IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVATION: 01.04.2015

DATE OF PRONOUNCEMENT: 27.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Company Appeal Nos.13 and 14/2014
MP.Nos.1 and 2/2014

Company Appeal.No.13/2014:-

1.S.Natarajan Appellant/R7

Vs

1.S.V.Global Mills Limited, Chennai-1

2.M.Ethiraj, Chairman, S.V.Global Mill Limited, Chennai-4

3.E.Shanmugam, Managing Director, S.V.Global Mill Limited Chennai-28

4.Sheetala Credit Holding Pvt Limited, Chennai-28

5.Satluj Credit and Holdings Pvt Limited, Chennai-28

6.Twentieth Century APCO Leasing Private Limited, Chennai-28

7.Rajat Chakra Credit and Holdings Limited, Chennai-28

8.Calcom Credit and Holdings Pvt Limited, Chennai-28

9.N.Rajalakshmi, Chennai-28

10.Y.Satyajit Prasad, Chennai-17

11.Dr.K.Shivaram Selvakumar, Director, S.V.Global Mill Limited Chennai-40

12.R.Narayanan, Chennai-42 Respondents

Company Appeal.No.14/2014:-

1.Sheetala Credit Holding Pvt Limited, Chennai-28

2.Satluj Credit and Holdings Pvt Limited, Chennai-28

3.Twentieth Century APCO Leasing Private Limited, Chennai-28

4.Rajat Chakra Credit and Holdings Limited, Chennai-28

5.Calcom Credit and Holdings Pvt Limited, Chennai-28

6.N.Rajalakshmi, Chennai-28 Appellants

Vs.

1.S.V.Global Mills Limited, Chennai-1

2.M.Ethiraj, Chairman, S.V.Global Mill Limited, Chennai-4

3.E.Shanmugam, Managing Director, S.V.Global Mill Limited Chennai-28

4.Y.Satyajit Prasad, Chennai-17

5.Dr.K.Shivaram Selvakumar, Director, S.V.Global Mill Limited Chennai-40

6.R.Narayanan, Chennai-42

7.S.Natarajan Respondents

Prayer:- These Company Appeals have been filed under Section 10F of the Companies Act, 1956, for the relief, as stated therein.

For Appellants : Mr. R.Murari, SC for Ms.Preethi Mohan-CA.13

Mr. K.G.Raghavan, SC, for Mr.Anirudh Krishnan & Janani Shankar-Appellants 1 to 5-CA-14

Mr. P.H.Aravind Pandian, SC for Mr. Anirudh Krishnan & Janani Shankar-6th Appellant-CA-14

Mr. R.Venkatavaradhan-1st Appellant-CA.14

For Respondents: Mr.Mr. R.Murari, SC for Ms.Preethi Mohan-R7-CA-14

Mr. K.G.Raghavan, SC, for Mr.Anirudh Krishnan & Janani Shankar-RR4&8-CA.13

Mr. P.H.Aravind Pandian, SC for Mr. Anirudh Krishnan & Janani Shankar-R9-CA.13

Mr. T.K.Seshadri, SC for Mr. T.K.Bhaskar
(RR10to12-CA.13 and RR4 to 6-CA.14)

Mr. R.Venkatavaradhan-R1-CA.13
Mr.P.S.Raman, SC for T.K.Bhaskar for
R2 & 3-CA.14

JUDGMENT

The above C.A.No.13/2014 has been filed by the Appellant/7th Respondent in CP.No.62/2014, against the order dated 23.10.2014 passed in C.P.No.62/2014 by the Company Law Board, Chennai, dismissing the interim reliefs sought for by the Petitioners therein, who are the Respondents 4 to 9.

2. C.A.No.14/2014 has been filed by the appellants/Petitioners in CP.No.62/2014, against the order dated 23.10.2014 passed in C.PNo.62/2014 by the Company Law Board, Chennai, dismissing the interim reliefs sought for by them.

3. For the sake of convenience and for easy reference, the parties are hitherto described as they were arrayed as per their rank in Company Petition.

4. The brief facts of the case are as follows:-

a. The 1st Respondent Company was incorporated on 30.10.2007, under the provisions of the Indian Companies Act, 1956. The main object of the Company is to develop properties. The Petitioners, being six in number, together hold 18.98% of the shares in the 1st Respondent Company. The first five Petitioners are Private Limited Companies, the shares of which are completely owned by the 7th Respondent and his family members. The 6th Petitioner is the wife of the 7th Respondent. The 7th Respondent, who is a Chartered Accountant, by virtue of his services to the Udayar Group, comprising of the 2nd Respondent and his brother, became their close and confidential associate. In the year 1987, the 7th Respondent obtained an opportunity to acquire controlling interest in M/s.Binny Limited. The 7th Respondent along with late N.P.V.Ramasamy Udayar, M.Nandagopal and M.Ethiraj, decided to have equal share in M/s.Binny Limited and acquired the shares of the Company. The shares of the Company were allotted to the Petitioners, at the behest of the 7th Respondent, who was made as Promoter and Director of the Company. The 7th Respondent played a crucial role in reviving the Company and successfully rehabilitating it under the BIFR Scheme by bringing in new investors who were inducted as co-Promoters. However, the partnership between N.P.V.RamasamyUdayar, M.Nandagopal and M.Ethiraj fell out. Due to severe financial crisis faced by the new Co-Promoters, M/s.Binny Limited started facing problems again and all the attempts to revive the Company was thwarted by the Respondents 2 and 3. Subsequently, M/s.Binny Limited, was demerged as M/s.Binny Limited and M/s.Binny Karnataka Limited. After Demerger, the Company went back with its original Promoters. In view of the difference of opinion between the Promoters, the M/s.Binny Limited was further demerged into M/s.SV Global Mill Limited, the 1st Respondent Company and M/s.Binny Mills Limited. In the 1st Respondent Company also, the Petitioners were allotted 18.98% of paid up equity capital and the 7th Respondent was classified as a Promoter and Director to the 1st Respondent Company. The 7th Respondent was again re-appointed as the Director along with the 4th Respondent and the terms of both of them were set to expire on the same day. While so, a Board Meeting was convened on 04.08.2014 to discuss various issues, including the Agenda to conduct the Annual General Meeting on 26.09.2014 for election of Directors by e-voting. Though all the Shareholders, were instructed to cast their e-vote, the Respondents 2 and 3, did not do so and cast their votes by paper ballot and the resolution, seeking the re-appointment of the 7th Respondent, was not approved.

b. Alleging that the Respondents have malafidely cast their vote by paper ballot in contravention of the resolution, that the 7th respondent was being forced to sell the shares held by the petitioners; that when two Directors are set to retire on the same date, there must be a lot to decide the Director, who would have to retire as per Clause 112 of the Articles of Association; that the representation of the Petitioners in the management of the 1st Respondent Company cannot be denied by ousting the 7th Respondent, as it would amount to oppression of the rights of the Petitioners; that as per Section 107 of the Act and Rule 20 of the Companies (Management and Administration) Rules 2014, only e-voting was permitted and there is no provision for paper ballot; that the principles of quasi-partnership was defeated by the 2nd Respondent; that the Respondents 2 and 3 have acted against the Board Resolution to remove the 7th Respondent to take control of the 1st Respondent Company and to divert funds to their associate Companies and to misuse the funds and property of the Company for personal use, the Petitioners have filed the above Company Petition, by invoking the provisions of the Companies Act, 1956, for oppression and mismanagement in the affairs of the Company, seeking various main reliefs and interim reliefs as stated under:-

Final Reliefs:-

1. To declare that the 7th Respondent is not liable to retire by rotation as a Director at the Annual General Body Meeting of the Company held on 26.09.2014.

2. To declare that the 7th Respondent continuing as a Director of the 1st Respondent Company as the resolution not reappointing the 7th Respondent in the Annual General Meeting held on 26.09.2014 is an act of oppression.

3. To declare the votes cast by paper ballot by the Respondents 2 and 3 in the Annual General Meeting held on 26.09.2014 as null, void and invalid.

4. To declare the results of all businesses transacted in the notice calling the Annual General Meeting held on 26.09.2014 only based on the electronic voting mechanism and the votes cast by paper ballot excluding the votes cast by the Respondents 2 and 3.

5. To direct the 1st Respondent Company to alter the Articles of Association of the 1st Respondent Company so as to insert a new clause(s) incorporating the Principles of Proportional Representation and accordingly, permitting the Petitioners to appoint not less than 1 Director on the board of the 1st Respondent Company.

6. To direct the 2nd Respondent to handover vacant possession of the property of the 1st Respondent Company situated at New No.5, Old No.3, III Avenue, Boat Club Road, Chennai-28 and to pay the fair rental value for the period of such unauthorized occupation.

7. To direct the 1st Respondent Company to utilize all the properties belonging to the 1st Respondent Company in the best possible manner for the benefit of all the shareholders of the 1st Respondent Company.

8. To restrain the 1st Respondent Company and/or the 2nd Respondent and/or the 3rd Respondent from initiating, executing or consummating any transactions of any nature with any of the related party(ies) of the 2nd and/or the 3rd Respondent at the cost or interest of the 1st Respondent Company and without the unanimous consent of the Board of Directors of the 1st Respondent Company.

Interim Reliefs:-

1.To direct the 1st Respondent Company not to give effect to the resolution passed under Item No.3 not approving the reappointment of the 7th Respondent as Director of the 1st Respondent Company and consequently permit the 7th Respondent to continue as Director by retaining the status quo of the Board of Directors of the 1st Respondent Company as on 25.9.2014.

2.To appoint an Independent Chairman for all the Board and General Meetings of the 1st Respondent Company.

3.Not to create any charge, lien or encumbrance over any of the immovable properties of the 1st Respondent Company whether held as stock in trade or otherwise and not to sell, dispose or alienate any of the immovable properties of the 1st Respondent Company whether held as stock in trade or otherwise.

4.To keep all monies received and/or to be received on the compulsory acquisition of the land at Bangalore only in an interest bearing term deposit, free of any lien or charge, with a Nationalized Bank in the name of the 1st Respondent Company.

5.To appoint a Management Committee consisting of Independent Chairman and members representing SN Group and ME Group, equally, to manage the affairs of the 1st Respondent Company.

6.To direct the 1st Respondent Company to convene Board Meetings or General Meeting only after obtaining the approval of the Honourable Bench.

7.To restrain the 3rd Respondent from occupying or making use of any of the property of the 1st Respondent Company as his residence forthwith.

8.Not to enter into or carry out any transaction with any of the related party pursuant to the resolution carried out by postal ballot vide notice dated 28.3.2014.

9.To appoint a Commissioner to authenticate all statutory documents required to be maintained and being maintained by the 1st Respondent Company under the provisions of the Companies Act, 1956/2013 and the Rules made thereunder and the SEBI Act and Rules and Regulations made thereunder.

5. After hearing the parties, the Company Law Board refused to grant the interim reliefs by the order impugned. Aggrieved, the Petitioners and the 7th Respondent have filed above independent appeals.

6. Assailing the impugned order of the Company Law Board, Mr.R.Murari, learned Senior Counsel appearing for Ms.Preethi Mohan, the learned counsel for the appellant in CA.No.13/2014, who is the 7th Respondent in the Company Petition, has raised the following contentions and sought for setting the impugned order of the Company Law Board:-

a. The Company Law Board has failed to consider the documents and the pleadings, which would, on the face of it, reveal that the 1st Respondent Company was created as a result of demerger of M/s.Binny Limited, in which the 7th Respondent had a major role as the representative of the Petitioners in the management and that the same had continued in the 1st Respondent Company also.

b. The Company Law Board has failed to consider that the 7th respondent has been associated with the 2nd respondent from 1980 onwards and jointly acquired the rights in Binny Ltd and was inducted as a promoter on 11.01.1988.

c. That the Company law Board failed to consider that 7th respondent was instrumental in re-opening the engineering division, solving the labour problem, getting approval of the rehabilitation scheme from BIFR, finding investors and getting various disputes resolved and hence was classified as a promoter in all the regulatory filings for all the group of companies.

d. The Company Law Board has failed to see that the irregularity committed in the election is one of the acts of oppression alleged in the Company Petition and the same has not been filed to agitate the personal grievance of the 7th Respondent.

e. The Company Law Board has failed to consider that there is a statutory bar as against the 7th Respondent in filing a petition for oppression and mismanagement, as he is not a shareholder.

f. The Company Law Board has failed to consider that the representation of the Petitioners in the Company has been deprived by ousting the 7th Respondent illegally so as to commit various acts of mismanagement and the conduct of the Respondents would amount to oppression of the rights of the Petitioners who are the shareholders of the 1st Respondent Company.

g. The Company Law Board has failed to consider that the 7^{th} Respondent has always been considered only as a representative of his group in all the Annual General Meetings and not as an independent Director, which is evident from the letter dated 01/10/2014. Only in the representative capacity he was re-elected on 20.09.12.

h. The Company Law Board has failed to consider that prima facie, the documents produced by the Petitioners would reveal that the functioning of the 7^{th} Respondent in the Board has been on the principles of quasi-partnership with equal participation from all the groups for over a period of 20 years.

i. As the partnership was only oral, the 7^{th} respondent demanded a confirmation in writing from the 2^{nd} respondent who assured that the earlier understanding would continue. However, the 2^{nd} respondent had been forcing the 7^{th} respondent to sell away the shares in the 1^{st} respondent company and upon refusal, the 7^{th} respondent has been ousted from the company only to swindle the property in boat club and to illegally sanction loan to the companies in which they are interested.

j. The Company Law Board has erroneously placed reliance on Article 97 to hold that the 7^{th} Respondent was not one of the first Directors of the Company and not a subscriber to the Memorandum and completely ignored the factual position that the 7^{th} Respondent was recognised as one of the promoters.

k. The Company Law Board has failed to consider that a prima facie case for the grant of interim reliefs was available and the principle adopted by the Company Law Board to deny the interim reliefs, holding that the same would amount to granting the final relief, is unsustainable, as such an interpretation would amount to abdication of the court's power to grant interim orders.

l. The procedures followed during the AGM on 26.09.2014 is against the provisions of the Companies Act 2013 and the rules as only e-voting was permitted. The notification dated 19.03.2015 issued by the Ministry of Corporate Affairs, amending the Companies (Management and Administration) Rules 2014 will only have prospective effect. By defeating the resolution for re-appointment, the legitimate expectation of the petitioners has been denied.

m. The 7^{th} respondents was discharged from c.c.31/06 and has no connection with the other cases as alleged and hence there is no legal bar against the 7^{th} respondent for becoming a director.

7. Mr.K.G.Raghavan, learned Senior Counsel appearing for Mr.Anirudh Krishnan and Ms.Janani Shankar, learned Counsel for the appellants 1 to 5 in CA.No.14/2014/Petitioners in the Company Petition, has painstakingly contended as follows:-

i. The Company Law Board failed to consider the various documents relied upon by the Petitioners to show that funds are being diverted and that the property of the 1st Respondent Company at Boat Club is being misused to the detriment of the Company.

ii. The Company Law Board has totally misconstrued the arguments and held as if the Petitioners have contended that the method of e-voting is perse illegal. On the contrary, the case of the Petitioners has, all along, been that only e-voting is valid and paper ballot is invalid.

iii. That only e-voting as per section 108 was contemplated. Poll as per section 109 is permissible only when there is a demand after show of hand as per section 107 and not after e-voting.

iv. The Company Law Board has failed to consider the documents filed in support of the contention that the entire business activities were carried on the basis of quasi-partnership right from the day, the Petitioners' group represented by the 7th Respondent and the other groups became stake holders in the erstwhile M/s.Binny Limited with each Promoter having almost same percentage of equity ownership.

v. The Company Law Board has failed to consider that in view of the peculiar share holding pattern, which is akin to a quasi-partnership, the Petitioners have an inherent right in the management of the Company and the removal of the petitioner's representative would amount to oppression.

vi. The Company Law Board has failed to consider that the 7th Respondent and his family members own 100% share capital in the Petitioner Companies and therefore, effectively the 7th Respondent is holding the shares of the 1st Respondent Company through the Petitioners.

vii. The Company Law Board erred in holding that the Petitioners are espousing the cause of the 7th Respondent as if the 7th Respondent has no nexus to the 1st Respondent Company. The Company Law Board failed to take into account the letter dated 01.10.2014.

viii. The Company Law Board failed to see that the procedure, followed during the election to oust the 7th Respondent and to deny any representation to the Petitioner, is contrary to Sections 107,108 and 109 of the Companies Act, 2013, Rule 20 of the Companies (Management and Administration) Rules 2014 and circular dated 17.04.2014 of SEBI, 35B of notification dated 23.06.2014 which contemplate only for e-voting and postal ballot and voting cannot be partially by e-voting and paper ballot.

ix. Further, the agenda for the meeting also contemplated only e-voting. Since the voting is not permitted by paper ballot, all the votes polled by paper ballot have to be ignored .

x. The notification of the results of the election was also improper and not according to Rule 20 (xiv).

xi. The Company Law Board failed to take note of Article 112 of the Articles, which contemplates that the decision to retire one of the two Directors serving for the same period, shall only be by lot and since the 7th Respondent and the 4th Respondent were appointed on the same date and since there was no agreement between them, the issue of retirement must have been decided by lot.

xii. The Company Law Board failed to consider that the ouster of the 7th Respondent is only as a counter blast for the action taken by the 7th Respondent in ensuring certain conditions and approval from the Board of Directors for grant of loans to the related companies of the Respondents 2 and 3.

xiii. In the interest of all the shareholders, the 7th Respondent, who has been a pioneer in promoting and managing this Company, must be permitted to continue as a director.

xiv. The Company Law Board ought to have seen that the balance of convenience was in favour of the Petitioners and irreparable loss would be caused to the Petitioners and other shareholders if the interim relief is not granted as the Respondents 1 to 6 would take decisions contrary to the interest of the Company and by granting the interim relief, the same position, which has been continuing for the past 25 years, would continue till final decisions are taken.

xv. Notification dated 19.03.15 amending Rule 20 permitting paper ballot is only prospective in nature and in the absence of specific provision and agenda permitting paper ballot, the votes of the Respondents 2 and 3 cannot be considered.

xvi. The reason given by the Respondents 1 to 6 that the 7th Respondent is ineligible to be appointed as a Director, pursuant to Section 164 is incorrect and many documents have been relied upon to show that the said provision is not attracted as the 7th Respondent was either not a Director or had obtained orders from appropriate courts.

xvii. As the petitioners want the votes of the 2nd and 3rd respondent to be discarded, it is not necessary to challenge the resolution, whereby the proposal to re-appoint the 7th respondent was defeated.

8. The learned Senior Counsel appearing for the appellants/Petitioners has also relied upon numerous documents from the date of taking over M/s.Binny Limited, its demerger on various dates and steps taken by the 7th Respondent for revival, to support his contentions that management is done on quasi-partnership and also upon the following judgments:-

1. AIR 1990 SC 867 (Dorab Cawasji Warden Vs. Coomi Sorab Warden and others)

2. 1965 35 CC 351 (SP.Jain Vs. Kalinga Tubes)

3. AIR 1981 SC 743 (Needle Industries and another Vs. Needle Industries Newey Holdings Limited)

4. 1973 AC 360 House of Lords (Ebrahimi Vs. Westbourne Galleries)

5. AIR 1976 SC 91 (Hind Overseas Pvt Limited Vs. Raghunath Prasad Jhunjhunwala and another)

6. AIR 1965 GUJ 96 (Mohanlal Ganapatram Vs. Shri Sayaji Jubilee Cotton and Jute Mills Company Limited)

7. AIR 1999 SC 3105 (Colgate Palmolive (India) Limited Vs. Hindustan Lever Limited)

8. 1994 (4) SCC 225 (Morgan Stanley Mutual Fund Vs. Karthick Das)

9. 1997 (90) CC 205 (Mad) (Saroj Goenka and others Vs. Nariman Point Building Services)

10. 1977 47 CC 503 Bom (Khandelwal Udyog Limited and Acme Mfg. Limited)

11. 2011 161 CC 454 (Mad) (Subhiksha Trading Services Limited In Re)

12. 2011 167 CC 167 (Mad) (K.Muthusamy P.Durai Vs. S.Balasubramaniam and others)

13.2003 117 CC 506 (Bom) Maharashtra Power Development Corporation Vs. Dabhol Power Co. and others)

14.AIR 1966 CAL 512 (Ramashankar Prosad and others Vs. Sindri Iron Foundry (P) Limited and others)

15. 2001 4 CLJ 81 (PIK Securities (P) Limited Vs. United Western Bank Limited)

16.2008 143 CC 97 (SC) (MSDC.Radharamanan Vs. MSD.Chandrasekara Raja and another)

17. 2005 123 CC 566 (SC) (Sangramsinh P.Gaekwas and others Vs. Shantadevi P.Gaekwad (Dead) by LRs and others)

18.1981 151 CC 743 (SC) (Needle Industries (India) Limited Vs. Needle Industries Newey (India) Holdings Limited)

19.1987 61 CC 20 (Mad) (V.M.Rao and others Vs. Rajeswari Ramakrishnan)

20.2008 141 CC 475 (Mad) (Ministry of Company Affairs and the Registrar of Companies Vs. Cavin Plastics and Chemicals (P) Limited)

21.2011 167 CC 566 (Mad) (Essar Telecommunications Holdings Private Limited Vs. India Securities Limited)

22.2009 5 SCC 694 (State of Assam Vs. Barak Upatyaka D.UKarmachari Sanstha)

23.2001 104 CC 611 (Company Law Board) (K.N.Bhargava and others Vs. Trackparts of India Limited and others)

24.200 Crl.LJ 310, MANU/UP/0683/2000 (Trackparts of India Limited and others Vs. K.N.Bhargava and others)

25.2000 123 CC 486 CLB (Sh Gurmit Singh and others Vs. Polymer Papers and others)

26.2006 5 SCC 545 (Hero Vinoth (minor) Vs. Seshammal)

27.2005 1 SCC 212 (Dale and Carrington Invt Pvt Limited Vs. P.K.Prathapan)

28.2009 152 CC 609 (Deutsche Bank AG V Vilas Samant)

29.AIR-1961 SC 1633 (CIT Vs. Scindia Steam Navigation)

30. 1999 35 CLA 97 (Cal) (Nupur Mitra Vs. Basubani P Limited)

31. AIR 1957 SC 49 (Meenakshi Mills, Madurai Vs. Commissioner of Income Tax)

32. 2006 ILR 2 Delhi 780 (Telecommunications Consultants India Limited Vs. TCIL Bellsouth Limited)

33. AIR 1953 SC 148 (Nalinakhya Bysack Vs. Shyam sunder Haldar and others)

34. 1988 4 SCC 419 (Dr.Baliram Waman Hiray Vs. Justice B.Lentin and others)

35. AIR 1989 1 SCC 101 (Municipal Corporation of Delhi Vs. Gurnam Kaur)

36. 2012 7 SCC 462 (Purbanchal Cables and Conductors Pvt Limited Vs. Assam State Electricity Board and another)

9. Mr.P.H.Aravind Pandian, learned Senior Counsel appearing for Mr.Anirudh Krishnan and Ms.Janani Shankar, learned Counsel for the 6th appellant in Criminal Appeal.No.14/2014, assailed the impugned order of the Company Law Board, by contending that the 6th Petitioner is the wife of the 7th Respondent and that the 7th Respondent has been representing all the Petitioners at every stage for the last two decades. The learned senior counsel also contended that the decision of the Company Law Board to deny the interim relief contending that the relief is similar to main relief is unsustainable, in view of the settled proposition of law that interim relief and main relief can be similar and that the interim relief is only an arrangement, till the disposal of the main case. The learned senior counsel also contended that the Company Law Board considered irrelevant materials and failed to consider the relevant materials for the purpose of deciding the interim application and hence, sought for setting aside the impugned order.

10. Per contra, Mr.R.Venkatavaradhan, the learned counsel for the 1st Respondent, relied upon the Notification dated 19.03.2015 amending Rule 20 and the judgement reported in 1990 1 LW 495 (Wander Limited and another Vs. Antox India (P) Limited) and contended that no questions of law have been raised by the appellants and that there is no perversity in the impugned order as the Company Law Board has rightly exercised the discretion by appreciating the facts and the law and therefore, this court in appeal may not interfere with the orders. The learned counsel further contended that the Petitioners are agitating their grievance in the election by way of the Petition

under Section 397, which is unsustainable and therefore, sought for dismissal of the appeals.

11. Mr.P.S.Raman, learned Senior Counsel appearing for Mr.T.K.Bhaskar, the learned counsel for the Respondents 2 and 3 in CA.No.14/2014, also contended that there is no perversity in the orders of the Company Law Board. The Company Law Board, after considering the nature of final reliefs and the interim reliefs sought for by the Petitioners, has rightly held that in the facts of the case without adjudicating the main relief, the interim relief cannot be granted. The learned senior counsel also contended that the procedures followed in election cannot be agitated by way of a petition alleging oppression and mismanagement and no case has also been made out by the Petitioners. The Learned Senior Counsel also contended that section 397 (2) (a) and (b) have not been notified and hence the petition is not maintainable. The counsel also contended that the resolution by which the proposal to appoint the 7th respondent was defeated has not been challenged. The learned senior counsel also contended that the 7th Respondent was appointed as a Director only because of his service and that has got nothing to do with the Petitioners. However, he was not involved in the day to day activities. The learned senior counsel also contended that there were only three groups and the 7th Respondent and his family were never recognised as a group. The learned senior counsel also contended that the 7th Respondent is, in fact, disqualified from being appointed as Director as he has suppressed many material facts regarding non filing of return and criminal cases. The learned senior counsel also contended that no questions of law have been raised by the Petitioners and the order appealed is only an interim order. Since the Respondents have already filed their counter, the parties may be directed to argue the main petition before the Company Law Board. The learned senior counsel also relied upon the circular of SEBI dated 17.04.2014 to contend that as per Part-A of the circular, containing Clause 35B of the revised equity listing agreement, postal ballot has been permitted to enable the shareholders who have no access to e-voting to vote and therefore, e-voting is not the only method and paper ballot can also be resorted to. The learned senior counsel also referred to the general circular No.20/2014 of the Ministry of Corporate Affairs, dated 17.06.2014 to contend that the relevant provisions for e-voting under the Companies (Management and Administration) Rules 2014 were not mandatory till 31.12.2014 and therefore the paper ballots have to be accepted. The learned senior counsel also contended that proportionate representation is not contemplated in the articles and the 7th respondent cannot be permitted to be appointed as a permanent director against the wishes of the shareholders.The shareholders are well within their right to accept or reject the candidature of the 7th respondent as per the corporate democaracy and the question of re-appointing the 7th respondent on the basis of quasi partnership does not arise. Pursuant

to the meeting, the cessation of the Directorship of the 7th Respondent has been intimated to all the authorities and the balance of convenience is in favour of the respondents. Under the above circumstances, the learned senior counsel sought for dismissal of the appeals by relying upon the following judgments:-

1.1.1992 74CC 661 (Mad) (G.Kasthuri and another Vs. N.Murali and others)

2.2012 106 CLA 407 (Kar) (Somashekara Rao Vs. The Canara Land Investment Limited)

3.116 CC 465 (Micromeritics Engineers Pvt. Limited and others Vs. S.Munusamy)

4 2005 59 SCL 27 (Mad) PPN Power Generating Company Limited Vs. PPN (Mauiritius Company and others)

5.1999 97 CC 582 (Mad) (Gordon Woodroffe and Company Limited Vs. Gorden Woodroffe Limited)

6. AIR 1976 SC 565 (Hind Overseas Private Limited Vs. Raghunath Prasad Jhunjhunwalla and another)

7. 2013 178 CC 206 (CLB) Dr.Francis Cleetus and others Vs. Rashtra Deepika Limited and others)

8. 2014 120 CLA 62 (Bom) (In Re: Godrej Industries Limited)

9. MANU/SC/1540/1995 (Mohan Lal Vs. Kartar Singh)

10. AIR 1986 SC 1370 (Life Insurance Corporation of India Vs. Escorts Limited and others)

12. Mr.T.K.Seshadri, the learned Senior Counsel appearing for Mr.T.K.Bhaskar for the Respondents 4 to 6 in CA.No.14/2014 contended that the interim reliefs have been rightly denied by the Company Law Board after considering the pleadings and the documents. The learned senior counsel also contended that the Petitioners cannot agitate the grievance of the 7th Respondent. The Learned Senior relied upon section 5 and contended that unless there is a clause in the Articles of Association permitting the 7th respondent to continue as director, the same cannot be permitted. In the instant case, there is no such clause. The Learned Senior Counsel further relied upon section 149 (7) and Schedule IV of the Companies Act 2013 to contend that the 7th respondent was an independent director and is therefore bound by the decisions of the shareholders.The learned senior counsel further contended that no questions of law have been raised by the Petitioners and the entire arguments advanced now have to be agitated

at the final hearing of the Company Petition before the Company Law Board. The Learned Senior Counsel also relied upon section 167 of the Companies Act 2013 to contend that the 7th respondent is not entitled to be appointed as the director as he is disqualified under section 164. The learned senior counsel also contended that no prima facie case of oppression and mismanagement has been made out. In support of his contentions, the learned senior counsel Learned Senior counsel relied upon the following judgments and sought for dismissal of the appeals:-

1.116 CC 465 (Micromeritics Engineers Pvt. Limited and others Vs. S.Munusamy)

2. 421 ITR 589 (CIT Vs. Scindia Steam Navigation Company Limited)

3.1995 82 CC 836 (Mad) (Malleswara Finance Investments)

4. AIR 1956 SC1535 (Shanti Prasad Jain Vs. Kalinga Tubes)

5. AIR 1992 SC 453 (V.B.Rangaraj Vs. V.B.Gopalakrishnan)

6. 2004 121 CC 335 (Bom) (IL and FS Trust Co. Limited Vs. Birla Perucchini Limited)

7. AIR 1971 SC 422 (Naresh Chandra Vs. Calcutta Stock Exchange)

8. 1992 74 CC 661 (Mad) (G.Kasthuri and another Vs. N.Murali and others)

9. 2006 129 CC 1 (cal) (Ruby General Hospital Limited Vs. Dr.Kamal Kumar Dutta)

10. AIR 1971 SC 206 (H.P.Gupta Vs. Hiralal)

11. 2004 (3) CTC 348 (KRS.Mani and 3 others Vs. Anugraha Jewellers Limited)

12. 2014 120 CLA 62 (Bom) (In Re: Godrej Industries Limited)

13. 2002 (5) SCC 738 (Shashikant Singh Vs. Tarkeshwar Singh)

13. This court heard learned counsel on either side and perused the documents.

14. A preliminary objection has been raised by the learned senior counsel for the Respondents that no questions of law have been raised by the appellants and therefore, the appeal is liable to be dismissed in limine, by relying upon the following judgments:-

1. In 116 CC 465 (Micromeritics Engineers Pvt. Limited and others Vs. S.Munusamy), it has been held as follows:-

"10. I have carefully considered the submissions of the learned counsel for the parties. It is necessary to set out here the jurisdiction of this Court in appeal under section 10F of the Act. This Court in an appeal under Section 10F filed against the order of the Company Law Board is empowered to decide any question of law arising out of the order of the Company Law Board and the terms of the section clearly show that on the question of fact, this Court is not entitled to reappraise the evidence let in before the Company Law Board. The Delhi High Court in MOHD. JAFAR v. NAHAR INDUSTRIAL ENTERPRISES LTD. (19 97) 4 COMP.LJ 201), following the decision of the Supreme Court in the case of C.I.T. v. Scindia Steam Navigation Co. Ltd. (1961) 42 ITR 5 89), held that an appeal lies before the High Court from out of the decision of the Company Law Board on any question of law arising out of the order passed by the Company Law Board and when a question of law was neither raised before the Company Law Board, nor considered by it, it would not be a question arising out of its order notwithstanding that it might arise on the findings given by it. This Court in MALLESWARA FINANCE & INVESTMENTS CO. v. C.L.B. (82 Comp. Cases 836) has held that an appeal under section 10F before this Court can be entertained on a question of law that arises out of that order and on the question of fact, the appeal does not lie. This Court also held that the question whether the increase in share capital is proper or not is a pure question of fact and no appeal is maintainable against the decision arising out of the question. Therefore it is clear that the findings rendered by the Company Law Board on the increase in share capital and the allotment of shares to various relatives of the appellant-2 and inclusion of appellants 4 and 5 as directors of the company and removing the respondents from the office of the Directors of the company and reconstitution of the company's Board are all questions of fact as the findings have been rendered on materials on record and they are supported by evidence. Though the appeal is liable to be rejected on the very short ground, however, considering the elaborate arguments advanced by Mr.T.V.Ramanujam, learned senior counsel for the appellants, this Court is inclined to go into the merits of the submissions."

2. In 421 ITR 589 (CIT Vs. Scindia Steam Navigation Company Limited), it has been held as follows:-

"10. On these provisions, the question that arises for decision is whether in a reference under section 66, the High Court can consider a question which had not been raised before the Tribunal and/or dealt with by it in its order even though it be one of law. On the answer to be given to it there has been a difference of opinion among the High Courts and that turns on the meaning to be given to the words, "any question of law arising out of" the order of the Tribunal. There is no pronouncement of this court which concludes this question, though there are decisions which afford guidance in the determination thereof. These decision will now be considered.

11. In Commissioner of Income-tax v. Arunachalam Chettiar an order of assessment made by the Income-tax Officer was corrected by the Appellate Tribunal not in an appeal under section 33(4) but in a miscellaneous application presented to it under section 35. The Commissioner being dissatisfied with the order applied for a reference under section 66(1). The Tribunal was of the opinion that the order in question could be made in the exercise of its inherent jurisdiction and referred the question of its legality to the court under section 66(1). The Madras High Court declined to answer it on the ground that as the order was not one passed in an appeal, the reference under section 66(1) was incompetent, as under that provision the power of the Tribunal to refer was limited to questions of law arising out of an order passed in an appeal. In affirming this decision, this court observed at page 187 :-

"The jurisdiction of the Tribunal and of the High Court is conditional on there being an order by the Appellate Tribunal which may be said to be one under section 33(4) and a question of law arising out of such an order."

12. This is an authority for the position that the jurisdiction of the Tribunal to make, and of the High Court to hear, a reference must be strictly sought within the four corners of section 66.

39. The result of the above discussion may thus be summed up :

(1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be

deemed to have been dealt with by it, and is, therefore, one arising out of its order.

(3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it.

3. 2005 59 SCL 27 (Mad) PPN Power Generating Company Limited Vs. PPN (Mauiritius Company and others), it has been held as follows:-

"18. The above appeal is preferred under Sec.10-F of the Companies Act, 1956. Under the said provision, any person aggrieved by the decision or order of the CLB is given liberty to prefer an appeal to the High Court on any question of law arising out of that order. So, now we have to decide on the basis of the above said provision, regarding the scope of our jurisdiction while dealing with the order of the CLB, dated 5.7.2004. Even according to the learned Senior Counsel appearing for the appellant, the CLB is only exercising its inherent and discretionary power either to grant or reject the prayer for injunction. Only if it is established that the CLB exercised such power arbitrarily or capriciously or perversely or contrary to the settled principles of law regulating grant or refusal of interlocutory injunction, this Court can interfere with the said order. But if such power was exercised reasonably and in a judicial manner by the CLB, the appellate court is not justified in interfering with the said order by taking a different view."

4. In 1999 97 CC 582 (Mad) (Gordon Woodroffe and Company Limited Vs. Gorden Woodroffe Limited) , it has been held as follows:-

"54. The jurisdiction of this Court under Section 10 (f) of the Act is limited. It can go into the question of law arising out of such an order. When the Board has not discussed the issue in detail and given a decision on the transfer, this Court acting as an appellate authority under Section 10(f) of the Act, having limited jurisdiction with reference to law, cannot as a Court of law embark upon the consideration of evidence with reference to the transfer of shares."

15. The consensus of ratio in the above judgments is that an appeal will lie to the High Court under Section 10F of the Companies Act, only when there is a pure question of law. Similarly, the Court cannot interfere merely because another view is possible and analyse the evidence.

16. Refuting the contention, the learned senior counsel for the Appellants have relied upon the following judgments to sustain the appeal:-

1. In 2005 1 SCC 212 (Dale and Carrington Invt Pvt Limited Vs. P.K.Prathapan), it has been held as follows:-

"36. Section l OF refers to an appeal being filed on the question of law. The learned counsel for the appellant argued that the High Court could not disturb the findings of facts 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 judgement of the High Court is liable to be set aside. We do not agree with the submission made by the learned counsel for 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 on the question of law. The perversity of the finding itself becomes a question of law. In the present case we have demonstrated that the judgement 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 Ramanujan 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. "

2. In1999 35 CLA 97 (Cal) (Nupur Mitra Vs. Basubani P Limited), it has been held as follows:-

"85. The second question raised by the respondents is that this court should not interfere with the discretion exercised by the Company Law Board, No doubt it is ordinarily not open to the appellate court to substitute its own discretion for that of the trial Judge. However it is equally established that if the trial court had acted unreasonably or capaciously or had ignored relevant facts or has adopted an approach which is incorrect, as we have found in this case, the appellate court not only is empowered but is under a duty to interfere that the exercise of discretion by the trial court.”

3. In AIR 1957 SC 49 (Meenakshi Mills, Madurai Vs. Commissioner of Income Tax), it has been held thus:-

“44. We have discussed the authorities at great length, as some of the observations contained therein appear, at first sight, to render plausible the contention of the appellant, and it seems desirable that the true meaning of those observations Should be clarified, lest error and misconception should embarrass and fog the administration of law. The position that emerges on the authorities may thus be summed up:

(1)When the point -for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court under section 66(1).

(2)When the point for determination is a mixed question of law and fact; while the finding of the Tribunal on the facts found is final its decision as to the legal effect of those finding is a question of law which can be reviewed by the court.

(3) A finding on a question of fact is open to attack, under section 66(1) as erroneous in law when there is no evidence to support it or if it is perverse.

(4) When the finding is one of fact, the fact that it is itself in inference from other basic facts will not alter its character as one of fact."

17. The judgments relied upon by the appellants are also in the same footing, except when relevant materials are not considered and if a finding on a question of fact is perverse, the same itself becomes a question of law.

18. Upon consideration of the grounds and the impugned order, this court is of the view that the questions that have been raised before this court are not purely questions of law, but are only mixed questions of law and fact, which cannot be entertained by this court. Even though, as per the judgement relied upon by the learned senior counsel for the appellants, a perverse finding or non-consideration of relevant documents can amount to question of law, this court is of view that there is no perversity in the impugned order of the Company Law Board and therefore, the appeals are not maintainable. The interim relief as sought in this case are in the

nature of prohibitory and mandatory injunction for which the Petitioners must satisfy the mandatory tests of prima facie case, balance of convenience and irreparable loss. This court feels that the 7th respondent cannot be permitted to continue as a director after he has failed in his endeavour to be re-appointed by virtue of an interim order. Any subsequent act(s) of mismanagement would give rise to a fresh cause of action to the petitioners. Hence, the loss if any cannot be held to be irreparable. The Company Law Board has considered the pleadings and the documents and considering the nature of claims, refused to grant interim orders by giving specific findings.

19. In the judgment reported in 1990 1 LW 495 (Wander Limited and another Vs. Antox India (P) Limited) , the Apex Court has held as under:

> "8. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.
>
> 9. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph :

... These principles are well established, but as has been observed by Viscount Simon in Charles Osention & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”

20. The grant of interim relief is only discretionary. Hence, sitting in appeal, this court is not inclined to interfere with the impugned order of the Company Law Board. The appellants have alleged various acts of oppression and mismanagement. Necessarily, the Company Law Board Board will have to go into the same at the time of final hearing.

21. In the judgement reported in 2011 167 CC 167 (Mad) (K.Muthusamy P.Durai Vs. S.Balasubramaniam and others), this court has held as follows:-

“21. In Tea Brokers P. Ltd vs. Hemendra Prosad Barooah, (1998) 5 Comp LJ 463 (Cal), a majority shareholder was reduced to the position of minority by the allotment of new issue of shares wholly to the minority group. The circumstances were such that if the aggrieved majority shareholder was called upon to dispose of his stake in the company to the other group, he would not be able to get adequate compensation because the business which he had built in the name of the company was of great value to him. The Court held that such a single act was sufficient to constitute oppression so as to enable the Company Law Board to exercise its powers under Section 402. The single act was capable of causing perpetual damage to the shareholder. His removal from directorship and the new allotment were both set aside. While doing so, the Division Bench of the Calcutta High Court observed (at para 46): -

"This is undoubtedly, a right and privilege which a member enjoys in his capacity as a member of the company. It will ordinarily be an act of oppression on the member if he is deprived of a privilege and right. Such an act will undoubtedly be harsh, burdensome and wrongful and will necessarily be an act oppression to the member concerned. Such an act may be even a single act done on one particular occasion, if the effect of such an act will be of a continuing nature and the member concerned is deprived of his rights and privileges for all time to come in future".

22. In Ramashankar Prosad vs. Sindri Iron Foundry (P) Ltd., AIR 1966 Cal. 512, it was held by a Division Bench

of the Calcutta High Court that if the oppression was of a short duration but is of such a lasting character that redress is impossible by calling board meetings or general meetings of the company, a case for intervention under section 397 is made out. It was further held that it was not necessary that the petitioner who comes to Court for redressal under Section 397 should have submitted himself to oppression over a period before he can invoke the powers of the Court. If the effects of the single act which is burdensome, wrongful and oppressive are of continuing nature, and the member concerned is deprived of a right and privilege for all time to come in future, then the petition under Section 397 of the Act can be filed even in respect of a single act.

23. Agreeing with the said view, a learned Judge of the Bombay High Court held in Maharashtra Power Development Corpn. Ltd vs. Dabhol Power Co. Ltd., (2003) 117 Com Case 506, that it is ordinarily correct to say that a single act of oppression would not give rise to a cause of action for filing a petition under Section 397. However, the learned Judge pointed out that it is not a rule of law, but a rule of prudence and that if the effects of a single act which is burdensome, wrongful and oppressive are of continuing nature, then a petition can be filed.

24. In Bhagirath Agarwala vs. Tara Properties P. Ltd., (2002) 51 CLA 57 (Cal), also the removal of a Director and allotment of shares were set aside as they were done at a meeting which was convened without complying with the requirements of Section 286 and also reflected an oppressive policy. The allotment was made only to one member without simultaneous offer to others on pro rata basis. A single act of issue of additional shares which would have a continuous effect was held to constitute oppression.

25. In the light of the law laid down by various Courts, let us now have a look at the acts of oppression and mismanagement pleaded in the company petition filed by respondents 1 to 5 herein. As pointed out earlier, the company petition as it was originally filed, alleges the following acts of oppression and mismanagement:-

(i) that after the induction of the first respondent as a Director in 2003, he was not issued with any notice of any meeting of the Board of Directors and that his letter dated 29.4.2004, sent by registered post, enclosing a demand draft for Rs.500/- with a request to send all notices for the meetings of the Board and the meetings of the company was returned as refused;

(ii) that the Kalyana Mandapam was leased out by the appellants, to the son of the first appellant by a registered Lease Deed dated 28.6.2002 for a monthly rent far below the market rate of rent;

(iii) that the land on which the Petrol Bunk was located was sold to the first appellant and his wife for a consideration of Rs.60 lakhs and that the appellants started paying a sum of Rs.99,000/- per month towards interest to the first appellant and his wife, on the ground that they could not take possession of the property;

(iv) that the rental income of Rs.22,000/- per month from RPG Cellular Company was received by the first appellant's son, though it was payable to the company;

(v) that the first appellant and another person by name Gomathy Nayagam were drawing salary, despite objections; and

(vi) that the advances and rents received from tenants are not accounted for.

28. Continuous acts of oppression and mismanagement, carried out upto the date of filing of the petition under Sections 397 and 398, are similar to conventional warfare. Nevertheless, acts of terror, unleashed at different places and at different points of time, as part of a larger design, could also be construed as a war. If isolated acts, performed at some intervals of time, are found to be part of a larger design, they would certainly come within the parameters of the expression "affairs are being conducted".

29. Moreover, an act could be an act of omission or commission. The gravity of an act, may at times depend upon the act itself. At times, it would depend also upon the consequences that flow out of such an act. There are acts, whose consequences, may not last forever or for a long time. There are also acts, whose consequences, may linger for a long time or whose consequences, would not even be known in the immediate future. Such acts, like the infection of hepatitis-B virus, may sit dormant and inactive for a long time before striking a fatal blow. Therefore, the interpretation given by various Courts that the acts complained of should be continuous acts, extending upto the date of filing of the petition, has to be understood not merely in the context of the acts performed, but also in the context of the consequences that followed."

22. The ratio laid down in the above judgement is an act, which, per se, on the date of commission or omission, may not amount, on the face of it, to be an act of oppression and mismanagement, but may later turn out to be so.

23. In the facts of the case, whether the proceedings held on Annual General meeting on 26.09.2014 is as per law and the implication of the same with regard to allegations of oppression and mismanagement and whether the acts complained constitute independent acts of oppression and mismanagement or not will be determined by the Company Law Board. The Respondents have already filed their counter. Therefore, in the facts and circumstance of the case, the Company Law Board is directed to dispose of the CP.No.62/14 within three months on day to day basis. With the above directions, these Company Appeals are dismissed. Consequently, the connected MPs are closed. No costs.

Srcm

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Company Law Board,
Chennai Branch, Chennai.

Copy to:

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

1 cc to Mr.T.K.Bhaskar, Advocate SR 23761

1 cc to M/s.Preethi Mohan, Advocate SR 23221

1 cc to Mr.R.Venkatavaradhan, Advocate SR 23459

1 cc to Mr.Anirudh Kishnan, Advocate SR 23456

ksj(co)
prk11/6

Judgement in
Company Appeal Nos.13 and 14/2014
MP.Nos.1 and 2/2014

27.04.2015