

IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPEAL NO. 01 OF 2016
AND
COMPANY APPLICATION NO. 36 OF 2016

1. Shalby Limited,
A Company duly incorporated under
the Companies Act, 1956, and
having its registered office at
Shalby Ltd., Opp. Karnavati Club,
S. G. Road, Ahmedabad 380 015.
2. Dr. Vikram Indrajit Shah, DIN
Shareholder of the Company,
resident of 6, Rupam Society,
Nr. Memnagar Fire Station,
Vijay Cross Roads, Navrangpura,
Ahmedabad – 380 009,
Gujarat, India.
3. Mr. Shyamal Shivkumar Joshi, DIN 00005766
Director and shareholder of the Company,
resident of 40, Prerana Tirth-1,
B/H, Someshwar-II, Satellite,
Ahmedabad 380 015,
Gujarat, India.
4. Mr. Ravi Bhandari, DIN 06395271
CEO, Director of the Company,
Resident of B/3/403,
Green Acres, Prahlad Nagar,
Ahmedabad 380 015,
Gujarat, India.
5. Mr. Maitreya Anilbhai Shah, DIN 02208064
Director of the Company,
Resident of 504, Law Garden Apartment
Opp. Law Garden, Ellisbridge,
Ahmedabad 380 006
Gujarat, India.
6. Vrundavan Shalby Hospitals Limited,
A Company duly incorporated under
the Companies Act, 1956 and
having its registered office at
NH-17A, By-pass, Karaswada,
Mapusa, P. O. Thivim I E, Bardez,

Goa 403 507.

..... Applicants/Appellants

V e r s u s

1. Dr. Digambar Surya Naik, DIN 01682688,
Director and shareholder of the Company,
resident of NH 17A, By-pass, Karaswada,
Mapusa, P.O. Thivim I E, Bardez,
Goa 403 507.
2. Mrs. Mangala Digambar Naik,
a shareholder of the Company,
resident of NH 17A, By-pass, Karaswada,
Mapusa, P. O. Thivim I E, Bardez,
Goa 403 507.
3. Mr. Mammootil Thomas Koshy, DIN 01289866
Director of the Company,
Resident of B-303,
Sterling Court Maheshwari Nagar,
MIDC Andheri (East),
Mumbai 400 093,
Maharashtra, India.

..... Respondent nos. 1 & 2
Original Petitioners
Respondent no. 3
Original Respondent no. 6)

Mr. S. D. Lotlikar, Senior Advocate with Mr. D. Pangam and Ms. Ketki Naik,
Advocates for the Appellants.

Mr. S. G. Desai, Senior Advocate with Mr. Pavithran A.V. and Ms. Ketki Pednekar,
Advocates for the Respondents.

Coram :- F. M. REIS, J

Reserved for Judgment on : 15th October, 2016

Pronounced for Judgment on : 22nd December, 2016

JUDGMENT

Heard Shri S. D. Lotlikar, learned Senior Advocate for the Appellants
and Mr. S. G. Desai, learned Senior Advocate for the Respondents.

2. The above Appeal takes exception to the Order dated 25.04.2016 passed by the Company Law Board, New Delhi Bench, New Delhi in CP no. 18 of 2015.

3. Briefly, it is the case of the Appellants that a Company Petition was filed in 2015 before the Company Law Board, Mumbai Bench by the present Respondent nos. 1 and 2 against the present Appellants and the Respondent no. 3 under Section 397-398 of the Companies Act, 1956, alleging acts of oppression and mismanagement. In the course of the said proceedings before the Company Law Board at Mumbai and the Company Law Board at Delhi,, various interim orders came to be passed including an Order dated 15.09.2015 which was passed upon an Agreement/Consensus between the parties, by which the present Respondent nos. 1 and 2 were to buy out the Appellant nos. 1 to 5 for a consideration of Rs. 19 Crores. In the course of the proceedings in the said CP no. 18 of 2015, various interlocutory Company applications were filed including a Company Application no. 122 of 2015 and 133 of 2015. The Respondent nos. 1 and 2/original Petitioners had also filed a Company Application no. 53 of 2015 seeking to amend Company Petition no. 18/2015, nos. 122 of 2015 and 133 of 2015. The said interlocutory Company Applications were heard by the Company Law Board, New Delhi and by Order dated 16.03.2016, the said Company Applications were kept for Orders. It is further contended by the Appellants that shockingly when the impugned Judgment came to be pronounced on 25.04.2016, the Company Law Board, New Delhi, finally disposed of the main Company Petition instead of pronouncing Orders on the two interlocutory applications bearing nos.

122 of 2015 and 133 of 2015 which in fact were heard and fixed for orders. Being aggrieved by the said Order/Judgment, the Appellants preferred the above Company Appeal essentially on the ground of the breach of the principles of natural justice.

4. It is contended by the Appellants that the Appellant no. 6 is incorporated with the Registrar of Companies at Goa. The Respondent nos. 1 and 2 are initial subscribers to the Memorandum of Association and the authorised Share Capital is Rs.100 lacs divided into 1,00,000 equity shares of 100 each. The Appellant no. 1, Shalby Limited, is incorporated as a registered Office at Ahmedabad, Gujarat which is incorporated to provide world class facilities and offer the entire gamut of medical facilities. It is further contended that the Respondent no. 1 started his own medical practice at Mapusa and in the year 1995, he incorporated the Company i.e. Appellant no. 6 along with his wife the Respondent no. 2. It is further contended that negotiations commenced in the year 2011 which culminated in to an investment Agreement on 12.08.2011 entered between the Respondent no. 1, Appellant no. 6 and the Appellant no. 1. It is further contended that in terms of the said investment Agreement, the name of the Appellant no. 6 came to be changed to Vrundavan Shalby Hospitals Limited. It is further contended that there was a notice from the Appellant no. 6 to hold an Extraordinary Meeting at the registered office on 13.03.2015 inter alia to increase the authorised share capital from the existing Rs. 2 Crores divided into 2,00,000/- equity shares of Rs.100/- each to Rs. 5 Crores divided into 5,00,000/- equity shares of Rs. 100 each by creating additional 3,00,000 equity shares of Rs. 100/ each, each ranking pari

passu with the existing shares of the Appellant no. 6. The above Company Petition no. 18 of 2015 was filed by the Respondent nos. 1 and 2 at Mumbai under Sections 397, 398, 399, 402 and 403 of the Companies Act, 1956 against the Appellants and the Respondent no. 3 for various final as well as interim reliefs as prayed for in paragraphs 36 and 37 of the Petition. It is further contended that the matter was mentioned for urgent reliefs before the Mumbai Bench in March 2015 and by ad-interim Order dated 12.03.2015, the Appellant no. 6 was directed to hold the Extraordinary General Body Meeting on the schedule time, date and place but, however, the Resolution passed, if any, were not to be implemented until the next date of hearing. It is further contended that the Appellant no. 1 was required to file a short reply within a week in respect of the interim relief to which rejoinder, if any, was allowed to be filed. The Company Petition was listed on 27.03.2015 for hearing in respect of the interim reliefs. Various Resolutions came to be passed at the Extraordinary General Body Meeting on 13.03.2015 and the Resolution for raising the capital through Right Issue of shares was also passed. Accordingly, the Appellant nos. 1 to 5 filed an interim Affidavit in reply on 20.03.2015 and the rejoinder was filed on 24.03.2015 by the Respondent nos. 1 and 2. The Company Law Board at Mumbai passed an interim Order on 10.04.2015 by which the Resolution passed on 13.03.2015 were stayed and resultantly, the Appellant no. 6 was restrained from giving effect to the letter of offer of Right Issues. Thereafter, the Appellant nos. 1 to 5 filed before the Company Law Board at Mumbai on 13.04.2015 Company Application no. 72 of 2015 praying for an Order to permit the Appellant no. 6 to convene a fresh meeting of its Board of Directors followed by that of its shareholders to consider to increase the authorised equity share capital and

the paid up equity share capital with full compliance of the provisions of the Companies Act, 2013. The present Respondent nos. 1 and 2 filed their affidavit in reply to the Company Application no. 72 of 2015. The said application was disposed of by the Mumbai Bench on 28.04.2015 by permitting the Company to hold a fresh Extraordinary General Body Meeting for consideration of the Rights Issue and the Respondent nos. 1 and 2 were free to raise the objections and it was directed that the Company Application be listed on 05.05.2015. The Appellant no. 6 issued notice of the meeting to be held on 02.06.2015 to transact various resolutions stated therein. The Advocate of the Respondent nos. 1 and 2 addressed a letter to the Appellant no. 6 in connection therewith on 30.05.2015. The Meeting of the Board of Directors was held on 02.06.2015 at which the Appellant nos. 3, 4, 5 and the Respondent no. 1 were present. Various Resolutions came to be passed subject to the approval of the members and the Company Law Board and subject to such conditions and modifications as may be prescribed. While granting such approval, the Board of Directors consented to offer, issue and allot not exceeding 4,70,000 Equity Shares on right basis in one or more tranches at a price of Rs.160/- per share. Consequent upon the said Resolution of the Board of Directors, notice of the Extraordinary General Body Meeting of the Share Holders of the Appellant no. 6 was called on 30.06.2015. On 29.06.2015, the Company Law Board passed in exercise of powers conferred by Sub-Section (4)(B) of Section 10E of the Companies Act, 1956 read with Regulation 4 of Regulations 1991 in the matter of constituting Benches for the purpose of exercising and discharging Board's powers. On 30.06.2015, the Extraordinary General Meeting of the shareholders of the Respondent no. 6-Company was held wherein besides

Appellant nos. 2, 3, 4 and 5, the Respondent nos. 1 and 2 were also present and various Resolutions were passed. In the aforesaid background in view of the Order dated 20.04.2015 passed by the Company Law Board Mumbai, the Appellant nos. 1 to 5 filed before the Company Law Board, Mumbai, Company Application no. 122/2015 for a prayer that an Order or direction permitting the Appellant no. 6 to give effect to the said Resolutions of the shareholders of Extraordinary General Meeting Body dated 30.06.2015. The Respondent nos. 1 and 2 filed an affidavit in reply to such application on 03.08.2015 and inspection was permitted by an Order dated 04.08.2015 for inspection to the Respondent nos. 1 and 2 and a suggestion was given to the parties to amicably settle the dispute. An affidavit in rejoinder was filed by the present Appellants and ultimately, the present Respondent nos. 1 and 2 filed Company Application no. 133 of 2015 for setting aside the Resolutions passed in the Extraordinary General Meeting dated 30.06.2015 and for staying the same by way of interim Order. The Company Law Board of New Delhi passed an Order recording the Resolution passed an Order recording that the settlement arrived at between the parties. The Original Petitioners-Respondent nos. 1 and 2 herein, filed Company Application no. 162 of 2015 seeking extension of time for making the payment in terms of the settlement. The Respondent nos. 1 and 2 thereafter filed written arguments in Company Application no. 122 of 2015 on 05.11.2015 as settlement could not be worked out. The matter was thereafter heard on 05.11.2015 and thereafter posted for filing written arguments on 23.11.2015. The present Appellant nos. 1 to 5 filed their written arguments on 23.11.2015. Both the sides thereafter filed written submissions and the matter was adjourned for clarification. Additional written

submissions were thereafter filed on 13.12.2015 in Company Application no. 122 of 2015 and Company Application no. 133 of 2015 by the Appellant nos. 1 to 5 herein. The Respondent nos. 1 and 2 thereafter filed written arguments in respect of Company Application no. 122 of 2015 and 133 of 2015 on 14.12.2015. Additional synopsis were filed by the Appellant nos. 1 to 5 on 05.03.2016 in the said two applications. The hearing of the Company Application nos. 122 of 2015 and 133 of 2015 were concluded on 16.03.2016 before the Company Law Board in New Delhi and was placed for Orders. The Company Law Board pronounced its Order/Judgment on 25.04.2016 finally disposing of the Company Petition no. 18 of 2015 which stands impugned in the present Appeal.

5. The Respondents have filed their reply, inter alia, contending that the above Appeal is not maintainable as Appeal under Section 10F is maintainable only on the question of law. It is further contended that the Company Law Board had jurisdiction to decide the Company Application no. 122/2015 filed by the Appellants and Company Application no. 133 of 2015 filed by the Respondent nos. 1 and 2 as the issue involved is whether the decision taken by the Appellants to increase the Share Capital by rights issue is an act of oppression to the Minority Shareholders i.e. Dr, Naik Group in terms of Section 397 of the Companies Act. It is further contended that the Company Law Board has not committed any breach of the principles of natural justice as according to the said Respondents, there is no dispute that both the parties have been fully heard as far as the interim Applications are concerned and, as such, according to the Respondents, there was no separate hearing required to be held in the main Company Petition. It is further

contended that the Company Law Board has rightly appreciated the material on record and issued directions in accordance with law and there is no infirmity to such views taken by the Company Law Board. It is further pointed out that the Company Law Board has held that the acts and the conduct of Shalby Group is oppressive against the interests of Dr. Naik Group. It is further pointed out that by the impugned Judgment, Dr. Naik Group has been ordered to exit from the Company and consequential orders, have been made at Para 117 of the impugned Judgment. It is further pointed out that both the parties accept that they could not work together and, as such, according to the Respondents, there is no reason to interfere in the impugned Judgment. It is further pointed out that Central Government Order dated 29.06.2015 empowers the Delhi Company Law Board to decide all urgent and mentioning matters and, therefore, the main Company Petition was mentioned before the Company Law Board. It is also brought to my notice subsequent Order dated 23.09.2015 whereby the Company Law Board Delhi was empowered to entertain and dispose of all urgent and mentioning matters falling in the State of Goa mentioned before it. It is further pointed out that in view of the urgency in deciding the main Company Petition, the Mumbai Company Law Board by Order dated 10.04.2015 and 24.04.2015, had fixed the main Company Petition for final hearing on 05.05.2015 which itself suggested that in view of the urgency, the main Company Petition was agreed to be disposed of. It is further pointed out that the reliefs and the grounds in the two Misc. Applications as well as Company Applications are similar and, as such, there shall be no injustice occasioned in disposing of the main Petition. The Respondents elaborately point out that there is no infirmity in the findings of the learned

Company Law Board and looking into the facts of the case and the oppression sought to be committed by the Appellant no. 1 to the Minority Shareholders of the Dr. Naik Group, the Company Law Board has minutely concluded to come to the conclusion that the Respondent nos. 1 and 2 were entitled for reliefs as directed in the impugned Judgment. It is vehemently disputed that there is any breach of the principles of natural justice and, consequently prayed that the Petition be rejected.

6. Mr. S. D. Lotlikar, learned Senior Advocate appearing for the Appellants has pointed out that on a bare perusal of the written synopsis filed by the Respondents themselves would suggest that the arguments advanced were only in connection with the said Company Application nos. 122 and 133 of 2015. It is further pointed out that the Respondents themselves have stated that they restricted the arguments only with regard to the interim reliefs. The learned Senior Advocate further pointed out that there was no hearing on the main Company Petition as, according to him, there were two Company Applications which were urgent in nature, one Company Application filed by the Appellants to permit them to implement the Resolution of the General Body Meeting and the subsequent Application filed by the Respondent nos. 1 and 2 questioning the legality of such Resolution passed at the Extraordinary General Meeting. The learned Senior Advocate further pointed out that the matter itself was posted only for hearing of oral arguments as well as written submissions with regard to interim applications and, as such, the conduct of the Company Law Board to proceed to dispose of the Petition without a proper hearing on the main Petition, is erroneous. Learned Senior Advocate has thereafter taken me through the Notifications issued by the

concerned authorities to point out that the only urgent reliefs were to be handled by the Company Law Board, New Delhi in view of the absence of a Member at Mumbai and, as such, not giving a notice to the concerned parties that the matter was being examined finally, would not at all be justified. Learned Senior Advocate has thereafter taken me through the impugned Judgment to point out that the findings therein are in any way perverse in breach of the principles of natural justice, without properly looking into the evidence on record especially the evidence produced by the Appellants and, as such, the impugned Judgment passed by the Company Law Board deserves to be quashed and set aside.

7. On the other hand, Shri S. G. Desai, learned Senior Advocate appearing for the Respondent nos. 1 and 2, has pointed out that though the Company Applications filed one by the Appellants and the other by the Respondent nos. 1 and 2 were heard, the learned Company Law Board was justified to pass the impugned Judgment looking into the rival contentions in the main Company Petition filed by the Respondent nos. 1 and 2. Learned Senior Advocate further submits that as the Company Law Board found that disposing of the main Company Application would be justified in the circumstances of the case and as the Appellants were notified to that effect, the question of interference of this Court in the present Writ Petition would be totally unjustified. Learned Senior Advocate further pointed out that the Appeal against the Judgment of the Company Law Board is on a substantial point of law and, in the present case, the Appellants have failed to show any such question in the above Appeal. Learned Senior Advocate further pointed out that the Company Law Board at Delhi was dealing with the core

issue in the main Company Petition that the whole exercise by the Appellants was to decimate the Dr. Naik Group which cannot be decided at an interim stage. It was further pointed out that the Bench at Delhi found that there was an urgency to adjudicate the issues between the parties and, as such, proceed to decide the Company Application along with the main Petition. Learned Senior Advocate has thereafter taken me minutely through the impugned Judgment to point out that it is a well reasoned Judgment appreciating all the contentions and minutely examining the material on record which would not call for interference of this Court in the present Appeal. The learned Senior Advocate further pointed out that ultimately the impugned Judgment directs the exit of the Naik Group with consequential benefits and, as such, there is no substantive issue of law which calls for consideration in the present Appeal. The learned Senior Advocate further pointed out that the Company Law Board has rightly come to the conclusion that the acts and conducts of the Shalby Group is an oppression against the Naik Group. Learned Senior Advocate as such submits that there is no case made out for any interference in the impugned Judgment and, as such, the Appeal be rejected.

In support of his submissions, the learned Senior Advocate has relied upon the Judgments of the Andhra Pradesh High Court reported in ***Companies Cases Vol. 110 (A.P.) 2002 page 193*** in the case of ***Shri Ramdas Motor Transport Ltd. & Ors. vs. Karedla Suryanarayana & Ors.*** The learned Senior Advocate has also relied upon the Judgment reported in ***1981) 3 SCC 333*** in the case of ***Needle Industries (India) Ltd. & Ors. vs. Needle Industries Newey (India) Holding Ltd. & Ors.,*** to point out that the hearing of a Petition under Section 397 of the Companies Act has to be heard in the Open Court by following

the procedure of Civil Procedure Code. The learned Senior Advocate has also relied upon the Judgments reported in **(2004) 4 Company Law Journal 519** in the case of **B. V. Thirumalai & Ors. vs. Best Vestures Trading (P) Ltd., 2002 Company Cases Page 800** in the case of **Ashok Kumar Oswal & anr. vs. Panchsheel Textile Manufacturing and Trading Co. (P) LTD. & Ors.** of the Company Law Board, **2007) 3 Company Law Journal 499 (CLB)** in the case of **S. Varadarajan & anr. vs. Udhayem Leasings and Investments (P) Ltd. & Ors., (2010) 158 Company Cases 195 (CLB)** in the case of **Mrs. Gurpreet Gill vs. Pumpkin Studio P. Ltd. & Ors.** and **(1958) 3 ALL E. R. 66** in the case of **Scottish Co-operative Wholesale Society Ltd. Meyer & anr.**

8. I have carefully considered the rival contentions of both the learned Senior Advocates appearing for the their respective parties. The main question of law raised in the present Appeal is whether the matter fixed before the Delhi Bench was heard only on the two Company Application nos. 122 and 133 of 2015 and the disposal of the main Company Petition was in breach of the principles of natural justice. The records clearly reveal that the Company Petition filed by the Respondent nos. 1 and 2 was before the Bench at Mumbai, In fact, the Company Law Board Regulations of 1991 clearly provides in Regulation (7) that all proceedings other than the proceedings before the Principal Bench under Regulation 4 shall be instituted before the Bench within whose jurisdiction the registered office of the Company is situated or at any other place outside the region with the consent of the parties. In such circumstances, the Petition was filed in Mumbai which had jurisdiction to entertain such Petition. An Order was passed

dated 29.06.2015 by the Government in exercise of the powers contained in sub-Section 4 (B) of Section 10(E) of the Companies Act 1956 read with Regulation 4 of the Company Law Board Regulations 1991 thereby constituting the benches for the purpose of exercising and discharging the Board's powers and functions in the manner specified therein. Thereafter, on 23.09.2015, an Order came to be passed by the Government to initiate, inter alia, stating thus :

- “(i) ...
- (ii) All urgent and mentioning matters falling in the State of Goa, Gujarat, Chhattisgarh, Madhya Pradesh and Union Territories of Dadra and Nagar Haveli and Daman & Diu in CLB, Mumbai Bench shall be mentioned before Shri B. S. V. Prakash Kumar, Member (Judicial), CLB, New Delhi Bench on the afternoon at 2.30 p.m. On every “Tuesday and Thursday” in a week at New Delhi.”

9. There was another Order dated 25.01.2016 issued by the Government of India in partial modifications of the said Order dated 29.01.2016 wherein it has been stated that all urgent and mentioning matters falling under Section 111, 397/398 of the Companies Act, 1956 within the jurisdiction of Company Law Board Mumbai Bench shall also be heard by the Judicial Member.

10. On perusal of the said Orders, the Company Law Board at New Delhi Bench was conferred powers only to examine urgent and mentioning matters which require urgent reliefs. In the present case, in consonance with the said Orders, the Company Application nos. 122 of 2015 and 133 of 2015 wherein the Appellants on

one hand and the Respondent nos. 1 and 2 on the other hand, filed applications for interim reliefs and in view of the urgency shown by the parties, the matter was placed for hearing on such application before the Bench at New Delhi. In fact, the learned Company Law Board whilst passing the impugned Judgment has framed two points for determination, namely :

“Point no. 1 : Whether the issues and the reliefs in CA 122/2015 and CA 133/2015 are same as the issues and reliefs sought in the main petition ?

Point no. 2 : When the applications moved against each other not only being replete of the averments and issues of main petition and comprehensively asserted and denied with material papers on both sides and thread bare argued all the points, and when the petition becomes infructuous once these applications are decided, would it be possible to dispose the main petition along with these applications ?

11. At Para 67 of the said Judgment, it is clearly recorded that since the pleadings in Company Application nos. 122 of 2015 and 133 of 2015 are complete, the Bench heard the Applications which are replete of the averments and the contentions in the main Petition and the replies filed by the Appellant no. 1. The impugned Judgment further records that the Courts are not obliged to put on hold passing effective remedy just for want of hearing the main case. It is also recorded to that when the relief in Company Applications make the main Petition infructuous, such Company Petition could be disposed of along with the application and, as such, proceeded to dispose of the main Company Petition. The said observation

in the impugned Judgment clearly suggests that it was a view taken by the learned Bench of the Company Law Board that whilst deciding the said applications, it would be appropriate to dispose of the main Company Petition along with the said Company Application nos. 122 and 133 of 2015. Admittedly, this view was not placed before the parties at the time of the hearing of the Company Applications. It was as such incumbent upon the learned Company Law Board to place such views before the concerned parties so as to give them an opportunity to advance final arguments on the main Company Petition. The parties are always at liberty to fashion their arguments in the manner they find it more suitable and considering that only the Company Applications were under consideration, it was not open to the learned Board to dispose off the main Company Petition without giving an effective hearing to the Appellants and the Respondents on the main Petition. Having failed to give such opportunity, the impugned Judgments passed by the learned Company Law Board cannot be sustained and deserves to be quashed and set aside on this ground alone.

12. No doubt, the learned Board has elaborately examined the material on record whilst passing the impugned Judgment but the law recognizes that a view has to be taken after giving an appropriate notice and opportunity to the parties to advance their arguments. The ultimate decision taken by the Company Law Board would affect the substantive rights of the parties and, such rights, cannot be defeated or taken away without giving the parties an effective hearing on the issues involved.

13. Apart from that, it is pointed out by Shri S. D. Lotlikar, learned Senior Advocate appearing for the Appellants, that the powers which were conferred on the Bench at New Delhi were only to examine urgent reliefs which the parties could be entitled. As pointed out herein above, what was mentioned before the Bench at New Delhi were two Company Applications bearing nos. 122 of 2015 and 133 of 2015. Even on perusal of the written submissions filed by the Respondent nos. 1 and 2, it has been clearly submitted that the arguments advanced were in connection with the two Company Applications and the right to advance arguments on the main Petition were reserved. Interlocutory Orders in Misc. Applications are on prima facie considerations in aid of the final relief prayed in the main Petition. When the Respondent nos. 1 and 2 themselves have taken such stand, it was not appropriate on the part of the Respondent nos. 1 and 2 to now rescile from such stand to contend that the learned Company Law Board was justified to pass the impugned Judgment disposing of the Company Petition.

14. Though Mr. S. G. Desai, learned Senior Advocate appearing for the Respondent nos. 1 and 2, had attempted to impress upon this Court the correctness of the reasoning of the Company Law Board which cannot be said to be erroneous but, however, as the Appellants were admittedly not put to notice that the main Company Petition itself was being disposed off, such finding laboriously rendered by the Company Law Board stands vitiated on account of the breach of the principles of natural justice as there was no effective hearing on the main Company Petition.

15. In such circumstances, without going into the merits of the rival contentions raised by the Appellants and the Respondents in the main Petition, I find it appropriate and in the interest of justice to quash and set aside the impugned Judgment passed by the Company Law Board and direct the Company Law Board to decide the Company Petition and the said two Applications afresh after hearing the parties in accordance with law.

16. In view of the above, I pass the following :

ORDER

(i) The impugned Order/Judgment dated 25.04.2016 is quashed and set aside.

(ii) The Company Petition no. 18 of 2015 and Company Application nos. 122 of 2015 and 133 of 2015 are restored to the file of the learned Company Law Board, Mumbai Bench.

(iii) The Company Law Board is directed to decide the Company Petition and the said two Applications afresh in the light of the observations made herein above after hearing the parties in accordance with law.

(iv) Ad-interim reliefs, if any, in operation before the Company Law Board, to continue until further orders in the said Petition.

(v) The parties are directed to appearing before the learned Company Law Board, Mumbai, on 30.01.2017.

(vi) Appeal stands disposed of according with no orders as to costs.

F .M. REIS, J.

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