

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Company Appeal No.17 of 2014

Date : 15-4-2015

Between :

Smt. Dr. Renuka Datla and others ..
Appellants

And

Biological E Limited and others ..
Respondents

Counsel for appellants : Mr. S.R. Ashok, Senior Counsel for
M/s. Lakshmi Kumaran &
Sridharan

Counsel for respondent No.1 : Mr. P.S. Raman, Senior
Counsel

for Mr. M.V. Pratap Kumar

Counsel for respondent Nos.2 to 4 : Mr. S. Niranjan Reddy
for Mr. J. Krishna Dev

Counsel for respondent No.5:

Counsel for respondent Nos.6 & 7 : Mr. D. Prakash Reddy,
Senior Counsel for Mr. Y.

Suryanarayana

Counsel for respondent Nos.8 & 9 : Ms. Rubina S. Khatoon

The Court made the following :

JUDGMENT:

With the demise of its mentor, the closely held family company, namely, Biological E. Limited (for short “the company”) has plunged into the vortex of legal litigation. Pitted against each other are the mother on the one side and the three daughters on the other side. With the war beginning and the battle lines drawn, “the mother and daughters sentiment” has vanished. With the one up-man-ship getting better of the family relationship and vanity having the last laugh over mutual affections, the successors in interest of the departed soul, have arraigned themselves before the law Courts.

The background of this sordid episode needs to be briefly recounted for adjudication of this appeal.

The company was initially promoted by J.A. Narasimha Raju who is none other than the father of appellant No.1, and his friend Dasu Ramaswami in the year 1953 in the State of Maharashtra. It was engaged in the business of pharmaceutical products and vaccines. It is the pleaded case of appellant No.1 that his father held the majority

shares. Ten years after the company came into existence, it was shifted from Mumbai to Hyderabad in the year 1964. The father-in-law of appellant No.1, Venkata Krishnam Raju Datla, joined the father of appellant No.1, in running the company and later the business relationship has got converted into family relationship with Late Dr. Vijay Kumar Datla s/o. Venkata Krishnam Raju Datla, marrying appellant No.1, in the year 1967. With the death of the father of appellant No.1 in the year 1969, the mantle of running the company fell on the husband of appellant No.1, who was made the Chairman and Managing Director of the company. Late Dr. Vijay Kumar Datla who became the Chairman and Managing Director w.e.f. 1-5-1972 for a long time, successfully ran the company without the involvement of other family members. However, appellant No.1, who is a qualified medical professional, possessing a Doctorate in Pharmacology, and was working in the Nizam's Institute of Medical Sciences as a Professor and Honorary Consultant in Clinical Pharmacology and Therapeutics, initially joined the company as Medical Director and was made the Executive Director on 29-8-1991, which position she continued to hold. As noted hereinbefore, with the death of Late Dr. Vijay Kumar Datla, the family squabbles over the control and management of the company have surfaced.

Late Dr. Vijay Kumar Datla and appellant No.1 have promoted several companies and Trusts in which respondent

Nos.2, 3 and 4, who are none other than their daughters, were inducted as Directors, except the company. At the time of the death of Late Dr. Vijay Kumar Datla, himself, appellant No.1 and one G.V. Rao, an independent Director, constituted the Board of Directors with Late Dr. Vijay Kumar Datla as the Chairman and Managing Director and appellant No.1 as the Executive Director of the company.

The share holding pattern at the time of the death of Dr. Vijay Kumar Datla was as follows :

Sl.No.	Names of the members	No. of shares	Value in Rs.	% of shareholding
1	Dr. Vijay Kumar Datla	4,00,961	4,00,96,100/-	81.00
2	Dr. Vijay Kumar Datla (HUF)	4,594	4,59,400/-	0.93
3	Mrs. Purnima Datla	4,357	4,35,700/-	0.88
4	Mrs. Indira P. Raju	4,357	4,35,700/-	0.88
5	Ms. Mahima Datla	11,205	11,20,500/-	2.26
6	Dr. Viajay Kumar Datla (Trustee of Purnima & Indu Trust)	1,999	1,99,900/-	0.40

7	Dr. Vijay Kumar Datla (Trustee of Mahima Trust)	1,685	1,68,500/-	0.34
8	Purnima, Indira & Mahima	187	18,700/-	0.04
9	Dr. Vijay Kumar Datla & Dr. Renuka Datla	5,813	5,81,300/-	1.17
10	Ms. Mahima Datla and Dr. Renuka Datla	14,172	14,17,200/-	2.86
11	Dr. Renuka Datla & Mahima Datla	26,995	26,99,500/-	5.45
12	M/s. V.R. Investments Pvt. Ltd.	18,425	18,42,500/-	3.72
13	Mr. Purnedu Gupta & Ms. Krishna Gupta	250	25,000/-	0.05
	Total	4,95,000	4,95,00,000/-	100.00

On the demise of the Chairman and Managing Director, the independent Director, G.V. Rao, has submitted his resignation through his letter dated 6-4-2013 as the Director. The resignation letter was addressed to the Board of Directors, citing “unavoidable and compelling reasons” for his

inability to continue as a member of the Board. He has wished to relinquish his role as the Director with immediate effect with a request to acknowledge the letter of resignation and arrange to file Form No.32 with the Registrar of Companies. It appears, the said G.V. Rao has changed his mind and has addressed another letter dated 9-4-2013 to the Board of Directors wherein he has expressed his inclination to continue as a member of the Board and informed that he was withdrawing his resignation letter dated 6-4-2013. The events that have taken place immediately following his purported withdrawal have become the subject matter of serious disputes between appellant No.1 and respondent Nos.2 to 4.

On the same day of purported withdrawal of his resignation letter, a meeting of the Board of Directors was claimed to have been held by Mr. G.V. Rao.. In the said purported meeting, one of the three daughters of appellant No.1 i.e., respondent No.4, was allegedly appointed as a Director. On 10-4-2013, another meeting of the Board of Directors was stated to have taken place wherein the Board, based on a purported Will executed by Late Dr. Vijay Kumar Datla, transmitted 81% of the shares in the company in favour of another daughter of appellant No.1. i.e., respondent No.2, besides appointing the said respondent and another daughter of appellant No.1 i.e., respondent No.3, as a Directors of the company. In another meeting allegedly held

on 11-4-2013, respondent No.2 was said to have been appointed the Managing Director of the company.

Obviously, unable to bear her daughters seeking to take complete control of the company, appellant No.1 has filed C.P.No.1 of 2013 inter alia for a declaration that the appointments of respondent Nos.2 to 4 in the Board of Directors of the company in the meetings held on 9-4-2013,

10-4-2013 and 11-4-2013 were a nullity, void ab initio and illegal. A declaration was also sought to the effect that respondent No.5 has resigned from the Board of Directors of the company on 6-4-2013 and that therefore he is not entitled to continue as a Director of respondent No.1-company. She has also filed O.S.No.184 of 2014 in the Court of the learned Chief Judge, City Civil Court, Hyderabad, seeking several declaratory reliefs, which include the declaration that appellant No.1 is the absolute owner of the shares worth Rs.4,09,74,750/- held by her deceased husband and for a consequential direction to the respondents herein to transmit the shares in favour of appellant No.1 and deliver possession of the share certificates. She has also sought for certain alternative reliefs, reference to which is not necessary in the present context. The main basis for her suit was a Will purportedly executed by her late husband.

Appellant No.1 has filed an application for withdrawal of C.P.No.1 of 2013 before the Company Law Board. In her affidavit, she has stated that she was advised to withdraw the

said Company Petition as the scope of the same was limited and did not permit her to redress all her grievances and seek appropriate reliefs. Therefore, she sought for withdrawal of the said Company Petition with liberty to her to avail appropriate remedy. Subsequently, appellant No.1 has filed a fresh Company Petition registered as C.P.No.36 of 2014 for innumerable reliefs. Some of the reliefs claimed in the said Company Petition included a declaration that the acts of respondent Nos.2 to 9 are oppressive and prejudicial to the interests of the company; to declare the Board meetings held on 9-4-2013, 10-4-2013 and 11-4-2013 as illegal, null and void ab initio and to set-aside the resolutions passed in the said meetings; for removal of respondent Nos.2 to 5 as the Directors of the Company and transmission of 4,00,961 equity shares held by Late Dr. Vijay Kumar Datla in favour of respondent No.2 as illegal, null and void and consequently to rectify the register of the members by ordering transmission of such shares to appellant No.1; to supersede the company and appoint an Administrator/Special Officer to take charge of the management of the affairs of the company; and to declare that the resolutions passed in the Annual General Meeting held on 18-12-2013 are null and void.

Appellant No.1 has also claimed several interim reliefs. The three reliefs which are relevant for the present appeal are to supersede the Board of Directors of the company and to appoint an interim Administrator/Special Officer for taking

charge of the management and the affairs of the company; for an injunction to restrain respondent Nos.1 to 7 from altering or changing in any manner the shareholding pattern and paid up capital of the company; and a direction to the respondents not to hold the meeting of the shareholders of the company and also to restrain respondent No.2 from exercising her voting rights in respect of 4,00,961 equity shares. The Company Law Board, by its order dated 6-8-2014, while declining to grant interim reliefs as prayed by appellant No.1, adjourned the case to enable the respondents to file counter affidavit and the appellants to file rejoinder by placing on record the undertaking given on behalf of respondent Nos.2 to 4 that no movable or immovable properties would be alienated and that appellant No.1 will be continued as the Executive Director of the company. Not being satisfied with the said order, the appellants have filed this appeal under Section 10-F of the Companies Act, 1956 (for short "the Act").

I have heard Mr. S.R. Ashok, learned Senior Counsel for M/s. Lakshmi Kumaran & Sridharan, Counsel for the appellants, Mr. P.S. Raman, learned Senior Counsel for Mr. M.V. Pratap Kumar, Counsel for respondent No.1, Mr. S. Niranjan Reddy, learned Counsel for Mr. J. Krishna Dev, learned Counsel for respondent Nos.2 to 4, Mr. D. Prakash Reddy, learned Senior Counsel for Mr. Y. Suryanarayana, Counsel for respondent Nos.6 and 7, and Ms. Rubina S.

Khatoon, learned Counsel for respondent Nos.8 and 9.

Mr. S.R. Ashok made the following submissions:

- (i) That the Company Law Board failed to pass appropriate interim order and thereby it has failed to exercise the jurisdiction vested in it;
- (ii) That respondent No.5, the independent Director resigned through his letter dated 6-4-2013; as per the settled law, the resignation will come into force with immediate effect unless the Board allows it to be withdrawn and that in the absence of any Board resolution accepting the withdrawal letter, respondent No.5 ceased to be a Director. In support of his submission, the learned Senior Counsel placed reliance on the Judgment of the Chancery Division in **Glossop Vs. Glossop**^[1] and **T. Murari Vs. State (The Asst. Registrar of Companies)**^[2].
- (iii) That with the resignation of respondent No.5, the number of the Directors fell below the minimum number prescribed under Section 252 of the Act and the purported Board meeting convened and conducted by respondent No.5 on 9-4-2013 was patently illegal and consequently the appointment of respondent No.4 as a Director of the company was also illegal and *nonest*.
- (iv) That the Board meeting held on 10-4-2013 by

respondent Nos.4 and 5, transfer of 81% shares held by Late Dr. Vijay Kumar Datla in favour of respondent No.2, and the appointment of respondent Nos.2 and 3 as Directors of the Company are also illegal.

(v) That similarly, the purported Board meeting held on 11-4-2013 in which respondent No.2 was designated as Managing Director was equally invalid and illegal.

(vi) That the decisions taken in the meetings which were illegal to the knowledge of respondent Nos.2 to 6 cannot get validated under Section 290 of the Act, that too in respect of the matters which are not concerned with third parties, for Section 290 would not come to the aid of usurpers of the offices. In support of this submission, the learned Senior Counsel relied upon the Judgment in **M. Moorthy Vs. Drivers and Conductors Bus Service P. Ltd.**^[3] and **Eastern Linkers Pvt. Ltd. Vs. Dina Nath Sodhi**^[4].

(vii) That the Annual General Meeting held on 18-12-2013 wherein the Board resolutions dated 9-4-2013, 10-4-2013 and 11-4-2013 were purportedly ratified was also invalid as the said meeting was not validly convened and held and that the respondents have not availed any of the options available under

Sections 169(1), 169(7) and 186 of the Act.

(viii) That the provisions of Sections 252, 287 and 300 are mandatory, conceived in public interest and that they cannot be waived or acquiesced. In support of this submission, the learned Senior Counsel relied upon the Judgments in **Firestone Tyre and Rubber Co. Vs. Synthetics and Chemicals Ltd. and others**^[5] and **Dhirendra Nath Goari Vs. Sudhir Chandra Ghosh and others**^[6]. The learned Counsel has also relied upon the passage at page-3316 of Ramaiya on Company Law, 17th Edition.

(ix) That the doctrine of acquiescence cannot be pleaded against the appellants by the respondents as the latter have failed to act bonafide. Reliance in support of this submission is placed on **The Golden Valley Educational Trust Oorgam Vs. The Vokkaligara Sangha**^[7] and **Lanco Hills Technology Park Pvt. Ltd. Vs. Mahaboob Alam Khan**^[8].

(x) That the Will allegedly executed by Late Dr. Vijay Kumar Datla is shrouded under suspicious circumstances and that the company ought not to have transferred the shares held by Late Dr. Vijay Kumar Datla in favour of respondent No.2 in the absence of Probate of Will or succession certificate

as envisaged under Article 66 of the Articles of Association. That the company ought not to have resorted to the method of obtaining indemnity bond as per the Article 66 of the Articles of Association unless an application for obtaining Probate of Will or succession certificate was already filed by respondent No.2 and the same was pending.

- (xi) That appellant No.1 has already filed a civil suit claiming declaratory reliefs based on the Will executed by Late Dr. Vijay Kumar Datla in her favour and that till the dispute in the said suit is adjudicated, the respondents are not entitled to exercise the voting rights in respect of 81% of the shares originally held by Late Dr. Vijay Kumar Datla;
- (xii) That as the management of the company was usurped by respondent Nos.2 to 5 in the most illegal and unlawful manner, they are not entitled to manage the company till the Company Petition is disposed of and the same needs to be administered by an administrator to be appointed by the Court.
- (xiii) That respondent Nos.2 to 4 being interested Directors ought not to have participated in the Board meeting held on 10-4-2013, during which shares were transferred in favour of respondent No.2 as such participation is barred by Section 300 of the Act.

(xiv) That as per Article 70 of the Articles of Association, for registration of transfer of shares, the original share certificates have to be produced, while no such certificates were produced as evident from para 13(i) of the Form annexed to be submitted by the Company Secretary under the Companies (Compliance Certificate) Rules 2001.

Mr. P.S. Raman made the following submissions:

- (i) That for maintenance of an appeal under Section 10-F of the Act, a question of law must arise and that no such question of law has been raised in this appeal. In support of his submission, the learned Senior Counsel has relied upon the Judgment in **Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd.**^[9].
- (ii) That appellant No.1 has not come to the Court with clean hands as she has violated the undertaking given by her to withdraw the civil suit.
- (iii) That appellant No.1 has pressed three interim reliefs, namely, (a) for a restraint order against her removal as the Executive Director; (b) for appointment of an administrator to take over the affairs of the company; and (c) for freezing of voting rights in respect of 81% shares. That with regard to the first mentioned relief, an undertaking was given by the respondents that petitioner No.1 will not be

removed as the Executive director; the relief for appointment of an administrator was not even argued and that on the facts and the legal position, appellant No.1 is not entitled to the interim relief of freezing of voting rights in respect of 81% shares.

(iv) That respondent Nos.2 to 4 were appointed as Additional Directors initially; that under Section 260 of the Act such appointments last till Annual General Meeting (AGM) is held; that the acts done by the Directors have been approved by the Annual General Meeting and the defect if any in the appointment of respondent Nos.2 to 4 as Directors is cured by the AGM resolution;

(v) That through her letter dated 24-5-2013 addressed to the Board of Directors, appellant No.1 has requested for transfer of HUF shares in her favour and thereby she has recognized the reconstituted Board; that in pursuance of the said letter shares were transmitted in favour of appellant No.1 and therefore the plea of appellant No.1 raised against the validity of appointment of respondent Nos.2 to 4 as Directors is hit by the doctrine of approbation and reprobation and the same is also against equity and fair play. The learned Senior Counsel placed reliance on **Sangramsinh P. Gaekwad and others Vs. Shantadevi P. Gaekwad (dead) Through L.Rs.**

and others ^[10] in support of his submission.

- (vi) That the Company Law Board is not competent to adjudicate on the complicated issues of succession and that therefore the reliefs claimed by appellant No.1 before the Company Law Board based on the plea of invalidity of the Will executed by Late Dr. Vijay Kumar Datla in favour of respondent No.2 were not maintainable before the Company Law Board.
- (vii) That under Sections 397 and 398 of the Act, the Company Law Board will have no jurisdiction to pass any order unless it is prima facie established that the acts of oppression and mismanagement warrant winding up of the company to enable the Company Law Board to make any order other than an order of winding up of the company. That appellant No.1 miserably failed to establish such prima facie case before the Company Law Board.
- (viii) That while the resignation of a Director need not be accepted, with the withdrawal of his resignation, respondent No.5 has continued as the Director and in the absence of rejection of the withdrawal letter by the Board of Directors, the resignation letter ceased to exist.
- (ix) That appellant No.1 has indulged in suppression of material fact in C.P.No.1 of 2013, namely, letter dated 9-4-2013 of respondent No.5 withdrawing his

resignation.

Mr. S.Niranjan Reddy, who has supplemented the submissions of Mr. P.S. Raman, made the following submissions:

- (i) That appellant No.1 has indulged in suppression and prevarication of facts by not disclosing the withdrawal letter of respondent No.5 in C.P.No.1 of 2013 and alleging fabrication of the withdrawal letter in her criminal complaint and that in the case on hand, she has pleaded that she has received the withdrawal letter, but not accepted the same.
- (ii) That appellant No.1 has suppressed letter dated 15-4-2013 in C.P.No.1 of 2013 as well as C.P.No.36 of 2013 and in the appeal she has pleaded that the said letter was obtained by coercion.
- (iii) That appellant No.1 has not disclosed her letter dated 24-5-2013 addressed to the Board.
- (iv) That appellant No.1 has attended the Annual General Meeting on 18-12-2013 and in the criminal complaint she feigned ignorance of the said meeting. The learned Counsel also relied upon the Judgment of the Supreme Court in **Sangram Singh (10-supra)** to substantiate his submission that on the facts of the case the doctrine of approbation and reprobation is applicable.

- (v) That the jurisdiction of the Company Law Board under Sections 397 and 398 of the Act is summary in nature and that complicated questions of succession shall not be gone into by the Company Law Board.
- (vi) That appellant No.1 has failed to make out any case for appointment of a Receiver. The learned Counsel placed reliance on the Judgments in **T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and others**^[11] and **Chelikam Rajamma Vs. Padileti Venkataswami Reddy and others**^[12].

Mr. D. Prakash Reddy made the following submissions:

- (i) That Section 300 of the Act has to be read with Sections 297 and 299, and so read, it is evident that the said provisions apply in respect of a contract or an arrangement and as transmission of shares does not fall within either of these two expressions, there was no illegality in the participation of respondent Nos.2 to 4 in the meeting for transfer of shares in favour of respondent No.2. He has also submitted that appellant No.1 is guilty of suppression of material facts as she has not disclosed her letter dated 15-4-2013.
- (ii) That appellant No.1 has attended two Board meetings on 26-6-2013 and 22-8-2013 and this

conduct on her part disentitles her to question the reconstitution of the Board and transfer of shares in favour of respondent No.2.

Based on the respective pleadings of the parties and the submissions of the learned Counsel appearing for them, the following Points arise for consideration:

1. Whether respondent No.5 has ceased to be a Director of respondent No.1-company w.e.f. 6-4-2013?
2. Whether meetings dated 9-4-2013, 10-4-2013 and 11-4-2013 of the Board of Directors were validly held?
3. Whether respondent Nos.2 to 4 were validly appointed as the Directors of respondent No.1-company.
4. Whether the transfer of 81% shareholding in favour of respondent No.2 is valid?
5. Whether appellant No.1 has recognized the reconstituted Board of Directors by her subsequent conduct, and if so, whether she is not entitled in law to challenge the appointment of respondent Nos.2 to 4 as Directors and respondent No.2 as the Managing Director and the action of the Board of Directors in transferring 81% shareholding in favour of respondent No.2?
6. Whether the Annual General Meeting, dated 18-12-2013 was validly held and the resolutions passed therein cure the defects, if any, in the decisions taken in

the Board meetings dated 9-4-2013, 10-4-2013 and 11-4-2013?

7. Whether the acts done by the Board on 9-4-2013, 10-4-2013 and 11-4-2013 are saved by Section 290 of the Act?

I would like to proceed to decide the Points with the caveat that the findings on facts rendered in the Judgment are provisional as the Company Petition which is pending before the Company Law Board is still to be adjudicated and that these findings shall not prejudice either party in the adjudication of the Company Petition.

Re Point No.1: Dr. Vijay Kumar Datla, the Chairman and Managing Director of the company died on 20-3-2013. With his death, the number of Directors on the Board of the company was reduced to 2, namely, appellant No.1 and G.V. Rao – respondent No.5. On 6-4-2013, respondent No.5 has addressed a letter to the Board which reads as under:

“Due to unavoidable and compelling reasons, I regret my inability to continue my service as a member of the Board and wish to relinquish my role as Director with immediate effect.

I request you to kindly acknowledge and arrange to file Form 32 with the Registrar of Companies and furnish me a copy of the document filed with the acknowledgment.”

Section 283 of the Act envisages various situations in which Directors vacate their office. Cessation on account of

resignation is not envisaged by this provision. No other provision under the Act has dealt with 'resignation of a Director'. However, Article 129 of the Articles of Association of the company which incorporated the provisions of Section 283(1) and 314, included resignation of a Director as one of the contingencies for arising of vacancy in the office of a Director. As per Clause (m) of Article 129, the office of a Director will become vacant if he resigns his office by a notice in writing addressed to the company. The plain language of this Clause suggests that the office of a Director will become vacant if a Director sends his notice of resignation in writing addressed to the company. This clause does not lay down the requirement of acceptance of resignation for the resignation to take effect.

In **Glossop (1-supra)**, Article 84 of the Articles of Association of the company therein provided for various contingencies by which the office of a Director will fall vacant. As in the case on hand, one such contingency is resignation by a Director through a notice in writing to the company. On 16-5-1907, the Managing Director of the company sent notice in writing to the company requesting the latter to accept his resignation as Managing Director and to send a cheque for salary. Before any meeting of the Board of Directors was held, the Managing Director has sent another letter dated 23-5-1907 wherein he has stated that he has sent his resignation under a misapprehension and that he absolutely

withdraws the letter. In a special meeting held by the Directors held on 24-5-1907, they have declared that the Managing Director has vacated his office. Neville-J., framed the following question: “..... *whether the defendants were right in treating the plaintiff as having vacated his office as managing director in consequence of the written notice sent by him to the company requesting their acceptance of his resignation as managing director?* While answering this question, the learned Judge held as under :

“ That seems to me to depend entirely upon the proper construction to be put upon the articles of association of the company, and I think the most material articles are 84 and 85. I have no doubt that a director is entitled to relinquish his office at any time he pleases by proper notice to the company, and that his resignation depends upon his notice and is not dependent upon any acceptance. *Consequently, it appears to me that a director, once having given in the proper quarter notice of his resignation of his office, is not entitled to withdraw that notice, but, if it is withdrawn, it must be by the consent of the company properly exercised by their managers, who are the directors of the company. But, of course, that is always dependent upon any contract between the parties, and that has to be ascertained from the articles of association.* Now here, in the first place, I think that article 85, which declares that “The office of managing director shall be vacated on the happening of any of the contingencies mentioned in clause 84 thereof, whereby the office of director shall be vacated,” reads in the whole of article 84, including the provision in the last paragraph. I have, therefore, to consider whether a managing director, giving notice to the company of resignation, is entitled to withdraw that notice prior to the passing of a resolution by the directors that the

managing director has vacated his office. Such resolution has to be passed within six calendar months from the happening of the event whereby such director has vacated his office. Now what are the events whereby a director vacates his office. *One of those events is "If by notice in writing to the company he resigns his office," and I think that, upon such notice, he has vacated his office, although by the proviso the effect of that vacation is not immediate, but is suspensory, and does not take effect until a resolution has been passed by the directors. It seems to me that that is a different matter from saying that the director cannot vacate his office until such a resolution has been passed. The distinction, no doubt, is a fine one, but it seems to me that if the construction contended for by the plaintiff had been intended by the articles, the words would have been used would have been of this nature: "If by notice in writing to the company he resigns his office, and such resignation be accepted," instead of which the resignation of the office is made to be the vacation of the office, and the proviso is added to the effect that the directors may suspend the matter until they pass a resolution accepting his vacation. It seems to me, therefore, that the second part of this motion fails."* (Italics supplied)

It is worth noticeable that in the above discussed Judgment, Article 84 contained a proviso to the effect that vacancy of office shall not take effect unless the Directors pass resolution to the effect that the Director has vacated his office. Despite existence of such a provision, the Chancery Division held that the Director who resigned cannot claim to continue as such till resolution by the Directors is passed to the effect that the Director who has resigned has vacated his

office. The Court opined that as regards the Director who has sent his resignation in writing, he vacates the office and the vacancy would arise upon a resolution being passed by the Director within six calendar months. Thus, a subtle distinction was drawn between the vacation of office by a Director by resignation and arising of vacancy in the office of the Director. Indeed, even this distinction would not arise in this case as Article 129 of the Articles of Association does not contain a proviso similar to the one which existed to Article 84 in the case decided by the Chancery Division in **Glossop (1-supra)**. On a true and proper construction of Article 129(m), it does not admit of any doubt that once the Director sends his resignation by notice in writing addressed to the company, the office of the Director becomes vacant and the Director so resigned shall cease to be a Director from that time.

In **T. Murari (2-supra)** the Madras High Court has quoted the learned authors Palmer and Ramaiya in paragraphs 14 and 15 of the Judgment, which could be profitably reproduced hereunder :

“In Palmer’s Company Precedents, 17th Edn., Part I, page 565, it is stated as follows:

“Even in the absence of any express power to resign, it is submitted that, unless the Articles are specially framed, a director may by notice to the Company resign his directorship. Directors are merely agents of the company, and an agent may determine his agency.”

In Palmer’s Company Law, 21st Edn., page 653, under the heading ‘resignation’ it is stated as follows:

“A director can at any time resign his office,

and usually the articles make express provision accordingly. If he communicates his resignation to the Company, for instance, by a notice upon the company served in the manner provided by S. 437, his resignation is effective. A resignation once made cannot be withdrawn, except with the consent of the company.

The same result can, of course, in appropriate cases, be achieved by a director parting with his qualification shares, and so vacating office by disqualification.

A verbal resignation accepted at a general meeting is effective, even though the articles provide that a director shall vacate office if by notice in writing he resigns his office. A verbal resignation would not, however, be effective in the light of such an article if made to and accepted by the Board since the Board would have no authority to accept, and the resigning director would be unable to end his contract with the company, except in accordance with its terms, express or implied, or with the company's agreement.

Where a director who was both a permanent and an ordinary director resigned, it was held that the resignation applied to both offices."

In Ramaiya's Guide to the Companies Act, 6th Edn., p. 452 under the heading Resignation of office of director, it is stated as follows:

"There is no provision in the Act relating to the resignation of his office by a director, as in the case of a managing agent (S. 342). If there is any provision in the articles giving the right to a director to resign at any time, the resignation will take effect without any need for its acceptance by the Board or the Company in general meeting. Where a director is elected or has contracted to act for a fixed period, and make him liable for damages for breach of his contract, unless

the articles permit such resignation.

In the absence of any provision in the articles the ordinary rule of common law as regards resignation by an officer or agent must be followed, namely, intimation by notice given either to the company or the Board and acceptance of same by them. See *Glassop v. Glassop* 1908-2 Ch. 370, *Latchford Premier Cinema Ltd. Vs. Ennion* 1931-2 Ch. 409. In the latter case, even resignation orally tendered at a general meeting and accepted by the meeting was held to be effective. See also *State v. Sitaram* AIR 1967 Pat. 433.

Where a resignation states that it is to take effect on acceptance, or the articles so require, acceptance is necessary to end the tenure of office. Where however, resignation says that it is to take effect immediately, acceptance is not necessary, unless the articles or any provision of law makes it necessary. Any form of resignation, whether oral or written, sufficient, provided the intention to resign is clear. In the absence of any indication otherwise, a resignation takes effect immediately. Resignation will not however relieve him from any accountable or other inability which he may have secured while in office.

A resignation once made cannot be withdrawn except with the consent of the Company or the Board. See *Rev. Mayor of Wigan* 1886. 14 Q B.C. 908; *Glassop v. Glassop* 1907-2 Ch. D. 370; *Sivial v. Tricamdas Mills Co. Ltd*, 36, Bom. 564.”

From the judicial precedents and the standard text books of renowned authors on Company Law, the law is well crystallized as under :

In the absence of an express statutory provision, Articles of Association need to be looked into. Resignation of a Director will take effect as per the procedure laid down in

the Articles of Association of a company. In the absence of any provision laid down even in the Articles of Association, as per the ordinary rule of common law, a Director may, by notice to the company, resign his Directorship and the resignation will take effect depending upon what the Director expresses in his resignation letter i.e., if he says that the resignation is to take effect on acceptance, it will take effect on such acceptance, and where the resignation says that it is to take effect immediately, acceptance is not necessary. Resignation once made cannot be withdrawn except with the consent of the company or the Board. However, the resignation will not relieve the Director from being accountable or from any liability which he may have incurred while in office.

As noted above, Article 129(m) of the Articles of Association is free from any frills. Under this Article, the office of a Director will become vacant the moment he addresses notice of his resignation in writing to the company. Admittedly, respondent No.5 has sent his notice in writing wherein he has in unequivocal terms expressed his wish to relinquish his role as a Director “with immediate effect”. Thus, w.e.f., 6-4-2013, respondent No.5 has vacated his office as a Director.

On 9-4-2013, respondent No.5 has addressed another letter in writing to the Board of Directors which reads as under :

“I, G.V. Rao, would like to continue as member of the Board, and hereby withdraw my resignation letter

dated 6.4.2013.

As per the law discussed above, while a Director can unilaterally resign, his withdrawal of the resignation cannot be unilateral and unless and until the Board of Directors accepts the request and allows the Director to withdraw his resignation, his cessation as a Director will continue and his withdrawal of the resignation has no validity unless it is accepted by the Board. It is not the pleaded case of any of the respondents that the purported withdrawal of resignation by respondent No.5 was accepted by appellant No.1 as the sole surviving Director, or for that matter, at any later point of time even by the reconstituted Board. Indeed, the occasion for the reconstituted Board to accept or reject the withdrawal letter of respondent No.5 would not arise as respondent Nos.2 to 4 themselves would not have come into existence as Directors of the company had respondent No.5 has not proceeded on the premise that his resignation letter stood withdrawn and that he continued as a Director.

On the analysis as above, this Court has no hesitation to hold that respondent No.5 has ceased to be a Director of the Company w.e.f. 6-4-2013 and he was not reinstated as Director at any later point of time.

Re Point No.2 to 4: Under Section 252(2) of the Act, every company other than a public company mentioned under subsection (1) thereof, shall have at least two Directors. Article 117 of the Articles of Association of the company also

prescribed the minimum number of Directors as two. As found on Point No.1, from 6-4-2013, the company had only one Director i.e., appellant No.1. Under Section 287(2) of the Act the quorum for the meeting of Board of Directors shall be $\frac{1}{3}^{\text{rd}}$ of its total strength or two Directors, whichever is higher. With the resignation of respondent No.5 as a Director, the company failed to satisfy the mandatory provisions of Section 252(2). Under Article 128 of the Articles of Association, a minimum of two Directors is required even to increase the number of Directors and to summon the General Meeting.

With the resignation of respondent No.5 coming into force with immediate effect as desired by him, he had no authority to convene the meetings, leave alone holding them. Even assuming for the sake of argument that respondent No.5 continued to be a Director, he was not competent to convene the Board Meetings on his own without the consent of appellant No.1. It is no one's case that appellant No.1 has agreed for convening of the Board meetings. On the contrary, her specific grievance is that she was not even made aware of such Board meetings, what to say of issuance of a notice to her for the Board meetings. Nothing is placed before the Court to show that the mandatory requirement of notice under the Act was served on appellant No.1. It is not known who authorized respondent No.5 to invite respondent Nos.2 to 4 who have immense personal interest, to the meetings and appoint them as

Directors/Managing Director. From the manner in which respondent No.5 acted unilaterally behind the back of appellant No.1 who was the Executive Director besides holding about 30,000 shares either on her own or jointly with respondent No.2, it is quite clear that he was used as a lever by respondent Nos.2 to 4 to usurp the offices of Director and wrest the management to the detriment of appellant No.1. Admittedly, there was no quorum for the meeting held on 9-4-2013 as appellant No.1 was not present at the meeting. Therefore, the said meeting was held in violation of Section 287(2) of the Act and Article 128 of the Articles of Association.

To recapitulate, it is the case of the respondents that in the purported Board meeting held on 9-4-2013, respondent No.4 was appointed as a Director; that in the so-called meeting dated 10-4-2013, 81% of the shares were transferred to respondent No.2 besides appointing the said respondent along with respondent No.3 as Directors and in the Board meeting held on 11-4-2013, respondent No.2 was appointed as the Managing Director. These acts are without any sanction of law as there was no validly convened and held Board meeting to begin with on 9-4-2013. As the appointment of respondent No.4 as a Director in the meeting held on 9-4-2013 was not valid, the convening of meetings on 10-4-2013 and 11-4-2013 and the decisions taken therein are equally invalid, nay, per se illegal.

The validity of transfer of shares in favour of respondent No.2 is assailed by appellant No.1 on yet another ground i.e., respondent Nos.2 to 4 are interested Directors and their participation in the Board meeting held on 10-4-2013 is contrary to the mandatory provisions of Section 300 of the Act. Sub-section (1) of Section 300 of the Act, which is relevant for this case, reads as under :

“No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement; nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.”

The above reproduced provision contains two phrases, namely, ‘contract’ or ‘arrangement’ entered into or to be entered into by or on behalf of the company. Mr. D. Prakash Reddy, learned Senior Counsel submitted that the expression ‘arrangement’ is similar to the expression ‘contract’ in Section 300 and that transfer of shares does not fall in either of the said two expressions. On a literal construction of sub-section (1) of Section 300 of the Act, the interpretation sought to be placed thereon by the learned Senior Counsel, appears plausible. However, appellant No.1 has placed reliance on the “Guide to the Companies Act by A. Ramaiya, 17th Edition, 2010”. Referring to Section 300 of

the Act, the learned author wrote :

“A proper construction of the word “Interest” here should be an interest conflicting with duty. For example, if the Board of Directors are considering allotment of shares to themselves, there is no conflict of interest and duty here. But, if they are allotting shares to themselves in a situation where that allotment furthers their personal interest as different from the general interests of the shareholders, this section shall apply and the Board shall be incapable of passing resolution on that matter.”

Though no judicial pronouncements appear to be available on this aspect, I choose to follow the opinion of the author whose authoritative commentary on the Act is acknowledged as of the highest standard by all Courts including the highest Court of our country. Undoubtedly, the allotment of shares in favour of respondent No.2 furthers her personal interest and it cannot be said that the same is in general interest of the share holders. On the contrary, it was detrimental to one of the major share holders viz., appellant No.1. In my opinion, the facts of the present case attract the prohibition recognized by the author under Section 300 of the Act.

Besides questioning transfer of shares as being contrary to Article 66 of the Articles of Association, appellant No.1 has raised the plea that the Company Secretary has not ensured that original share certificates were not produced by respondent No.2 as envisaged under Article 70 of the Articles of Association. While it may not be necessary to deal with the plea based on Article 66, the contention relating to

violation of Article 70 appears to have merit. Article 70 of the Articles of Association reads as under:

“Before the registration of a transfer, the Certificate or Certificates of the Share or Shares to be transferred must be delivered to the Company along with (save as provided in Section 108 of the Act) a properly stamped and executed instrument of transfer.”

Para-13(1) of the Form prescribed under Rule 3 of the Companies (Compliance Certificate) Rules 2001 requires the Company Secretary to state as to whether the Company has delivered all the certificates on allotment of securities. In the Form signed by the Company Secretary, he has not stated whether the share certificates were actually delivered to the transferee i.e., respondent No.2. Therefore, I find merit in the submission of the learned Counsel for appellant No.1 that the purported transfer of share certificates is in violation of Article 70 of the Articles Association of the company and the Form prescribed under Rule 3 of the 2001 Rules.

The above assigned reasons lead me to hold that (a) all the three meetings were not validly held; (b) respondent Nos.2 to 4 were not validly appointed as Directors and (c) the transfer of 81% of the shares held by Late Dr. Vijay Kumar Datla in favour of respondent No.2 has not validly taken place and consequently such a transfer cannot be recognized in law.

Point No.5: All the learned Counsel for the respondents have forcefully pleaded that appellant No.1 had the

knowledge of Board meetings dated 9-4-2013, 10-4-2013 and 11-4-2013 and the appointment of respondent Nos.2 to 4 as Directors of the company and that her subsequent conduct reveals that she has accepted all the actions such as convening of the Board meetings and the business transacted in those meetings. In support of this submission, the learned Counsel for the respondents have relied upon the letter dated 15-4-2013 purportedly addressed by appellant No.1 to the B.E. (Biological Evans) family, her letters dated 24-5-2013, 19-10-2013 and 20-10-2013, her participation in the Board meeting held on 22-8-2013 and receipt of enhanced salaries by her.

With respect to these aspects, appellant No.1 has come out with her own version as projected by her counsel at the hearing as well as in his brief written submissions. It is therefore necessary to deal with each of these aspects. Appellant No.1 has allegedly addressed letter dated 15-4-2013 which makes an interesting reading. The said letter reads :

“Over the past few weeks all of us have endured a great personal loss. The untimely death of my husband Dr. Vijay Kumar Datla, the Chairman and Managing Director of BE has left an irreplaceable void in the company. I have had the privilege of watching BE being established by both by my father late Sri G.A.N. Raju and father in law late Dr. D.V.K. Raju. I have also the pride of watching it grow and prosper under my husband’s leadership. I have witnessed the goodwill and commitment he shared with his team. The entire BE family have stood by him through good

and bad and for this, I am eternally grateful. Although the leadership of Vijay was instrumental in cultivating BE, we must continue to evolve and grow, in order to prosper further.

Today, I feel proud to share with you the news of the appointment of my three daughters Purnima, Indira and Mahima to the Board of BE. As you are aware, Mahima has been working alongside you and my husband for over 15 years now and shares his passion for this institution. I am happy to introduce her in her new capacity as the Managing Director of BE. I seek your blessings and guidance for Mahima as she takes on this new responsibility. Therefore, let us uphold this legacy and continue to make a difference.”
Wishing the BE team much much success!!!”

Appellant No.1 has filed a complaint before the IV Additional Chief Metropolitan Magistrate, Hyderabad on 14-5-2014. Several serious allegations were made by appellant No.1 in the said complaint, reference to which in the present context is unnecessary. However, with reference to letter dated 15-4-2013, she has alleged as under :

“..... Accused No.5 in furtherance of his criminal intrigue went on addressing the complainant and caused several communications to be written by the Accused No.1 to 3 ascribing to the complainant most unpleasant and hasty things and made propaganda in society vilifying her character and placing it in bad and blackest odor and coaxing/coercing her into offering *post facto* consent to the said board meetings in order to obtain her ratification. It is under such undue influence and while undergoing shock of her husband’s death, during mourning and surrounded by wicked persons actuated by criminal motives that the complainant was made to sign a note on 15-04-2013 introducing her daughters as directors but utterly

ignorant of their criminal conspiracy by means of conducting the board meetings and groping in dark about their ulterior motives.” (Emphasis added)

The Court is informed that the criminal complaint filed by appellant No.1 is pending. The truth or otherwise of the allegations contained in the complaint cannot therefore be discussed at this stage. The fact however remains that the letter dated 15-4-2013 is the subject matter of a serious controversy. Unless the investigation is complete and the criminal case is adjudicated, no conclusion can be drawn as to whether appellant No.1 has addressed letter dated 15-4-2013 voluntarily or under coercion and undue influence. Such a letter at this stage therefore cannot be made basis to judge the conduct of appellant No.1.

With regard to letter dated 24-5-2013, the same is shown to have been signed by appellant No.1 as well as respondent Nos.2 to 4. However, in the written submissions made on behalf of appellant No.1, a stand was taken that the said letter was executed by respondent Nos.2 to 4 with a view to falsely attribute acceptance of the reconstitution of the Board of Directors by appellant No.1.

Coming to letters dated 19-10-2013 and 20-10-2013, reading of these letters would only reveal how seriously appellant No.1 was feeling aggrieved by the actions of respondent Nos.2 to 5. Letter dated 19-10-2013 was addressed to the company by inviting the attention of

respondent No.5. This was in reply to letter dated 3-10-2013 of respondent No.5. In this letter, appellant No.1 has seriously disputed the Will propounded by respondent Nos.2 to 4 and deprecated their conduct. She has further stated :

“.....You are all aware, especially the current set of Directors, notwithstanding their illegal usurping the Directorships, that my husband late Dr. Vijay Kumar Datla, made arrangements to bestow and vest all the properties in me after his demise so as to avoid any possible split among the family members and subsequent peaceful transmission of the same to them”

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This portion of the letter clearly speaks the mind of appellant No.1 that far from accepting respondent Nos.2 to 4 as Directors, she has accused them of “usurping” the Directorship. Through her letter dated 20-10-2013 addressed to the Managing Director, she was not only highly critical of all the actions of respondent Nos.2 to 5, but also reiterated her stand that respondent Nos.2 to 4 are ‘usurpers’ of office. The following portion of this letter is relevant in this context:

“ You have done and created so many things behind my back and that you all want that the I should not know of your above actions and wrong doings. Having treated me in the above manner, you have strengthened my resolve and purpose of struggle. You may also note that the Act does not give even in remote sense, any power to the majority members to violate the rules, breach the law, act in suppression of the interest of the minority and from your letter, I am very sorry to understand that you want to use the usurped majority to thump the law and that of the interests of the Minority. Please be noted that word of the majority that too, the majority acquired through

illegal means is not rule of law always as you have tried to make out and I am very clear on the same. I will come on each of the replies given in you above letter shortly. Before concluding, I must state that you have avoided giving replies to my pointed issues except that you wanted me to know that you usurped the power and have been acting unilaterally under the so called majority rule. Anyhow, please restore my chamber and ensure my safety and security during my visit to the company and the earliest modes of attack are not repeated and in the event, any untoward event occurs or direct or indirect threats are given to me, I hold you all responsible for the same.” (Emphasis added)

The epithets “usurped majority”, “to thump the law” and “majority acquired through illegal means is not rule of law”, are indication enough to show that appellant No.1 was seething with anger at and venting out her discontentment with and disapproval of the actions of respondent Nos.2 to 5. By merely addressing a letter to the “Managing Director”, appellant No.1 cannot be understood to have recognized respondent No.2 as such or accepted reconstitution of the Board of Directors. Indeed, these letters instead of advancing the case of the respondents, support the plea of appellant No.1 that she has never supported the actions of respondent Nos.2 to 5 either regarding reconstitution of the Board of Directors or transfer of shares.

With regard to participation of appellant No.1 in the Board meeting held on 22-8-2013, para-13 of the minutes of the Board meeting refers to letter dated 22-8-2013 addressed

to the Board of Directors by appellant No.1. It is further stated therein that copies of the said letter containing the views of appellant No.1 were circulated in the meeting to all other Directors for their perusal and discussion; that the Board took note of the contents of the allegations in her letter and that the Board decisions were taken based on the majority rule in accordance with the applicable law. A copy of the said letter is filed by the appellants along with the appeal. Consistent with her stand, appellant No.1 was bitterly critical of the Board meetings dated 9-4-2013, 10-4-2013, 24-5-2013 and 26-6-2013. She has stated :

“ I understand that after the demise of my Husband, some board meetings were held on 9th and 10th April, 24th May, 26th June of 2013. The present notice seeks to have the same approved in the proposed meeting. In this regard, I would like make it clear that the earlier meetings have no legal sanctity as no prudent procedure was followed to convene the above impugned meetings as such, the question of ratification of the minutes of the said meetings will never arise in the present board meeting. I did not receive any notices or agenda or minutes of the Board Meeting and in the absence of the same, I cannot put my stamp of approval for the same.... ”

The letter further stated :

“ Let Board not do anything related to the personal agendas like fixing high remunerations and appointment of new directors and personal relatives at high positions with huge remunerations, burdening the financial position of the company....”

Appellant No.1 finally gave a piece of advice to respondent Nos.2 to 4 and her sons-in-law as under :

“ ... This would not rest the divine soul of my husband in peace. My husband is none other than father of some of you, father in law of some others and friend and philosopher of others and I trust that you will listen to my good words and differ (defer) with the agenda items till they are discussed threadbare and other important issues are addressed and done with. ...”

This letter puts to rest any doubt whether appellant No.1 has reconciled herself to the events that have taken place following her husband's death. That her resolve to oppose all those actions was getting stronger and stronger is reflected in this letter.

Dealing with the doctrine of waiver, the Supreme Court, in **Dhirendra Nath Goari (6-supra)**, referred to and relied upon the following passage in Maxwell's commentary “On the Interpretation of Statutes”, 11th Edition, at page 375, thus:

“Another maxim which sanctions the non observance of a statutory provision is that *cuilibet licet renuntiare juri pro se introducto*. Every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy.”

The Supreme Court also quoted Craies on Statute Law, 6th Edition, at page 269, which reads:

“As a general rule, the conditions imposed by statutes

which authorize legal proceedings are treated as being indispensable to giving the court jurisdiction. But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the court.”

Further, the Supreme Court has quoted with approval the Division Bench Judgment of the Patna High Court in **Sheo Dayal Narain Vs. Musammat Moti Kuer**^[13] wherein it was held :

“Where the court acts without inherent jurisdiction, a party affected cannot by waiver confer jurisdiction on it, which it has not. Where such jurisdiction is not wanting, a directory provision can obviously be waived. But a mandatory provision can only be waived if it is not conceived in the public interests, but in the interests of the party that waives it...”

Madon,J as his Lordship then was, while dealing with Section 300 of the Act, in **Firestone Tyre and Rubber Co. Vs. Synthetics and Chemicals Ltd. and others (5-supra)** held at para-49:

“ There can be no estoppel against a statute nor can a person waive any right or benefit conferred by a statute unless it is of a personal and private nature. There is a clear distinction between a contractual or a statutory right created in favour of a person for his own benefit and a right which is created on the ground of public interest and policy. The rule of waiver cannot apply to a prohibition based on public policy (See: Post Master-General, Bombay vs. Gangaram Babaji

Chavan)”

In a well informed Judgment, the Division Bench of Karnataka High Court in **Golden Valley Educational Trust (7-supra)**, referred to the English as well as the Indian law on the doctrine of acquiescence and held as under :

“ In order to constitute acquiescence not only (1) full knowledge of one’s right is required, but (2) there must be some lying by him to the detriment of the other side. For it is elementary that there can be no acquiescence without full knowledge both of the right infringed and of the acts which constitute the infringement and of the act which constitute the infringement. Acquiescence implies that a person who is said to have acquiesced did so with knowledge of his rights and the other person acted in the bona fide belief that he was acting within his rights. The absence of either of these elements makes the doctrine inapplicable.....”

Applying the proposition of law laid down as above to the facts of this case, Section 252 of the Act which prescribed a minimum of at least two Directors and Section 287 which prescribed quorum for Board meetings are undoubtedly conceived in public interest and therefore they cannot be waived. Conscious of this position in law, the learned Counsel for the respondents have fairly submitted that they are not pressing into service the doctrine of waiver or acquiescence. However, they have sought to press the doctrine of “approbation and reprobation”.

The phrase "approbate and reprobate" is borrowed from Scotch Law where it is used to express the principle

embodied in the English doctrine of election, namely, that no party can accept and reject the same instrument (**Verschures Creameries v. Hull and Netherlands Steamship Co.** ^[14]).

In **Lissenden v. C. A. V. Bosch, Ltd.** ^[15], the House of Lords pointed out that the equitable doctrine of election applies only when an interest is conferred as an act of bounty through some instrument. In that case, the House of Lords held that the withdrawal by a workman of the compensation in money deposited by the employer could not take away the statutory right of appeal conferred upon him by the Workmen's Compensation Act.

In **Banque Des Marchands De Moscou v. Kindersley** ^[16] Evershed, M. R., referring to the phrases "approbating and reprobating" and "blowing hot and blowing cold" held :

"These phrases must be taken to express, first, that the party in question is to be treated as having made an election from which he cannot resile, and, second, that he will not be regarded, at least in a case such as the present, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his present action is inconsistent".

The above Judgments were referred to and relied upon by the Supreme Court in **Bhau Ram Vs. B. Baijnath** ^[17]. That was a case where an appeal was filed before the

Supreme Court under the Reva State Pre-emption Act 1949 by the plaintiff in a suit in whose favour a decree was passed and who has filed appeal before the Supreme Court not being satisfied with the decree. The plaintiff has questioned the constitutionality of the provisions of the Reva State Pre-emption Act before the Supreme Court. A preliminary objection was raised to the maintainability of the appeal on the ground that after the Special Leave was granted to file the appeal the plaintiff has withdrawn the price of pre-emption which was deposited by the defendant by pressing into service the doctrine of approbation and reprobation. Placing reliance on the English law referred to above, the Constitution Bench of the Supreme Court rejected the preliminary objection.

The legal position that emerges from the decisions referred to above is that the doctrine of approbation and reprobation applies to a case where a party has made an election and he has derived benefit out of such election.

In the instant case, from the facts discussed above, appellant No.1 cannot be said to have made an election to recognise the reconstituted Board of Directors and derived any benefit out of such election. However it is represented at the hearing that the decision taken in one of the Board meetings held on 22-8-2013 regarding the remuneration to Managing Director and all the Directors, including appellant No.1, was implemented and appellant No.1 is deriving the

benefit from such decision. Appellant No.1 who was present in the Court submitted that she has in fact opposed the increase in remuneration in her dissenting views expressed through her letter dated 22-8-2013 referred to in para-13 of the Minutes of the meeting dated 22-8-2013 and that without her consent the company has been crediting the increased remuneration to her bank account.

In her letter dated 22-8-2013, appellant No.1 has seriously opposed the enhancement of remuneration and appointment of new Directors. If despite this opposition, the management of the company is crediting the enhanced remuneration to the bank account of appellant No.1, she cannot be accused of deriving the benefit and reprobating therefrom. In any event, from the discussion made hereinbefore, this Court does not find any positive act on the part of appellant No.1 which constitutes an act of approval of the decisions taken by respondent Nos.2 to 5, which were impugned in the Company Petition except the letter dated 15-4-2013, which, as observed hereinbefore, is subject of serious controversy. This Point is answered accordingly.

Point No.6 : Heavy reliance is placed on the first proviso to Section 260 of the Act by the learned counsel for the respondents. They have submitted that even if the appointment of respondent Nos.2 to 4 as Directors and respondent No.2 as the Managing Director in the Board meetings held on 9-4-2013, 10-4-2013 and 11-4-2013

suffered from procedural illegalities, under the aforementioned provision the additional Directors held office only until Annual General Meeting and that in any event in the said meeting their appointments were approved. In this context, it needs to be mentioned that in the counter-affidavit filed on behalf of respondent No.1, it is averred that the AGM was held on 18-12-2013. Neither the notice of the said meeting nor the Minutes thereof have been filed by respondent No.1. A perusal of the record shows that no such material was produced even before the Company Law Board though a reference to the said AGM was made in the order under appeal. Be that as it may, as noted hereinbefore, under Article 128 of the Articles of Association of the company, even for calling a General Meeting there must be a minimum of two Directors. When respondent No.5 has ceased to be a Director and respondent Nos.2 to 4 were not legally appointed as Directors, the very convening of the AGM and the decisions taken therein are *non est* in law. Indeed, to overcome this situation, the respondents have putforth the plea of 'necessity' to justify the holding of Board meetings as well as the general meeting on 18-12-2013 in which all the actions were purportedly ratified. They have sought to justify all their actions commencing from convening and holding of the Board of Directors meeting on 9-4-2013 to the convening and holding of the Annual General Meeting on 18-12-2013 on the ground that they had no choice other than

resorting to such actions with the death of the Chairman and the Managing Director of the company and the obvious non-cooperation of appellant No.1 who was the Executive Director. The respondents have thus invoked the doctrine of necessity.

Countering this plea, the learned Senior Counsel for appellant No.1 has pleaded that there were clearly three alternatives to left the members under the provisions of the Act, namely, (i) the required number of members as envisaged under Section 169(4) could have given a notice to the Board of Directors to call an extraordinary general meeting of the company; (ii) if the Board fails to conduct extraordinary general meeting within 21 days of the requisition, the members could approach the Company Law Board for a direction to conduct an extraordinary general body meeting under Section 169(7); or (iii) to approach the Company Law Board under Section 186 to order a meeting of the company to be called and held in the manner as may be directed by the Company Law Board.

In Election Commission of India Vs. Subramaniam

Swamy ^[18] the Supreme Court, explained the doctrine of necessity, in para-16 as under :

“We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and

considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief Election Commissioner to participate, if not the doctrine of necessity may have to be invoked.”

With respondent No.5 resigning his office as Director and appellant No.1 remaining as the sole Director of the company, respondent Nos.2 to 4 as members had an option to approach the Company Law Board under Section 186 of the Act for a direction to hold a general meeting of the company. Instead of following this simple procedure, respondent Nos.2 to 5, for the reasons best known to them, have embarked upon a procedure which has proved to be in utter violation of the statutory provisions of the Act as discussed above. Therefore, the respondents cannot seek to justify their otherwise indefensible and unjustifiable actions by invoking the doctrine of necessity.

Point No.7: Section 290 of the Act, on which the respondents have heavily banked, reads as under :

Validity of acts of directors: Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles:

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated.”

On a plain reading of the above reproduced provision, it is clear that this provision applies only in a case where invalidity of appointment of a director was discovered after he has done the acts. This provision fell for consideration of the Courts at least in two decisions, viz., **M. Moorthy (3-supra)** and **Eastern Linkers Pvt.Ltd.(4-supra)**. In **M. Moorthy (3-supra)**, almost a situation similar to the present one arose where out of three Directors only one Director was stated to have called Board meeting on 20-5-1978 in which a third party was stated to have been inducted as a Director and thereafter he was made the Managing Director. Thereafter, the Board lead by the self-claimed Managing Director has sold two buses of the company which were its only assets. The High Court observed that out of the three continuing Directors, two Directors were not present at the meeting held on 20-5-1978 as it was their case that notices were not served on them and that therefore such a meeting which had

no quorum could not be recognized as a valid meeting and any decision taken therein cannot be treated as valid. Repelling the contention that Section 290 of the Act saved the action of the Board, the Madras High Court held :

“ ... That section, however, will have no application to the present case where, as per the earlier discussion, there had been a usurpation of the office of director and managing director. Section 290 of the Act would not cover cases where there is a total absence of appointment or a fraudulent usurpation of authority. Our attention has not been drawn to any provision in the Act or any decision holding that even in the absence of appointments or usurpation of the office of director or managing director, the provisions of Section 290 of the Act would apply....”

Similar is the case decided by the Division Bench of Delhi High Court in **Eastern Linkers (4-supra)**. That was also a case where the shares were allotted by a Director who was purported to have been elected at an invalid meeting. Rejecting the argument based on Section 290 of the Act, the Bench in no uncertain terms held that the said provision is based on the rule culled out from **Turquand's case**^[19] which, as reproduced in **Morris Vs. Kanssen**^[20] is to the effect that the persons contracting with a company and dealing in good faith may assume that acts done within its constitution and powers have been properly and duly performed and are not bound to inquire whether acts of internal management have been regular. The Bench further

held that the said rule is not applicable to the case it was deciding where a Director or a de facto Director invoked the rule so as to validate a transaction which was in fact irregular and unauthorized. The Bench has thus declined to extend the benefit of Section 290 of the Act to the Director who has presumed in his own favour that things are rightly done and on enquiry it was found that they were wrongly done.

Shortly put, the benefit of Section 290 of the Act is generally available to third parties who enter into transactions with a company not knowing what the internal structure and mechanism of the company is. A person such as a Managing Director or a Director who is expected to know what is right and what is wrong and what is legal and what is illegal cannot be allowed to presume things in his favour, and if at the end he fails to prove that he has acted as per law, he cannot take shelter under Section 290 of the Act, more so, in a case where the Directors usurped their office.

Conclusion on Point Nos.1 to 7:

In the light of the discussion undertaken above, this Court has no hesitation to find all the issues against the respondents.

Re Point No.8: Mr. P.S. Raman, has made a strong submission that unless the Company Law Board is satisfied that the conditions which are necessary for winding up a company exist, it has no jurisdiction to pass any order against the company under Section 397(1) of the Act. In support of

his submission, he has placed reliance on the Judgment in **Sangram Singh (10-supra)**. There is no quarrel about this submission. Intervention by the Company Law Board can be made only if the applicant before it establishes that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members, which in ordinary course warrant winding up of the company, but such a step would unfairly prejudice the member or members who made such a complaint before the Company Law Board. So much so, for granting interim relief, the Company Law Board must be prima facie satisfied, that one of the circumstances mentioned in clause (a) of sub-section (2) of Section 397 exists, namely, that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members.

In **Sangram Singh (10-supra)** the Supreme Court held the expression "oppressive" to mean burdensome, harsh and wrongful; that oppression complained of must relate to the manner in which the affairs of the company are being conducted and the conduct complained of must be such as to oppress the minority members and by reason of such acts of oppression it must be shown that the majority members obtained a predominant voting power in the conduct of the company's affairs.

In **V.K. Krishnan Vs. West Fort Hi-Tech Hospital**

Ltd. ^[21], the Supreme Court held that the following amounts to oppression:

- (a) Where the conduct is harsh, burdensome and wrong.
- (b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-à-vis the others.
- (c) The action is against probity and good conduct.

This precisely is the complaint of appellant No.1 before the Company Law Board. It is her specifically pleaded case that respondent No.5 having resigned has convened successive Board meetings and allowed respondent Nos.2 to 4 to usurp the office of Directors and have manipulated the transfer of overwhelming majority of the shares in the company in favour of respondent No.2 and allowed her to unlawfully wrest the management of the company suppressing the rights of appellant No.1. If these allegations are eventually proved, the Company would be liable to be wound up. Therefore, in my opinion, there cannot be a better case than the present one which could satisfy the provisions of Section 397 of the Act warranting interference by the Company Law Board for granting appropriate interim orders under Section 403 of the Act.

Another submission made by Mr. P.S. Raman is that appellant No.1 has not approached this Court with clean hands as she has assured the Company Law Board that she

will withdraw the civil suit filed by her in respect of the Will. It is the case of appellant No.1 that the said statement was made before the Company Law Board on a wrong legal advice and that she has later realized that the scope of the cases before the Company Law Board and that of the suit before the Civil Court is distinct from each other. The learned Counsel has fairly conceded that the validity of the respective Wills propounded by both the parties cannot be adjudicated by the Company Law Board and that appellant No.1 is entitled to pursue the suit. If appellant No.1 has made the statement before the Company Law Board on a wrong advice, which to my mind appears so, she cannot be blamed for going back on her statement.

Mr.P.S. Raman further submitted that in strict sense, no question of law arises for maintaining an appeal under Section 10-F of the Act. In my opinion, this submission has no merit as denial of interim orders in a case where the elements of prima facie case, balance of convenience and irreparable injury are established, itself gives rise to a question of law.

Another submission which was initially made by the learned Counsel for the respondents, but later not pressed is the maintainability of the Company Petition before the Company Law Board. It has now been conceded that appellant No.1 on her own without the aid of the other appellants could maintain the Company Petition under

Section 399(1)(b) of the Act.

Before granting interim reliefs, the Court needs to be satisfied that existence of at least three elements is established by the party seeking such interim reliefs i.e., (1) Prima facie case; (2) Balance of convenience and (3) Irreparable injury. From the findings on Point Nos.1 to 7, it must be held that appellant No.1 has satisfied the elements of prima facie case. Now, it needs to be considered whether the other two elements also exist for granting the interim reliefs pressed by her counsel at the hearing, namely, to supersede the Board of Directors of the company; to appoint an interim administrator or special officer for taking charge of the management of the affairs of the company; and for injunction to restrain respondent Nos.1 to 7 from altering or changing in any manner the shareholding pattern and paid up capital of the company and a direction to the respondents not to hold the meetings of the shareholders of the company and also to restrain respondent No.2 from exercising voting rights in respect of 4,00,961 equity shares.

As regards the relief for suspension of the Board of Directors, the logical consequence of the findings rendered under Point Nos.1 to 3 supra, is that no Board of Directors is legally in existence. With the death of the Chairman and Managing Director of the company and resignation of respondent No.5, appellant No.1 alone continued as the Executive Director. Respondent Nos.2 to 4 not having been

validly appointed and respondent No.5 having resigned, the present Board of Directors cannot be allowed to run the company's affairs. The Court has therefore to necessarily exercise its power under Section 403 of the Act for making necessary arrangement for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable. In the peculiar facts and circumstances of the case, this Court, therefore feels the necessity of making appropriate arrangement to ensure that the company's affairs are regulated properly till such time as the disputes between the parties are settled.

While appellant No.1 has set up the Will stated to have been executed by her husband Late Dr. Vijay Kumar Datla, under which the testator has allegedly created life interest in her in respect of 81% of the shares held by him, respondent No.2 has also set up another Will whereunder all the 81% of the shares of Late Dr. Vijay Kumar Datla were allegedly bequeathed in her favour. As noted hereinbefore, appellant No.1 has filed O.S.No.184 of 2014 for several reliefs based on the Will propounded by her. The respective rights of appellant No.1 and respondent No.2 have therefore to be necessarily adjudicated only in the pending civil suit. Till such adjudication is made, it is not possible for this Court to take any view on the genuineness or otherwise of these Wills. At this stage, therefore, this Court has no option other than ignoring both the Wills and assuming that Late Dr. Vijay

Kumar Datla died intestate.

Under Section 8 of the Hindu Succession Act, 1956, the property of a male Hindu dying intestate shall devolve firstly upon Class-I heirs. Under Section 9 thereof, all the Class-I heirs shall take simultaneously to the exclusion of all other heirs. Thus, pending adjudication of the suit filed by appellant No.1, it must be assumed that appellant No.1 and respondent Nos.2 to 4 are entitled to $\frac{1}{4}^{\text{th}}$ share each in 4,00,961 shares in the company held by Late Dr. Vijay Kumar Datla. Thus, for the present, pending adjudication of the suit filed by appellant No.1, she and respondent Nos.2 to 4, must be treated as having more or less equal shares.

Though there appear to exist simmering differences between appellant No.1 on the one side and respondent Nos.2 to 4 on the other, considering the fact that they are no other than mother and daughters who can sink their differences in their own interest and in the interest of the company, it is desirable that only these persons manage its affairs, lest any outsider's interference may lead to the company which is stated to be on profit making spree getting derailed and losing its rhythm. Therefore, instead of appointing an outsider as the administrator/receiver, keeping in view the interests of the company as of paramount importance, the following arrangement is made:

1. An adhoc Board of Directors is constituted with appellant No.1 as the Executive Director and

respondent Nos.2 to 4 as the Directors of respondent No.1-company. Appellant No.1 shall discharge the functions of the Managing Director of the company.

2. The adhoc Board is responsible for the day-to-day functioning of the company and shall carry out the statutory obligations under the Act.
3. All the decisions shall be taken by the Board based on unanimity and consensus. If consensus on any aspect relating to the day-day-day affairs of the company is eluded among the Board members, appellant No.1, as the Managing Director, shall approach the Company Law Board for appropriate directions.
4. The Board shall not transfer or deal with 81% shares held by Late Dr. Vijay Kumar Datla in any manner till the dispute on the issue of succession is adjudicated in O.S.No.184 of 2014.
5. The Board shall not take any major policy decisions unless there is unanimity among all its members and without the prior approval of the Company Law Board.
6. The adhoc Board shall continue to function till O.S.No.184 of 2014 is disposed of and appropriate orders in C.P.No.36 of 2014 are passed thereafter.
7. The Company Law Board shall keep C.P.No.36 of 2014 pending till O.S.No.184 of 2014 is finally disposed of.

The Company Appeal is accordingly allowed to the extent indicated above.

As a sequel to the disposal of the Company Appeal, Company Application Nos.1331 & 1332 of 2014 and Company Application Nos.7 & 8 of 2015 are disposed of as infructuous.

Justice C.V. Nagarjuna Reddy

Date : 15-4-2015

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[\[1\]](#) (1907(G) 1034)-(1907) 2 Ch. 370

[\[2\]](#) 1976(47) Comp. Cases 693 (Madras)

[\[3\]](#) (1991) 71 Comp. Cases 136 (Mad)

- [\[4\]](#) 1984(55) Comp. Cases 462 (Delhi)
- [\[5\]](#) 1971(41) Comp. Cases 371
- [\[6\]](#) AIR 1964 S.C. 1300
- [\[7\]](#) Manu/KA/2959/2013
- [\[8\]](#) 2012(4) ALD 385
- [\[9\]](#) AIR 1961 S.C. 1633
- [\[10\]](#) (2005) 11 SCC 314
- [\[11\]](#) AIR 1955 Madras 30
- [\[12\]](#) 1993(2) ALT 154
- [\[13\]](#) (1942) ILR 21 Patna 281
- [\[14\]](#) [1921] 2 K.B. 608.
- [\[15\]](#) (1940) A.C. 412
- [\[16\]](#) 1951 (1) Ch. 112
- [\[17\]](#) AIR 1961 S.C. 1352
- [\[18\]](#) (1996) 4 SCC 104
- [\[19\]](#) (1856) 25 LJ QB 317
- [\[20\]](#) (1946) 16 Comp. Cases 186 : 1946(1) All.E.R. 586 : (1946) AC 459
- [\[21\]](#) (2008) 3 SCC 363