholders before such transfer was effected.

39. Useful reference can also be made to the earlier Division Bench decision of this Court in the two appeals filed by the both parties herein, (C.A.33/04 and C.A.36/04), which were disposed of together. Again, we are only concerned with the appeal relating to SMHPL. This Court, deprecated the practice of the CLB, in having blindly accepted the contentions of the petitioners in the company petition. The findings of the CLB upholding the transfer from Binu Zachariya to Abraham Baby, was set at naught. The finding of the 'CLB' that such transfer was not objected to by the petitioners in the company petition, was held to be curious. Picking and choosing decisions in a meeting, nullifying one and sustaining the other was found to be unjustified; when the meeting itself was under a cloud. The

decision taken in the Board Meeting was found to be depicted in the minutes thereof and a single decision is not divisible, was the specific finding. The absence of the minutes of the Board meeting was noticed and it was found that no adverse inference could have been drawn against either party. The Tribunal was directed to go into the matter and make an enquiry as also record a finding thereon. It was noticed that an intimation of transfer to the Registrar of Companies in the prescribed format as also the entry thereof in the register have to be taken cognizance of, for deciding as to whether the statutory presumption under the Companies Act could be raised.

40.The CLB, at the earlier point, found that there was no material to find that one fifth of the shares should be allotted to each families of the sons of Kuruvila Onnittan nor was there evidence with respect to the decisions taken on 17.4.2002. The situation

remains as such even now. Presently, the CLB found that the fact that Bobby Kuriakose did not take proceedings against the transfer of shares, even after a sufficiently long period of time of its registration and intimation to the ROC, stands against his plea of the transfer being bad. It was also found that, despite T.O.Abraham having not proved the consideration, that was of no consequence and that alone cannot lead to a conclusion that, no such transfer took place. After noticing the admission of Bobby Kuriakose, that share certificates and blank transfer forms were handed over to T.O.Abraham, the Tribunal finds that “it must have been done with some understanding between the parties.” Theory of parity amongst the five branches, appears to be a figment of imagination of the petitioners and hence the transfer of 2,20,000 shares from Bobby Kuriakose to T.O.Abraham, could not be declared null and void, is the finding

of the CLB.

41. We cannot, but say that, the said finding has been entered on mere surmises and conjectures and the Tribunal has not looked into the evidence of such transfer, as per the provisions of the Companies Act or otherwise. No presumption could have been raised under Section 195, since the minutes book was absent. Neither of the parties substantiated their conflicting contentions of parity and transfer to the Managing Director with any other evidence. Even after the remand, specifically directing the Tribunal to conduct an enquiry, the parties rested contend, slinging mud on each other. No evidence at all was let in to substantiate the conflicting contentions and they remained in the realm of statements and assertions. We would not elaborate on the decisions placed under Section 111 since the delay was projected to contest the parity sought by Abraham group and the

rectification of the register conferring 20% on each family. Having found against parity, delay aspect would be inconsequential.

42.It is appropriate that we notice the power of this Court under Section 10F, as has been delineated by the Honourable Supreme Court in ***Dale & Carrington (supra)***:

“Section 10-F refers to an appeal being filed on a question of law. The learned counsel for the appellant argued that the High Court could not disturb the findings of fact arrived at by the Company Law Board. It was further argued that the High Court has recorded its own finding on certain issues which the High Court could not go into and, therefore, the judgment of the High Court is liable to be set aside. We do not agree with the submission made by the learned counsel for the appellants. It is settled law that if a finding of fact is perverse and is based on no evidence, it can be set aside in appeal even though the appeal is permissible only the question of law. The perversity of the finding itself becomes a question of law. In the present case, we have demonstrated that the judgment of the Company Law Board was given in a very cursory and cavalier manner. The Board has not gone into real issues which were germane for the

decision of the controversy involved in the case. The High Court has rightly gone into the depth of the matter. As already stated, the controversy in the case revolved around alleged allotment of additional shares in favour of Ramanujam and whether the allotment of additional shares was an act of oppression on his part. On the issue of oppression, the finding of the Company Law Board was in favour of Prathapan, i.e., his impugned act was held to be an act of oppression. The said finding has been maintained by the High Court although it has given stronger reasons for the same.”

43. We feel that the CLB's findings upholding the transfer and the decision on 17.4.2002 is based on no evidence. We are unable to agree with the CLB that the transfer effected and affirmed by the Board on 17.4.2002 was valid. We are unable to agree with either of the conflicting contentions of the parties for absolute lack of evidence. Neither can the contention of parity, allegedly decided on 28.11.2001, be upheld nor can the contention of the majority being validly transferred to the Abraham group on 17.4.2002 be countenanced. Both the decisions remain in the

realm of hypothesis. The transfer effected to the Managing Director himself is found to be oppressive, insofar as there being absolutely no explanation or evidence as to how a shareholder, having substantial interest in the company, transferred majority shares to the Managing Director, thus rendering himself a rank minority. There were also considerable amounts, more than 57 lakhs outstanding as loans to be repaid by the company to Bobby Kuriakose. The decisions taken are not properly taken at the Board Meeting as per the provisions of the Companies Act. The decision *in toto* on 17.4.2002 would have to go. In such circumstance, we restore the parties to the position that existed on 19.10.2001 with T.O.Abraham and T.O.Aleyas holding 3 lakh shares each and Binu Zachariya and Bobby Kuriakose holding 5 and 4 lakh shares respectively.

44.The decisions of 28.11.2001 and 17.4.2002 have been found to

be not validly arrived at. Parties would revert back to the position as on 19.10.2001 and so would the Companies affairs be regulated, as the share holding stood on that date. Further challenge to the Extra-Ordinary General Body Meeting of 25.4.2003 and 30.6.2003 and the Board Meeting of 3.6.2003 has already been set aside by the CLB. There is no appeal from the said orders. Despite the fact that we have reversed the CLB's finding as to the decision taken on 17.4.2002 the consequence with respect to the subsequent meetings would be the same. The CLB has further directed valuation of the shares and purchase by the Abraham group. Such direction was on affirming the majority shareholding on the Abraham group; which no longer survives. Hence, the Board of Directors would have to be convened to decide upon the further action before a valuation is done and one group is directed to purchase the shares held by the

other. There now exists no brute- majority as was the case with affirmation of the transfer approved on 17.04.2002.

45.In such circumstance, we appoint Adv.Sri.C.E.Unnikrishnan, a trained Mediator too, as Special Officer to convene the Board after issuing notice to the Directors being T.O.Abraham, T.O.Aleyas, Binu Zachariah and Bobby Kuriakose. Each group will be permitted to be accompanied by a Chartered Accountant of their choice. The Auditor of the Company shall also be invited by notice to attend. The Special Officer shall Chair the meeting and cause the minutes to be recorded and if required shall also call for a General Body Meeting. If a settlement is arrived at, then the Special Officer would be competent to record the same in the minutes book and intimate the same to the ROC, with all the parties signing on each page of such minutes. If not settled after even four meetings, the parties shall be left to their

remedies. The Special Officer shall be paid a remuneration of Rs. 50,000/- for each sitting as also the expenses claimed by him out of the funds of the Company.

46. In this context, we would take the opportunity to remind the parties, of the cause underlying the disputes, we referred to, initially, which has its origin in the genesis of the human race. Apposite would be reference to Chapter IV of the Book of Genesis from the Bible, when the Lord spoke to Cain, understanding his consternation, at the Lord being more pleased with his brother Abel's offering.

“If thou do well, shall thou not receive? but if ill, shall not sin forthwith be present at the door? but the lust thereof shall be under thee and thou shall have dominion over it.”

Cain gave short shrift to this advice and invited sin into his heart to cause the death of his brother Abel, and consequently, bring upon himself exile to east of Eden. With all humility, we afford

the parties, the Good Lord's choice, by the appointment of a Special Officer and convening of the Meeting of the Company. If the doors be kept open for sin, and lest they lust for it then, definitely, the Special Officer will leave them to their destinies in further litigation. The choice is entirely of the parties.

The Company Appeals are partly allowed, revising and modifying the order of the 'CLB' in C.P.No.30/03 setting aside the order confirming the transfer of shares as decided in the meeting dated 17.4.02 and the consequent orders of valuation and transfer of shares and reverting the parties and the company to the share-holding as on 19.10.2001. The parties shall bear their respective costs.

Ashok Bhushan, Chief Justice.

sl.

K. Vinod Chandran, Judge.