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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CO. A. (SB) 40/2013

January 27, 2016

RAJ KUMAR BHATIA AND ORS.

....Appellants

Through: Mr. U. K. Choudhary, Sr. Adv. with
Mr. Abhishek Kumar, Advocate

Versus

M/S. AV LIGHT AUTOMOTIVES LTD. & ORS. ... Respondents

Through: Mr. M. Dutta, Advocate

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

SUDERSHAN KUMAR MISRA, J.

1. This is a petitioners' appeal under Section 10(f) of the Companies Act, 1956, impugning the dismissal of their petition by the Company Law Board on 24.06.2015 as well as the direction that the impasse between the two groups be ended by directing the appellants; who currently hold 15.87% shares; to exit the company by selling their shares to the respondents at a value to be determined by a valuer appointed by the Company Law Board.

2. To begin with, the first respondent, AV Light Automotives Ltd. (the company), was incorporated on 07.03.1996. At that time, the appellants as well as respondent Nos.2 to 5 held the entire shareholding of the company. The appellants group held 33.33% whilst the remaining 66.67% was held by respondents 2 to 5. And, out of the six directors on the board of the company, the appellant's group had two directors.

3. According to the appellants, it was understood by both groups that the company would function in the nature of a partnership, where the first appellant had also provided his own premises to the company to commence business. At the same time, in view of his experience, the second respondent was given a free hand in the belief that he would run the company honestly whilst keeping every shareholder in the loop. However, at the commencement of production, the appellants group was neglected by the respondents, who did not even bother to issue notice of Board Meetings or of the Annual General Meeting to them; and that the respondents also stopped providing copies of the balance sheet and other relevant documents to the appellants; and it was only in May 2007 that the appellants learnt from an official of the Excise Department that the company was not maintaining proper records. The first appellant thereafter wrote to the company on 20.06.2007 seeking audited accounts of the company from the year 2003 onwards, to which, no response was received. In support of this, the appellants rely on UPC receipts. Ultimately, the appellants are stated to have inspected the records of the company on 20.12.2007 and 24.12.2007, and learnt that the appellants 1 and 3 have been removed from the directorship of the company, and that the share capital of the company have been increased from Rs.30 lakhs to Rs.63 lakhs without offering any additional shares to the appellants.

It is also alleged by the appellants that they have not received notice of any Board Meeting held after the respondents assumed control of the company; and that, in fact, no such meetings had been held by the respondents. According to the appellants, this constitutes oppression since it amounts to the denial of appellants' legitimate right as Director and Shareholder to participate in the management of the company, and is also

an act of mismanagement because it violates the mandate of the Companies Act, under which the company was obliged to hold at least one board meeting every three months.

4. The principal grievance of the appellants is that in the year 2005, the respondents illegally increased the subscribed capital of the company from Rs.30,00,000/- to Rs.63,00,000/- by issuing Rights shares without providing the appellants an opportunity to subscribe to the same; and allotted the said shares to themselves, their close family friends and relatives in violation of Section 81 (1A) of the Companies Act, 1956, thereby reducing the shareholding of the appellants' group from 33.33% to 15.87%, while increasing that of the respondents' group from 66.66% to 84.13%. The appellants had challenged the issuance of Rights shares before the Company Law Board (CLB for short), inter alia, on following grounds:

- (a) That the resolution required under Section 81(1A) of the Act, has not been passed. The consent of the shareholders has also not been obtained for effecting increase in the share capital of the company. Nor was any notice for issue of right shares received by them; therefore, in the absence of a fair opportunity to participate, they could not exercise their legal right to subscribe the Rights issue.
- (b) Notice, claimed to be issued by the respondents through UPC, had actually never been issued by them; and the UPC produced by the respondents is forged. In support of their submission, the appellants contend that the Board Meeting approving the issue of right shares was convened on 5th February, 2005 at 5:00 pm at Faridabad, and the UPC receipt produced by the appellants was also of 5th February,

2005 from Lodhi Road Post Office, since the meeting itself was convened at 5:00 pm, it was impossible for the notice to have been dispatched on the same day. Secondly, for the respondents to have chosen to despatch the notice from Lodhi Road at New Delhi, and not from Faridabad in Haryana, where the meeting was held, is suspicious.

- (c) Although in the Board Meeting of 5th February, 2005, it was decided that the closing date of the issue was 5th March, 2005, however, the respondents have allotted themselves the rights shares on 2nd March, 2005 itself, i.e. prior to closing date of the issue, thus, foreclosing the rights of the appellants.
- (d) Even though the balance sheet for the year ended 31st March, 2006 shows Rs.18,30,745/- as share application money pending for allotment, however, the respondents have proceeded to allot shares to their family members alone.

5. In response, the respondents contend that the share capital of the company was increased after following due process; and that the requisite forms were filed with the ROC. They claimed that the provisions of Section 81(1A) of the Companies Act are not applicable since they had issued the rights shares in terms of Section 81 (c) & (d) of the Act. They further contend that although the Board Meeting of this closely held company with four directors was held at 5:00 pm at Faridabad; the Letter of Offer was issued from the Registered Office of the company at South Extension, New Delhi, and posted to the shareholders by UPC from the nearby Lodhi Road Post Office. They further submitted that the

shareholders of the company, other than the appellants, had already deployed the share application money aggregating to Rs.17,50,000/- during the financial year 2003-04 for further increase of the equity share capital which was required to maintain debt equity ratio for seeking financial assistance from bank/financial institution.

6. The respondents also submitted that although in the original Board Minutes, as also in the notice issued to the appellants, the closing date for the Rights issue was 2nd March, 2005, but in the extracts of the Board Meeting, it was inadvertently mentioned as 5th March, 2005. They further submitted that the share application money, shown pending for allotment in the balance sheet for the year ended 31st March, 2006, was the additional money that had been received from the existing shareholders to meet the funding requirements of the company; and that no further allotment has been made till date. The respondents have also submitted that the business of the company was being undertaken with the aim to benefit all the shareholders of the company; and that the company is regularly paying dividend to the appellants; and that in fact, a sum of Rs.11.80 lacs has been distributed as dividend continuously without break till the financial year ended 31st March, 2007.

7. While dealing with these issues, the Company Law Board observed as under:

“.....The company went for rights issue when the lending Bank i.e. City Bank imposed a condition upon the company to move into its own premises within twelve months of disbursement, first instalment was received in the month of July, 2003. With the money and the funds generated from other sources, the factory premises was purchased at Manesar in Haryana valued at Rs.77,90,166/-. Thereafter raised funds for clearance of loan of HSIDC and for construction of building premises valued at a total amount of Rs.1,10,93,884/-

. Towards meeting some of these expenses, the company raised fund by going for rights issue. The respondent company Board passed a resolution on 5-2-2005 to raise fund by issuing equity shares of 3,30,000 shares of Rs.10 each in the share capital of the company as rights issue to the members who at the date of offer i.e. 5-2-2005 are holders of the company in proportion of 1:1 ratio. The Board further resolved that the share transfer book should remain closed from 5-2-2005 to March 2, 2005 making last date for acceptance of offer at March 2, 2005. The respondent company sent notices to the petitioners along with resolution indicating to how many proportionate shares the petitioner are entitled. To prove dispatch of notices to the petitioner, the respondents filed UPCs for proving notices have been sent to the shareholders including the petitioner.”

8. Regarding the issuance of notice from the Lodhi Road Post Office, the Company Law Board concluded that since it is a closely held company with four directors and about ten shareholders, it makes no difference from where they sent the paper of their resolution and notice to the shareholders. On the matter of closing of the issue on 2nd March, 2005 instead of 5th March, 2005, it held that even if it was assumed that the date of closure of the Rights issue communicated to the petitioner was wrong, had they intended to avail the opportunity, they could have informed the company that the offer was closing two days earlier; with a request for extension. Furthermore, they did not even bother to initiate any proceedings against the company over this issue. Therefore, the Company Law Board was satisfied that the petitioners were aware of the Rights issue; that there was proper communication to them; they consciously did not respond to the rights issue, and that they had raised this issue merely as an afterthought on seeing the company growing well.

9. Before the Company Law Board, the appellants also challenged the removal of the first and third appellant from the Board, *inter alia*, on the following grounds:

- a. That although the Articles of Association of the company specifically provide that any resignation from the Board shall be in writing, in fact, the appellants never resigned, either orally or in writing because they never intended to resign. However, in the form filed with ROC, the respondent has mentioned the reason for their removal as, “resignation letters received”.
- b. When the respondents had accepted the resignations of appellants 1 & 3, in their Board Meeting of 05.01.2014; then there was no need to pass another Resolution on 01.04.2014 accepting their resignation over again. Furthermore, although the language of minutes of the Board Meetings shows that the appellants were present, but actually those resolutions were passed in their absence.

10. In response, the respondents contend that, in fact, the appellants had tendered an oral resignation which was accepted; but inadvertently, in the form filed with the ROC, it was stated, “resignation letters received”. In this context, they submitted that the company wanted a loan from the Citi Bank for which personal guarantees of the Directors were required, with the additional pre-requisite that none of the directors of the company is a defaulter of the bank. However, since the appellant No.1 was being shown as a defaulter qua his credit card payments, therefore, appellant No.1 and appellant No.3, who is his wife, had voluntarily resigned from the Board so as to enable the company to raise the said loan. The respondents have also emphasized that, in fact, the appellants did not impeach their removal

in their petition before the Company Law Board; and have raised this only in their rejoinder.

11. The issue of removal of the appellants from directorship was decided by the Company Law Board against the petitioners. In that context it stated as follows;

“16. It is evident that the petitioners 1 & 2 were shown removed as directors from April, 2004, there is material showing that loaning Bank could provide loan only when its directors are not defaulters to the Bank, the time of showing their removal as directors is coincidental to the timing Bank indicated loan be provided if no director of the company is defaulter to the Bank. For having the petitioners 1 & 2 themselves manage their own company i.e. P-4 company, it can be inferred that the petitioners are in know how Board meetings and general meetings take place, and must be knowing how frequent board meetings and general meetings take place, despite knowing all these, these petitioners never made any complaint to the company until May, 2007, especially when they have been admittedly receiving dividend from the company..... The petitioners perhaps remained silent when the company was struggling for funds and struggling to establish itself by the efforts of the respondents. The petitioners have not given their personal guarantees to the company; it is the respondents given their personal guarantees to have loans come to the company. Having the company wriggled out of trying time, if the petitioners now come and say the act of removal of them as directors is in violation of the provisions, it cannot become a ground of oppression and mismanagement.....

17. These petitioners stopped participating in the management from 2003 onwards, let us assume for time being, they were removed from the board without following the procedure laid under the Companies Act, where these petitioners were for about four years. They suddenly work up in the year 2008, filed this company petition saying they trusted the respondents and they breached fiduciary obligation

cast upon them. Here one more thing to remember is that directors will be appointed in a company to administer the affairs of the company, if they failed to participate in the affairs of the company, the company does not require them to continue in the management, the petitioners admittedly left the management to the respondents for the reasons they know best. The petitioners, after much water has flown, cannot ask rewinding all these happenings, which have given growth to the company.”

12. At the outset, counsel for the respondents objected to the maintainability of this appeal on the ground that it raises only disputed questions of fact for which the Company Law Board is the final authority. And unless the order passed by the Company Law Board is perverse; or against the material on record; or against settled principles of law, this Court will not entertain such an appeal under Section 10-F of the Act. It is submitted that since none of the issues raised by the petitioner are valid questions of law, the appeal is liable to be dismissed on this short ground. He referred to the decision of this Court in *V.S. Krishnan and Others Vs. Westfort Hi-Tech Hospital Ltd.*, (2008) 3 SCC 363 in this behalf.

13. Counsel for the appellants on the other hand submitted that the appeal does involve substantive questions of law, and it cannot be said that only disputed questions of fact are sought to be re-agitated in this appeal. He submitted that the respondents could not have removed the appellants as directors of the company without their resignation in writing in terms of Articles of Association of the company. Therefore, the so called oral resignations allegedly submitted by the appellants is a misrepresentation and a fraud played on the appellants by the respondents. Further that the increase in capital by the respondents by issuing rights shares to the

shareholders of the company, without complying with Section 81(1A) of the Act, was illegal. And that allotment of rights shares to persons who were not the shareholders of the company, is in clear violation of the said section of the Act. Further, the allotments made to Smt. Chand Rani could not have been made since she was not a shareholder of the company at the relevant time. According to him, this amounted to preferential allotment in favour of the said Smt. Chand Rani; but even in such a case, the legal formalities for making allotment of preferential shares to Smt. Chand Rani were not complied with.

14. The appellants claim that the following questions of law arise in this appeal;

- I. Whether the alleged resignation of Appellant No. 1 & 3 from the directorship of the Company could be held to be valid, when specific case of the Appellant Nos. 1 & 3 was that they never resigned and in the absence of any such resignation in writing being brought on record by the Respondent?
- II. Whether the learned CLB could have upheld the alleged resignation of Appellant Nos. 1 & 3 in exercise of its equitable jurisdiction by completely ignoring that the Appellants were alleged to have resigned in two board meetings purportedly held on 05.01.2004 and 01.04.2004 respectively in which meetings Appellant Nos. 1 & 3 were not present?
- III. Whether the meetings dated 5.1.2004 and 1.4.2004 allegedly held by the board of directors of the Respondent Company could be held to be valid in the absence of any notice in terms of section 286 of the

Companies Act, having been served on the directors including the Appellant Nos. 1 & 3?

- IV. Whether illegal removal of Appellant Nos. 1 & 3 from the directorship of Respondent No. 1 Company could be brushed aside as a mere technicality not adversely affecting the interest of Appellant Nos. 1 & 3?
- V. Whether the impugned order suffers from patent illegality in as much as Appellant No. 3 who was not a defaulter to the Citibank, was alleged to have resigned through Appellant No. 1?
- VI. Whether the CLB's reliance on the judgments in the case of Mohanlal Ganpatram and Another Vs. Shree Sayaji Jubilee Cotton and Jute Mills Co. Ltd. And Other [AIR 1965 Guj. 96 at 103] and Sangramsingh P Gaekwad & Ors Vs. Shantadevi P. Gaekwad (Dead) through LRs. And Ors.; 2005 (11) SCC 314 is correct in view of totally different facts and circumstances of the present case?
- VII. Whether the findings in T. Muraru Vs. State (1970) 46 Company Case 613 Madras, as noted in para 24 of the impugned order, were applicable in the present case in view of the clearly distinguishable facts and circumstances including a provision in the Articles of Association of the Respondent Company providing for vacation of the office of a director by resignation in writing, admitted non-observance thereof by Respondent Nos. 2 to 5 and submission of Form 32 filed by Respondent No. 1 with the Registrar of Companies

under the signature of Respondent No. 2 showing “resignation letter received”?

- VIII. Whether the findings of the CLB, upholding the belatedly raised plea of the Respondents of alleged oral resignation of Appellant No. 1 & 3, is patently illegal, unreasoned and the one based on conjecture and surmises?
- IX. Whether the CLB failed to appreciate the case of the Appellants qua the illegal and unauthorized issue of right shares by the Respondents, in its right perspective thereby vitiating the impugned order?
- X. Whether the so called need/justification for issuance of right shares by Respondent Company, accepted as correct by the learned CLB in para 27 of the impugned order, was borne out of records and even if it was so, whether the findings of the learned CLB are based on complete non-application of mind and bad in law?
- XI. Whether the decision of issuance of right shares in the meeting of the board of directors purportedly held on 5.2.2005 and subsequent allotment of right shares to the shareholders other than Appellants, is in compliance with various legal provisions and hence lawful?
- XII. Whether the findings of the learned CLB attributing knowledge of the right issue to the Appellants are legally sustainable in view of specific plea of Appellants of receiving no notice/offer from Respondent No. 1, for subscribing to the right issue?

- XIII. Whether patent illegalities committed by the Respondents in relation to the issue of right shares, including closer of offer prior to the date mentioned in the board resolution allegedly passed in the meeting held on 5.2.2005, could be cured/ignored by the learned CLB on the ground of alleged error of inadvertence on the part of the Respondents?
- XIV. Whether the meeting of the board of directors of the Company allegedly held on 5.2.2005 at 5 pm at Faridabad and alleged dispatch of the notice to the shareholders on the same date through UPC from the post office at Lodhi Road New Delhi, were not sufficient for the learned CLB to hold that notices were in fact not dispatched?
- XV. Whether service of notice through UPC is legally acceptable so as to draw presumption of service even in cases where such service is seriously disputed by its intended recipients?
- XVI. Whether the acts of illegal removal of the Appellant No. 1 & 3 from the directorship of Respondent Company and unlawful issue of right shares did not amount to oppression of the Appellant and mismanagement of Company on the part of the Respondent Nos.2-5?
- XVII. Whether the finding of the learned CLB, qua issue no. 3, is legally tenable when the case of the Appellant was that the Appellant had financial expertise who had contributed not only to the paid up capital of the Respondent Company to the extent of 1/3rd but had also deposited a further sum of Rs.18,30,745/- with Respondent Company toward share application money?

- XVIII. Whether the mere fact that the Company concerned has grown over the period, is sufficient to hold that there was no oppression and mismanagement in the Company?
- XIX. Whether relief granted by the learned CLB is legally sustainable?

According to the appellants, all these issues involve substantive questions of law in as much as the Company Law Board has not considered the impact of violation of Section 81(1A) of the Act while deciding the issue with regard to allotment of the rights shares. Learned counsel contends that it was mandatory for the Board of Directors to fulfill the formalities as required under Section 81 (1A) to formalize the allotment to outsiders, even though they may be relatives of some of the shareholders. He submits that absence of proper documentation, as prescribed in the Act, is fatal to such allotment of rights shares and hence such allotment is liable to be cancelled, being in violation of Section 81(1A);

15. Section 10F of the Act reads as under:

“Appeals against the orders of the Company Law Board -
Any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

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

Clearly, an appeal would lie only on a substantive question of law; and no disputed questions of fact can be reagitated under Section 10-F. While considering the scope of Section 10-F of the Act in ***V.S. Krishnan and Others Vs. Westfort Hi-Tech Hospital Ltd.*** (*supra*), the Supreme Court has held as under:

“16. It is clear that Section 10-F permits an appeal to the High Court from an order of the Company Law Board only on a question of law i.e. the Company Law Board is the final authority on facts unless such findings are perverse, based on no evidence or are otherwise arbitrary. Therefore, the jurisdiction of the appellate court under Section 10-F is restricted to the question as to whether on the facts as noted by the Company Law Board and as placed before it, an inference could reasonably be arrived at that such conduct was against probity and good conduct or was mala fide or for a collateral purpose or was burdensome, harsh or wrongful. The only other basis on which the appellate court would interfere under Section 10-F was if such conclusion was (a) against law or (b) arose from consideration of irrelevant material or (c) omission to construe (sic consider) relevant materials.”

16. Counsel for the appellants, however, is not able to point to any averment in the appeal where the issue with respect to the allotment of rights shares to outsiders is specifically raised. A mere mention of the Section, without the supporting averments in the appeal does not make such reference a substantive question of law, capable of being considered as a legal issue under Section 10F of the Act. Furthermore, the issue of documentation required for making the rights allotments; as to whether such documentation exists or not; or whether it exists in the right form or not, are all questions of fact.

17. Despite extended submissions over many hearings, learned counsel for the appellants is unable to explain as to why questions of insufficiency or illegality of the documentation required for issue of rights shares to members or outsiders, was not agitated before the Company Law Board. By changing the form of pleadings, the substance of plea does not change; and a mere change of form and terminology, will not confer jurisdiction under Section 10F which otherwise does not lie.

18. Resort to Section 10F of the Companies Act, 1956 to file an appeal against an order of the Company Law Board is statutorily circumscribed. It is only on a question of law that the invocation of Section 10F is permissible. On questions of fact, the findings arrived at by the Company Law Board are final; except on the limited ground of perversity; or on the ground that the facts as found were based on no material or evidence. The plea of perversity is to be examined at the threshold to see whether any prudent Adjudicating Authority could have arrived at the conclusion which has been arrived at by the Company Law Board; and if the answer is yes, then that is the end of the matter. It cannot be reopened once again in an appeal under Section 10F of the Companies Act. However, if the findings are found to be perverse, such perversity would itself become a question of law; and a perverse order is defined as one which is contrary to the facts and evidence on record; which no reasonable Adjudicating Authority could pass after examining the material placed before it. **See *Dale & Carrington Invt. (P) Ltd. and Anr. Vs. P.K. Prathapan and Ors.*, (2005) 1 SCC 212 (Para 36). In *E. Shanmugan Vs. APS Cam-O-Matec Pvt. Ltd.*, 2006 (133) DLT 484 (Para 9).**

19. An examination of the 19 issues framed by the appellants in the appeal show that primarily, they are all questions of fact, although the learned counsel for the appellants has tried to make out a case that they are not based on proper appreciation of evidence on record before the Company Law Board and hence, perverse. The issues raised in the appeal; that have been reproduced above; revolve around the following subject matters:

- (i) Appellants not being informed of the meeting of the Board of Directors held on 05.02.2005; and the alleged notice sent under UPC informing the appellants of the decisions taken there, being a forgery.
- (ii) Unauthorized removal of the appellants as Directors of the Company.
- (iii) Allotment of Rights Shares in violation of Section 81(1A) of the Act.

These three issues are necessarily questions of fact, and encompass the so-called 19 legal issues framed by the appellants. The Company Law Board has dealt with these issues in detail and their findings, as noted earlier, are reasoned and plausible findings, and, hence, strictly speaking, the appeal is not maintainable under Section 10-F. However, since the learned counsel for the appellants has argued in detail on each of these issues, it would be expedient to deal with them also.

20. The first plea raised is with regard to the malafide failure to inform the appellants of the meeting of the Board of Directors. According to the appellants, the notice allegedly issued to them under the Postal Certificate

produced by the respondents before the Company Law Board is a highly suspect, forged and manipulated document. Further, that the meeting of the Board of Directors, approving the issue of Rights Shares was allegedly convened at Faridabad, Haryana, on 05.02.2005 at 5:00 p.m. But the UPC receipt, under which the purported notice of its decision was sent to the appellants, is also of the same date and time, viz. 05.02.2005 at 5:00 p.m. from the Lodhi Road Post Office. If the meeting was convened at Faridabad, Haryana, at 5:00 p.m., the notice pursuant to that meeting could not have been posted on the same date and time from the Lodhi Road Post Office in New Delhi, since it was physically impossible to do so. Therefore, it follows that, in fact, no notice was sent; and the UPC certificate produced before the Company Law Board is a forged document.

21. Learned counsel for the respondents, on the other hand, submitted that even though the meeting of the Board of Directors took place at Faridabad, the letter making the offer of Rights Shares was issued from the registered office of the Company situated at South Extension, New Delhi, which is very close to the Lodhi Road Post Office from where the notice was sent under Postal Certificate. He also submitted that same mode of service was adopted for all the directors and shareholders of the company; and except for the appellants, no other director or shareholder of the company has raised any objection or plea that they did not receive the notice of the meeting for allotment of the Rights Shares.

22. Even though there are other, better ways of issue of notices like Speed Post and Registered A.D. Post, the service of documents on members of the Company under the Companies Act, 1956, is governed by

Section 53 of the Act. Sub-Section (1) & (2) of Section 53 of the Act read as under:-

“1. A document may be served by a company on any member thereof either personally, or by sending it by post to him to his registered address, or if he has not registered address in India, to the address, if any, within India supplied by him to the company for the giving of notices to him.

2. Where a document is sent by post-

(a) service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, provided that where a member has intimated to the company in advance that documents should be sent to him under a certificate of posting or by registered post with or without acknowledgement due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the document shall not be deemed to be effected unless it is sent in the manner intimated by the member; and

(b) such service shall be deemed to have been effected
(i) in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted, and

(ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.”

The respondents have produced a Certificate of Posting. Such service under Postal Certificate is presumed to be valid under sub-Section 2(b) of Section 53 of the Act at the expiration of 48 hours after a letter containing the same is posted; and the conduct of the respondents cannot be doubted merely because the timing of its dispatch from the Post Office does not match with the time when the meeting of the Board was conducted at Faridabad. This is especially so when no other Director or

shareholder, except for the appellants, has objected to the receipt of the said notice.

In addition, this aspect can also be examined from a more practical point of view. Board Meetings, like the one held on 05.02.2005, are important but routine meetings, the outcome of which is reasonably predictable; and the Secretarial Office normally keeps all the resultant documents ready in advance; and as soon as the formal meeting takes place and the decision taken, the action on the decisions taken is immediate, without loss of any time. Thus, there is nothing outside the realm of the normal, which can be read into the almost simultaneous holding of the meeting of the Board of Directors, and the issuance of the consequent notice to the shareholders. Consequently, there is no force in the appellants' case that the so called lack of intimation of the Board Meeting of 05.02.2005; or of the decisions taken there, amounts to oppression and mismanagement under Sections 397 and 398 of the Act; or that the finding of the Company Law Board in this behalf calls for interference under Section 10-F.

23. The next plea raised is the allegedly unauthorized removal of appellants as directors of the company.

Counsel for the appellants submits that the question of law being raised is; how could a director be removed in the absence of any resignation, 'in writing', as prescribed by the Articles of Association of the company itself. Counsel submits that there was no material whatsoever before the Company Law Board on the basis of which the CLB could have held that the appellants had resigned as directors of the company. There was no resignation letter to enable the CLB to hold that the appellants had resigned as directors. He also contends that if the resignation of the

appellants was allegedly accepted in the meeting of the Board dated 05.01.2004; then what prompted the Board to record acceptance of their resignation in the later meeting of the Board of Directors dated 01.04.2004. It is also submitted that there could be no acceptance of resignation twice over by the company. The submissions on the issue of resignation of the appellants as the directors of the company are primarily threefold, viz. (i) The Articles of Association of the Company specifically provide that the resignation of any director has to be in writing, which has admittedly not happened here; (ii) The appellants, as directors, were not present in any of the meetings dated 05.01.2004 and 01.04.2004 and, hence, they could not have orally resigned in the said meetings; and (iii) if the resignation had been orally conveyed to any other director who participated in the aforesaid meetings, then record thereof must contain the relevant details in the minutes as to whom the resignation was orally conveyed; and who then conveyed it to the Board. Learned counsel further submits that since the appellants were not present in person in both the meetings; the indication that an oral offer of resignation is being accepted by the Board must also carry a noting to the effect that there has been some oral communication of this offer to resign from the Board. The only other way could have been for it to either have been communicated through an intermediary; which could have been the Company Secretary; or any other Director; or perhaps even a telephone call while the Board was meeting. It is submitted that since the record does not support any such thing, the presumption can only be that a resignation conforming to the prescribed mode of resignation specified in the Articles of Association was received. Thus, the removal of the appellants as directors of the company was illegal and unauthorized;

and would constitute as oppression and mismanagement within the meaning of Sections 397 & 398 of the Companies Act.

24. In response, the respondents contend that this plea of removal as a director without authorization, is an afterthought. The appellants were very well aware of their having resigned as directors of the company; and Form-32 filed by the company with the Registrar of Companies was in the public domain since 30.04.2004. The non-participation of the appellants in the meeting of Board of Directors on 05.01.2004 and 01.04.2004, was voluntary; and it was in line with their desire to voluntarily give-up the directorship of the company for reasons of their reluctance to take the obvious business risks associated with the expanding business including, inter alia, the acquisition of new premises and bank loans etc. The appellants never complained about their removal as directors after the meeting of the Board on 01.04.2004; or even thereafter, once the information with respect to their resignation was put in the public domain by the Registrar of Companies. Further, even in their petition filed before the Company Law Board, the appellants did not raise this plea. It was only during the course of arguments before the CLB that they tried to make out a case in this behalf, for the first time. Learned counsel submits that in the absence of any pleadings to this effect before the CLB, appellants cannot raise this plea in appeal under Section 10F before this Court. It is also submitted that after their resignation as directors of the company, the appellants wrote two letters dated 20.06.2007 and 25.10.2007, i.e. almost three years after the acceptance of their resignation; and actual separation from the company; and in those letters also, the appellants did not make any reference to their removal as Directors; or of the meetings of the Board of Directors not being held; or that they had not been invited for the

meetings of the Board of Directors. The only grievance raised in the letter dated 20.06.2007 is that the Managing Director of the company has not cared to send the audited statement of accounts for the years 2003-04, 2004-05 and 2005-06, in spite of an official letter and several reminders over the phone. In the letter dated 25.10.2007 also, the appellant only asserts his legal right to have the notice of the AGM and audited statement of accounts of the company; and of his right to attend the AGM either personally or through proxy. The appellant in the said letter again called upon the company to send an audited statement of accounts for the year ending 31st March, 2007 together with the notice of AGM. Learned counsel submits that nowhere in the said letters have the appellants complained of their removal as directors; and rightly so, since they had voluntarily resigned as directors of the company in 2004 itself, which fact was put in the public domain by the Registrar of Companies on 30.04.2004 itself.

25. Learned counsel for the respondents further submits that so far as the issue of the two Board Resolutions of 05.01.2004 and 01.04.2004 are concerned, there was no statement in either of these resolutions that there was any resignation letter. The statement in Form 32 submitted before the Registrar of Companies stating that, 'resignation letter received', was an inadvertent error, but it does not change or dilute the factum of the appellants having resigned and of their resignation having been accepted by the Board.

26. On the same issue, learned counsel also submits that there was a specific reason; and a specific purpose for which the appellants have voluntarily resigned from the Board of Directors of the company. Since the

company was raising loans from its bankers, who had prescribed that none of the directors of the company should be a defaulter as a condition; and appellant No. 1, Mr. Raj Kumar Bhatia, was in default on certain credit card payments, therefore, in order to facilitate the loan for the company, he and his wife Mrs. Kavita Bhatia had volunteered to resign from the Board of Directors, so that their personal guarantees would not be required. Counsel also adverts to the resolution of the Board of 05.01.2004 where these facts are duly recorded to contend that the appellants cannot claim illegal removal as directors of the company amounting to oppression and mismanagement under Sections 397 & 398 of the Companies Act.

The minutes of the Board meeting of 05.01.2004 and 01.04.2004 read as under:

“CERTIFIED TRUE COPY OF THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF AVLIGHT AUTOMOTIVES LIMITED HELD ON MONDAY 5TH JANUARY 2004 AT 23/7, MATHURA ROAD, FARIDABAD, AT 11 A.M.

PRESENT:

Mr. Anil Anand
Mr. Rajan Sharma
Mrs. Savita Anand
Mrs. Renu Sharma

RESIGNATION AS DIRECTORS

Pursuant to Citibank not accepting the personal guarantee of Mr. Raj Kumar Bhatia in view of certain dues being in default on the certain credited card owned by Mr. Raj Kumar Bhatia, it was suggested by Mr. Raj Kumar Bhatia that he and his wife, Mrs. Kavita Bhatia would resign from the board of directors so that Citibank will then not need the personal guarantee of Mr. Raj Kumar Bhatia and Mrs. Kavita Bhatia.

“Resolved that the resignation of Mr. Raj Kumar Bhati as Director of the company be and is hereby accepted.

“Resolved that the resignation of Mrs. Kavita Bhatia as Director of the company be and is hereby accepted.”

FURTHER RESOLVED that Mr. Anil Anand be and is hereby authorized to file the intimation of the cessation of the directors with Registrar of Companies NCT Delhi & Haryana.

The Board was informed by the Chairman that at the request of the company, Citibank, N.A. has agreed to provide to the company funded facilities upto Rs.150 lacs, which includes Term Loan facilities up to Rs.85 Lacs and working capital facilities upto Rs.65 Lacs and non-fund based facilities up to Rs.Nil. The company being a Partner of AvLight Automotive works is also required to authorize a representative to sign the documents on behalf of the company.

-:SD:-
Chairman

CERTIFIED TRUE EXTRACT OF THE MINUTES OF RESOLUTION PASSED AT BOARD MEETING OF AVLIGHT AUTOMOTIVES LIMITED HELD ON THURSDAY 1ST APRIL 2004 AT 23/7, MATHURA ROAD, FARIDABAD, AT 11 A.M.

The Board has received the resignation of Mr. Raj Kumar Bhatia and Mrs. Kavita Bhatia from the board of the company with effect from 1st April, 2004.

“Resolved that the resignation of Mr. Raj Kumar Bhatia as director be and is hereby accepted with effect from 1st April, 2004.

“Resolved that the resignation of Mrs. Kavita Bhatia as director be and is hereby accepted with effect from 1st April, 2004.”

27. In the same context, the letters sent after more than 3 years; on 20.06.2007 and 25.10.2007, by the appellant to the company, read as follows:

“The Managing Director
M/s. AvLIGHT Automotives Ltd.
C-14, 2nd Floor, South Extn. Part-II,
New Delhi – 110049

Date 20/06/2007

Attention: **Mr. Anil Anand**

Sub: Copy of Audited Statement of Accounts for the years 2003-04, 2004-05, 05-06.

Please refer to my letter dt. 05.04/07 on the above subject

I am sorry to state that you have not cared to send me the Audited Statement of Accounts for the years mentioned above in spite of my official letter to you and several reminder over the phones

I once again request you to send me the Audited A/cs for the last three years immediately but in any case not after than a week. I hope you will treat it most urgent.

.....

The Managing Director
M/s. AvLIGHT Automotives Ltd.
C-14, 2nd Floor, South Extn. Part-II,
New Delhi – 110049

Date 25/10/2007

Attention: **Mr. Anil Anand**

Sub: Copy of Audited Statement of Accounts for the years 2003-04, 2004-05, 05-06.

Reference is drawn to my various letters with letter dt.15/08/07 on the above subject:

I am surprised that you have not courtesy even to acknowledge my letter under reference. You should clearly understand that it is my legal right to have the notice of AGM and audited statement of accounts from the company and right to attend AGM either personally or through proxy. I am not aware what is happening in company for all these years. I therefore call upon you to send the latest Audited Statement of Accounts for the year ending 31-03-07 to me immediately together with notice of AGM failing which I will refer the matter to R.O.C./ Company Law Board much against my wishes.

Kindly take this matter seriously.

.....”

28. Apart from the above, learned counsel for the respondent argued that assuming without admitting and contrary to the fact, that the resolution removing them from directorship is flawed, the appellants nevertheless had ceased to be Directors of the company by operation of Section 283(1)(g) of the Act, which postulates that if a Director absents himself from three consecutive meetings; or from all meetings of the Board for a continuous period of three months without obtaining leave of absence from the Board, he ceases to be a Director of the company. Section 283(1)(g) reads as under :

“283. Vacation of office by Directors

(1) The office of a director shall become vacant if-

(g) he absents himself from three consecutive meetings of the Board of Directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;”

Counsel for the respondents pointed out that the appellants remained absent from all the meetings of the Board of Directors of the company after 1st April, 2014, without seeking any leave of absence from the Board; and that at least 16 meetings were held during this period in which there was no participation by the appellants. Significantly, throughout this period, the appellants did not even bother to seek any information with regard to the meetings with the Board of Directors. Nor did they raise any issue in that context; which warrants the conclusion that they never considered themselves to be a part of the Board.

29. An examination of the minutes of the Board Meetings clearly indicates that there was a reason for the appellants' resignation from the Board of Directors, and their resignations were also accepted by the Board for the same reason. It cannot be said that the appellants were not aware of their removal as directors of the company. To my mind, the only plausible reason for not raising any plea in this behalf before the Company Law Board; as well as the tone and tenor of their aforesaid letters of 20.06.2007 and 25.10.2007, quoted above, where the appellants do not touch upon the issue of their removal as directors of the company, and confine their grievance merely to non receipt of audited statements of accounts, and for holding of the AGM of the company; is that it is only on an afterthought that this plea was sought to be raised during the course of arguments before the CLB. There is thus substance in the stand of the respondents that the appellants knew and had accepted the fact that they had ceased to be directors; and were always aware that their status was now limited to that of shareholders of the company. Add to this the fact of the appellants remaining silent for almost 03 years; and not making enquiries or calling upon the company to hold the meetings of the Board of Directors. When

the appellants, claiming to be Directors, do not either check with the company to find out why they are not being called for the meetings, or call upon the company to hold such meetings, which must be held at least 4 times a year; the only conclusion warranted is that they were aware that they were no longer the directors of the company. The issue of Form-32 submitted with the Registrar of Companies recording 'resignation letter received' has been explained by the respondents as an inadvertent error, which even though not found plausible by the Company Law Board was accepted in view of the accompanying circumstances. The Company Law Board has believed the resignation of the appellants as valid and not oppressive against them. To my mind also, it is obvious that the appellants had communicated a clear animus to resign and to disassociate, to the other members of the small handful that owned and controlled the company; which was then recorded in the minutes under the sanguine belief that it truly reflected the appellants' sentiments. Under the circumstances, mere non-insistence for a written resignation from the appellants' cannot be termed oppressive, or even an act of mismanagement.

30. The claim of the appellants to be restored as Directors of the Company also fails by virtue of Section 283(1)(g) since they never attended any of the stated 16 meetings of Board of Directors and never ever cared to access or know the outcome of the meetings of the Board. The claim for restoration of directorship is a clear afterthought to somehow regain a foothold in the company. Under the circumstances, and for all the aforesaid reasons, the appellants have not been able to persuade me to conclude that there is any error or perversity in the order of the Company Law Board on this issue.

31. The appellants next contend that the issue of rights shares by the company in the meeting of the Board of Directors of the company dated 02.03.2005 was in violation of Section 81(1A) of the Act; and consequently the said allotment of rights shares is liable to be set aside; and the act of the Company in allotting Rights shares to outsiders, in the absence of any information to the appellants, is oppressive and constitutes mismanagement within the meaning of Section 397 and 398 of the Act.

32. Counsel for the appellants submitted that the company undertook an exercise to increase its capital from Rs.30,00,000/- to Rs.63,00,000/- by way of rights to the existing shareholders of the company; but in the process, in violation of Section 81(1A) of the Act, they allotted 30,000 shares to one Mrs. Chand Rani, who was not a shareholder of the company at the relevant time. It was submitted that once a company undertakes an exercise to increase its capital; and intends to issue shares to persons other than existing shareholders; it is required to pass a special resolution to this effect under Section 81(1A) of the Act. Further, since Mrs. Chand Rani was not a shareholder of the company at the relevant time, not only was she not entitled to allotment of rights shares; but even if there was renunciation of certain shares under Section 81(1)(c) in her favour, that renunciation had to be made in writing to the Board of Directors. It is submitted that there was no such renunciation by any of the shareholders. And further, the resolution passed by the Board of Directors allotting shares to her was manipulated, because there was no communication from any shareholder of his desire to renunciate his/her entitlement under the rights issue. Counsel submits that in case a shareholder exercises his/her right to renounce any shares, he must write to the Board of Directors

saying that he has renounced so many shares and also to note in whose favour the renunciation is being made. There is no correspondence placed on record by the respondents which would support their claim of having acted under Section 81(1)(c) of the Act. It is submitted that the Company Law Board had completely ignored the fact that no such resolution was passed, and therefore, the allotment of shares in the meeting on 02.03.2005 could not have been made. It is further submitted that even the terms and conditions of the rights issue specifically provide that any person who wanted to renounce the shares will give 15 days' notice. Thus, even in terms of this requisition, if somebody had to renounce the shares to which he is entitled under the rights issue, he/she must serve a notice of 15 days to the company. It is submitted that the entire exercise of allotment of shares by way of a rights issue was a camouflage to bring down the holding of the appellants from 33.33% to 15.87%, to render them ineffective in monitoring the affairs of the company.

33. Counsel for the appellants referred to the decision of this Court in ***Pearson Education Inc. Vs. Prentice Hall India (P) Ltd. & Ors.***, 134 (2006) DLT 450 to submit that the motive of allotment of additional capital by way of rights issue by the respondent was malafide with the sole object of gaining control of the company. He referred to para 16 of the judgment wherein the court also referred to the decision of the Supreme Court in ***Dale & Carrington Invt. (P) Ltd. and Anr. Vs. P. K. Prathapan & Ors.*** (2005) 1 SCC 2012 on the issue of allotment of additional share capital by the company. The said para reads as follows;

“16. Recently in the case of *Dale & Carrington Invt. (P) Ltd. & Another v. P. K. Prathapan and Ors.*, V (2004) SLT 784= IV (2004) CLT 25 (SC)=(2005) 1 SCC 212, The Supreme

Court had the occasion to dwell on this aspect in detail by taking note of most of the available judgments on the subject. It may be noted that the facts of that case bear close proximity with that of the present case inasmuch as in that case also the company was having two groups of shareholders, one Indian group and one foreign group. The Managing Directors and his wife representing the Indian group allotted additional shares to themselves and in the process he and his wife became majority holder, thus reducing the non-resident a minority holder. The Court held as under:

“29. In the present case we are concerned with the propriety of issue of additional share capital by the Managing Director in his own favour. The facts of the case do not pose any difficulty particularly for the reason that the Managing Director has neither placed on record anything to justify issue of further share capital nor has it been shown that proper procedure was followed in allotting the additional share capital. Conclusion is inevitable that neither was the allotment of additional shares in favour of Ramanujam bona fide nor was it in the interest of the company or was a proper and legal procedure followed to make the allotment. The motive for the allotment was mala fide, the only motive being to gain control of the company. Therefore, in our view, the entire allotment of shares to Ramanujam has to be set aside.”

34. In response, counsel for the respondent submitted that firstly, the question with regard to allotment of shares to Mrs. Chand Rani was not in issue before the CLB. Had it been raised before the CLB, the CLB would have framed it as an issue. This is being raised here for the first time to say that their shareholding was reduced from 33.33% to 15.87% by the respondents to wrest control of the company. He further submitted that in the year 2004, when the process began for expanding the company and the

consequent need to generate funding, they approached the Citi Bank for loan. The bank agreed to advance a loan of Rs.1.5 crores on the condition, inter alia, that the company must purchase its own land and move in to its own premises within 12 months, from the rented premises; and the directors of the company furnish personal guarantees for funding the proposed expansion of the factory to increase the capacity and turnover. When the finance was committed by the Bank in 2005, a decision was also taken to increase the corpus, to enable purchase of the land in question for shifting from the rented premises. Learned counsel submits that under the circumstances, the decision to raise the capital through a rights issue became necessary. Therefore, it cannot be said that the exercise of increasing the share capital of the company by way of a rights issue is merely a camouflage to reduce the shareholding of the appellants from 33.33% to 15.87%.

35. Learned counsel further submits that reliance on the judgment in *Pearson Education Inc. Vs. Prentice Hall India (P) Ltd. & Ors.*, (*supra*) by the appellants is misplaced since the facts of the two cases are entirely different. It is submitted that in the case in hand, the appellants themselves had turned away from the company, resigned as directors and had, by their conduct, allowed the respondents to increase their stake in the company since they themselves did not intend to either extend their personal guarantees, or to enhance their risk in the business of the company. According to him, the appellants were not interested in the rights issue because between 2004 and 2006 the level of business risk was extremely high since the company was indebted to the bank and had also ventured into something which was ambitious at that time, and the appellants obviously did not consider it worth their while. The appellants, thus, did

not take the risk of subscribing the enhanced capital by way of the rights issue; and it was left to the respondents to undertake this risk. In this context, it must also be reiterated that the bonafides of the decision to infuse funds in the company or to go in for the expansion, have not been impeached anywhere by the appellants.

36. So far as the contention with regard to the violation of Section 81(1A) of the Act is concerned, learned counsel for the respondents referred to sub-clause (c) of clause 1 of Section 81 to say that this permits the shareholders to renounce the shares offered to them in favour of, “any other person”. And it was pursuant to this that Ms. Renu Sharma, who was holding 70,000 shares as on 30.09.2004 was entitled to 77,000 more shares under the rights issue. Out of these, she renounced 47,000 shares in favour of her husband Mr. Rajan Sharma, an existing shareholder and director of the company. The remaining 30,000 rights shares were renounced by her in favour of Smt. Chand Rani, her mother-in-law. It is, thus, contended that there is no violation of any provision of law.

37. It would be appropriate at this stage to notice Section 81 of the Companies Act, 1956, which reads as follows;

“81. Further issue of capital

1) Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then,

a) such further shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid up on those shares at that date;

- b) the offer aforesaid shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined;*
- c) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (b) shall contain a statement of this right;*
- d) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner as they think most beneficial to the company.*

Explanation: In this sub-section, “equity share capital” and “equity share” have the same meaning as in Section 85.

(1A) Notwithstanding anything contained in sub-section (1), the further shares aforesaid may be offered to any persons whether or not those persons include the persons referred to in clause 9a) of sub-section (1) in any manner whatsoever:-

- (a) If a special resolution to that effect is passed by the company in general meeting, or*
- (b) Where no such special resolution is passed, if the votes cast (whether on a show of hands, or on a poll, as the case may be) in favour of the proposal contained in the resolution moved in that general meeting (including the casting vote, if any, of the Chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast*

against the proposal by members so entitled and voting and the Central Government is satisfied, on an application made by the Board of directors in this behalf, that the proposal is most beneficial to the company.

(2) ”

38. Before examining the rival contentions regarding Sections 81(1) and 81(1A) of the Act, it would be useful to note that while interpreting a clause in a statute, it must be read to conjunct it with the overall intent of the legislature in enacting the statute. The words used in an enactment must be given a plain meaning within its ambit and context; and the separate provisions of a statute must normally be read to complement each other; and if it is not possible to do so, each of the provisions must be construed to make it effective and operative (*Ref. CIT Vs. S. Teja Singh, AIR 1959 SC 666*). No rules of construction can require that when the words of one part of a statute convey a clear meaning, it shall be necessary to introduce another part of the statute for the purpose of controlling or diminishing its efficacy. (*Ref. K. S. Paripoornan Vs. State of Kerala, AIR 1995 SC 1012, P.1037*). Section 81(1) of the Act provides a complete answer to the process of issue of the Rights shares being questioned by the appellants. Sub-clause (c) of Section 81(1) authorized the shareholders of the company to renounce the shares offered to any of them in favour of ‘any other person’. The right exercised by one of the directors, viz. Mrs. Renu Sharma, in renouncing 30,000 shares is in favour of, ‘any other person’, which, in this case was her mother-in-law Mrs. Chand Rani. This is in consonance with sub-clause (c) of Section 81(1). There is no need to bring in Section 81(1A) which envisages further issue of capital by offering further shares of the company to any person, whether or not that person includes the person referred to in clause (a) of sub-section (1).

There is a clear difference between an offer of allotment by a company pursuant to a decision taken by its Board in this behalf, and a decision taken by a shareholder to renounce shares being offered to him by the company in favour of someone else. The first is a decision by the Board, while the second is a decision by the shareholder to renounce. Here, we are only concerned with the latter, being the exercise of a vested right by an existing shareholder under Section 81(1)(c) of the Companies Act.

Furthermore, A. Ramaiya, Guide to the Companies Act, 16th Edition at page 1022, seems to embody the same line of reasoning while stating that;

“The requirement of passing a special resolution under sub Section (1A) is necessary only when the shares are issued to the public or are placed privately in terms of Section 67 (3) or proposed to be offered to any segment of the shareholders to the exclusion of the rest. The shareholders’ approval is accordingly not required for a rights issue, including the allotment of shares to the renounces, who are not members of the company.”

It follows, therefore, that Section 81(1A) has no application here and the plea of violation of Section 81(1A) in that context by the learned senior counsel for the appellants cannot be accepted for all these reasons.

39. The reliance by the appellants on the decision in ***Pearson Education Inc. Vs. Prentice Hall India (P) Ltd. & Ors.*** (*supra*) is misplaced in the facts of the case in hand. In the present case, the appellants voluntarily resigned as directors of the company since the lending bank had laid a pre-condition that none of the directors of the company should be a defaulter of the bank whereas the appellant was admittedly in default in making payment against his credit cards. Also, no malafides can be attributed to

the decision of the respondents to enhance the capital structure of the company to raise resources, which eventually resulted in the appellants' shareholding being reduced from 33.3% to 15%.

40. Looking to the overall circumstances, particularly the fact that the appellants did not impugn either the allotment of the Rights Issue or their removal from the Board of Directors at the relevant time; coupled with the fact that, admittedly, there is no challenge to the company's requirement for funds through the offer of rights, as well as by way of a bank loan, alongwith the explanations being offered by the respondent in this regard; as also the real likelihood of the appellants having been persuaded to raise all these grievances once the company's economic difficulties were over, and the company was clearly on the path of substantial progress; makes it clear that these allegations need not be probed further. Obviously if the company's affairs had taken a down turn after the Rights Issue as well as the loan from the bank, there would have been no question of the appellants' raising any grievance whatsoever even in June, 2007.

41. To enable the appellants to now reprise their role as directors, whilst also giving them the opportunity to avail the Rights issue at this stage would, in effect, amount to handing them the prize without having played the game at all, because the appellants never ran the risk normally associated with business expansions or personal guarantees. To my mind, once it is clear that the decision to infuse capital through the issue of Rights as well as Loans on personal guarantees was bonafide; and the appellants failed to raise any protest in a timely fashion; then regardless of the reasons for the non subscription to the Rights issue, or for not being required to furnish the necessary personal guarantees to the bank; it would

be grossly inequitable to now reward the appellants with the rewards sans the risk; and that too at the expense of the respondents who actually did run that risk by putting in their own moneys and personal guarantees on the line, thus facilitating the increase in the company's valuation from Rs.30 lakhs in 1996 to Rs.12 crores in 2008.

Had the appellants been responsible and conscientious participants, both as directors and shareholders; fully able and ever willing to shoulder their burden of the increased business risk under contemplation, nothing stopped them from taking the required steps; and also approaching the Company Law Board if necessary; in a timely fashion, but they chose not to do so. That they chose not to protest the lack of any information about any Board meeting, despite the belief that they were indeed directors, for years together; while duly receiving the annual accounts and dividends throughout; can only lead one to conclude that their interest in the company was limited to their initial shareholding and nothing more.

42. After the venture has clearly fructified; and the associated risks run successfully; to enable the appellants to now claim that they would certainly have subscribed to their share of the Rights issue to finance the venture in the first place, and consequently direct the allotment of proportionate shares to the appellant at the initial offer price; while divesting others, who had put down their own moneys at the crucial juncture for those shares; and that too when their current price and future prospects are much more, would not only ensure an undeserved windfall to the appellants; it would, to my mind, also demonstrate an extremely unjudicious naivety on the part of the Court.

43. For the all aforesaid reasons, I do not find any merit in the appeal. The appeal is, therefore, dismissed.

SUDERSHAN KUMAR MISRA.
(Judge)

January 27, 2016