<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>

ORDINARY ORIGINAL CIVIL JURISDICTION

CLB COMPANY APPEAL NO. 74 OF 2015
IN
CLB COMPANY PETITION NO. 13 OF 2014

Neelesh Kanade,)
residing at Plot No.71, Junoon Bunglow,)
Aamchi Colony, Bavdhan, Pune 411 021) ….. Appellant/
Original Petitioner

Versus

1. Edifice Properties Private Limited,)
having its registered Office at 208 Parvati)
Industrial Estate, Sun Mill Compound,)
Lower Parel, Mumbai 400 013)

2. Mr.Omprakash Basantlal Goekna)
(Director), residing at 101, 10th Floor,)
Somerset House, Sophia College Lane,)
Warden Road, Mumbai – 400026,)
Maharashtra)

3. Mr.Umesh Bhalchandra Vartak,)
(Director), residing at C-802,)
Lakshachandi Heights, Gokuldham,)
Gen. A.K.Vaidya Marg, Goregaon (E),)
Mumbai 400063, Maharashtra)

4. Mr.Anand Muddu Shetty, (Director),)
residing at 1201, 11th Floor, Victoria Classic)
Near Asha Nagar PK Road, Mulund (W),)
Mumbai 400080, Maharashtra)

5. Ms.Mrunalini Nimbalkar,)
Office at 14, Sneh Centre, FP/556/2,)
4th Floor, F C.Road, Shivajinagar,)
Pune 411005)

6. Mirah Realtors Private Limited)
(formerly known as Twinkle Realtors)
Private Limited) having its registered)
office at 208, Parvati Industrial Estate,)
Sun Mill Compound, Lower Parel, Mumbai)

7. Peninsula Land Limited,)
having its registered office at Mathura)
Das Mill, Senapati Bapat Marg,)
Lower Parel, Mumbai 400013)

8. Mr.Jaydev Mody, Director,)
Peninsula Land Limited,)
Address : Mathura Das Mill,)
Senapati Bapat Marg, Lower Parel,)
Mumbai 400013)

9. AAA Real Land Developers Private Limited)
having its registered office at 18,)
Ali Chambers, 2nd Floor, Nagindas Master)
Road, Fort, Mumbai 400001)

10. Mr.Azim Tapia,)
Clover Centrum, Plot No.5, Galaxy Society,)
245, Boat Club Road, Pune 411001)

11. Mr.Javed Tapia,)
Clover Centrum, Plot No.5, Galaxy Society,)
245, Boat Club Road, Pune 411001)

12. Deepak Maniar, Practicing Company)
Society, EFF Jumbo Darshan Co-operative)
Housing Society Limited, Building F2,)
Flat No.2, Ground Floor, Koldongri,)
Andheri (East), Mumbai – 400 069)

13. Mr.Yuvraj Nimbalkar,)
Office at 14, Sneh Centre, FP/556/2,)
4th Floor, FC Road, Shivajinagar,)
Pune 411005) ….. Respondents

Mr.Vishal Kanade, a/w. Mr.Biswadeep Chakravarty, Mr.Chandramouli V. i/b. Dave & Girish for the Appellant.

Mr.Sharan Jagtiani, a/w. Mr.Rohan Lavkumar, Ms.Rashida F.Savliwala, i/b. M/s.Dhruve Liladhar & Co. for the Respondent nos. 1 and 2.

Mr.Rohan Kelkar, i/b. Mr.Shashank Fadia for the Respondent nos. 3 to 5 and 13.

Mr.Mayur Khandeparkar, i/b. Mr.Sonu Tandon for the Respondent no.6.

CORAM : R.D. DHANUKA, J.
DATE : 1st FEBRUARY, 2017

P.C.

By this appeal filed under section 10F of the Companies Act, 1956, the appellant (original petitioner) has impugned the order dated 7th April, 2015 passed by the Company Law Board, Mumbai Branch thereby dismissing the Company Petition No. 13 of 2014 filed by the appellant under sections 237, 397, 398, 402 and 403 of the Indian Companies Act, 1956. Some of the relevant facts for the purpose of deciding this appeal are as under :-

2. The appellant is a shareholder of the respondent no.1 which was incorporated in the year 2004. Respondent nos. 2 to 4 and 8 are the directors of the respondent no.1 company. Respondent nos. 5, 6, 7, 9 and 10 are the other shareholders of the respondent no.1 company.

3. The respondent no.1 company was incorporated on 18th May, 2004. The applicant was appointed as a director of the respondent no.1 on 18th May,2006. On 18th May,2006 the appellant purchased 2900 equity shares of respondent no.1 company from Kiran Goenka. It is the case of the appellant that on 18th May 2006, the respondent no.1 passed a resolution authorizing the appellant to operate the bank account of the respondent no.1. On 6th July, 2006, the said 2900 shares were transferred in favour of the appellant by the respondent no.2. It is the case of the

appellant that the appellant was in possession of 29% of the authorized share capital of the respondent no.1.

4. On 15th September,2006, the authorized share capital of the respondent no.1 was increased from Rs.1 lac to Rs. 1 crore. The appellant was allotted 2,87,100 equity shares by the respondent no.1.

5. On 15th February,2007, the respondent no.1 allotted 7,75,000 shares to the respondent no.6 at Rs. 26 per share by passing a resolution. It is the case of the respondent no.1 that the appellant was present in the said meeting held by the respondent no.1.

6. On 2nd April, 2007 the Term Sheet was entered into between the appellant, respondent no.2 and the Peninsula Group (respondent nos. 7 1o 11) wherein it was proposed to offer 50% shares of the respondent no.1 to the said Peninsula Group and that the shares would be held equally by the promoter group including the petitioner and the Peninsula Group. The said Term Sheet was signed by the appellant also.

7. On 7th April, 2007 the respondent no.1 allotted further 2,40,000 shares to the respondent no.6 at Rs.337/- per share i.e. at premium of Rs.327/-. It is the case of the appellant that no shares were allotted to the appellant on 7th April, 2007. It is however the case of the respondent no.1 that the said further allotment of 2,40,000 shares to the respondent no.6 was pursuant to the Term Sheet dated 2nd April, 2007 which was also signed by the appellant. It is also the case of the respondent no.1 that the said allotment had been notified to the Registrar of Companies vide Form 2 dated 12th February,2008.

8. On 25th March,2008, further meeting of the respondent no.1 came to be held. In the said board meeting, it was resolved to allot 29,85,000 shares of Rs.10 each to respondent nos. 6, 7, 9, 10 and 11 at Rs.337 per share. Out of the said 29,85,000 shares, 22,60,000 shares were allotted to respondent nos.7, 9 to 11, while remaining 7,25,000 shares were allotted to respondent no.6. 24,750 shares of the appellant were transferred in favour of the respondent no.2 and 2,40,000 shares of the respondent no.6 were in turn transferred to the Peninsula Group in accordance with the said Term Sheet. It is the case of the respondents that the appellant was present in the said meeting. It is the case of the appellant that after various allotments referred to aforesaid pursuant to the said resolution passed by the respondent no.1 on 25th March,2008, the shareholding of the appellant was reduced from 29% to 5.3%.

9. On 24th April, 2008, a shareholder's agreement was executed between the said Peninsula Group i.e. respondent nos. 7 to 11 and Mr.Omprakash Goenka Group including the appellant. The said shareholder's agreement had been signed by the appellant also and had also had been initialled by him on every page. The Annexture 'C' to the said shareholder's agreement showed that the appellant was holding 2,65,250 shares equivalent to 5.30% of the paid up capital of the respondent no.1.

10. It is the case of the respondents that on 10th August,2008, the appellant and the respondent no.5 resigned as the directors of the respondent no.1 company. That resignation was accepted by the Board of Directors of the respondent no.1 w.e.f. 14th August,2008. The respondent no.1 filed Form 32 with the Registrar of Companies bearing the signature of the appellant. It is the case of the appellant that on 20th August, 2008 the appellant executed the development agreement in the

capacity as director of the respondent no.1 company.

11. On 9th June, 2009, the respondent nos. 1 and 6 issued a joint notice to the appellant as well as to the respondent nos. 2 and 5 stating that on account of the non performance of the appellant, the Peninsula Group had expressed their intention to terminate their shareholder's agreement and informed that the respondent no.6 had agreed to purchase the shares for the sum of Rs.337 each. The appellant did not accept the said offer made by the Peninsula Group.

12. It is the case of the appellant that on 9th August,2008 the Chartered Accountant of the appellant called upon Twinkle Group to furnish various details to all the shareholders.

13. On 28th January,2010, 25,00,000 shares held by the said Peninsula Group were transferred to the respondent no.6. It is the case of the appellant that the said shares were transferred without following the procedure prescribed by law and the Articles of Association of the respondent no.1 and without the knowledge of the appellant.

14. On 3rd February,2014, the appellant filed a company petition (13 of 2014) under sections 237, 397, 398, 402 and 403 of the Companies Act, 1956 before the Company Law Board, Mumbai Branch, Mumbai against the respondents herein challenging the allotment dated 15th February,2007 in respect of 7,75,000 shares to the respondent no.6, allotment of 2,40,000 shares on 7th April, 2007 to respondent no.6 and allotment dated 25th March,2008 of 7,25,000 shares to the respondent no.6. The appellant however did not challenge the allotment of 22,60,000 shares which were made by the respondent no.1 to the Peninsula Group in the meeting

held on 25th March,2008. The appellant challenged the transfer of shares made on 28th January,2010 from respondent nos.7, 9 to 11 to respondent no.6.

15. On 17th February,2014, the Company Law Board granted ad-interim relief restraining the respondents from alienating the properties of respondent no.1 till 21st February,2014. The said ad-interim relief was vacated by the Company Law Board on 24th February,2014. It is the case of the respondents that the said ad-interim relief was vacated by the Company Law Board on the ground of delay and in view of the suppression of the shareholder's agreement by the appellant which was produced by the respondents in its preliminary reply.

16. On 17th November,2014, the appellant preferred Company Application No.264 of 2014 before the Company Law Board inter alia praying for amendment in the company petition (13 of 2014). By an order dated 17th November,2014, the Company Law Board allowed the said application partly. The Company Law Board however did not allow the amendment pertaining to the shareholder's agreement on the ground that the appellant had earlier suppressed the shareholders agreement and the same could not be cured by those amendments.

17. The appellant preferred two separate appeals before this court thereby impugning the order dated 24th February, 2014 and 17th November,2014 passed by the Company Law Board. By an order dated 11th December,2014, this court disposed of both the company appeals and expedited the company petitions filed by the appellant.

18. On 7th April, 2015, the Company Law Board passed a detailed order and judgment thereby dismissing the company petition (13 of 2014) filed by the

appellant. Being aggrieved by the said order and judgment dated 7th April,2015 as modified by an order dated 17th April,2015, the appellant has preferred this appeal under Section 10F of the Companies Act, 1956.

19. Mr.Kanade, learned counsel for the appellant invited my attention to some of the documents referred to aforesaid. Learned counsel also invited my attention to Article 7 of the Articles of Association of the respondent no.1 which is extracted as under :-

> 7. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of shares capital all new shares shall before issue, be offered to such person as at the date of the offer are entitled to receive notice from the Company of general meeting in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered and limited by time within which offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the Directors may dispose of the same in such manner as they think most beneficial to the Company. The Directors may likewise so dispose of any new shares which (by reason of the ration which the new shares) cannot in the opinion of the Directors be conveniently offered under this Article.

20. Learned counsel invited my attention to the amendment carried out in the company petition filed by the appellant raising various issues. He invited my attention to paragraphs 42 to 44 of the impugned order and judgment of the Company Law Board and would submit that though the Company Law Board had recorded the submission made by the appellant alleging violation of Article 7 of the Articles of Association of the respondent no.1, in the impugned order and

judgment the Company Law Board has not at all dealt with the said submission made by the appellant and did not render any finding on the said crucial issue at all. He submits that since the Company Law Board has not made any adjudication on this crucial aspect of the controversy involved and more particularly that the allotment of the large number of shares in favour of some of the respondents was in violation of Article 7 of the Articles of Association and the execution of the shareholder's agreement itself was in violation of Article 7, an omission on the part of the Company Law Board on the record of the finding on the said issue though raised by the appellant and referred by the Company Law Board in the impugned order and judgment, a question of law would arise in this appeal filed under section 10F of the Companies Act,1956 and thus this appeal filed by the appellant deserves admission and further hearing on those issues. He submits that this issue goes to the root of the matter. He placed reliance on the judgment of Supreme Court in case of **Purnima Manthena and another vs. Renuka Dalta and others**, (2016) 1 SCC 237 and in particular paragraphs 49 and 50 thereof.

21. The next submission of the learned counsel for the appellant is that the interpretation of the Articles of Association by the Company Law Board itself would raise a question of law under this appeal filed under section 10F of the Companies Act, 1956. In support of this submission, learned counsel for the appellant placed reliance on the judgment of this court in case of ***Maharashtra Power Development Corporation Ltd. vs. Dabhol Power Co. and others,*** (2003) Vol.117 Company Cases 506 and in particular page 523 of the said judgment.

22. It is submitted by the learned counsel for the appellant that the finding of the Company Law Board on Article 6.1.1 of the Articles of Association is also totally vitiated. He submits that the respondent did not controvert and/or dealt with the

submissions made by the appellant before the Company Law Board alleging that the allotment of large number of shares by the respondent no.1 in favour of some of the respondents and execution of the shareholder's agreement was in violation of Article 7 of the Articles of Association. He submits that the Company Law Board is the last fact finding court and since no finding of fact is rendered by adjudicating on the issue of violation of Article 7 raised by the appellant this company appeal cannot be dismissed at this stage.

23. Mr.Jagtiani, learned counsel for the respondent nos. 1 and 2 and Mr.Khandeparkar, learned counsel for the respondent no.6 on the other hand invited my attention to some of the averments made and the grounds raised in the company petition filed before the Company Law Board by the appellant and would submit that when the company petition was filed by the appellant, there was no ground raised alleging violation of Article 7 of the Articles of Association. The appellant had also suppressed and did not annexe copy of the shareholders agreement alongwith the company petition. It is submitted that the copy of the said shareholders agreement was brought on record by the respondent no.1 in the affidavit in reply. It is submitted that only after such shareholders agreement was brought on record by the respondents, the appellant had applied for amendment to the company petition before the Company Law Board and to raise additional issues in the company petition.

24. It is submitted that even in the amened petition, the appellant has not contended that the allotment of additional shares by the respondent no.1 in favour of some of the respondents was not in compliance with the procedure prescribed under Article 7 of the Articles of Association or that the shareholder's agreement was though signed by the appellant was not binding upon him on the ground that

the said agreement was executed in alleged violation of the Article 7 of the Articles of Association.

25. Learned counsel also invited my attention to the impugned order and judgment rendered by the Company Law Board and more particularly paragraph (42) thereof and it is submitted that the only argument advanced before the Company Law Board insofar as alleged violation of Article 7 of the Articles of Association is concerned, was that any new issuance of shares had to be made to all existing members in proportion to their existing shareholding. He submits that the arguments now urged before this court by the learned counsel for the appellant were not even advanced before the Company Law Board nor were raised in the company petition though was amended.

26. Learned counsel for the respondent nos.1, 2 and 6 would submit that the appellant was present in the most of the meetings in which the resolutions were passed by the respondent no.1 for allotment of various shares to the respondent no.6 and more particularly in the meetings held on 15th February 2007 and 25th March 2008. They submit that the appellant had suppressed this fact and had mainly contended before the Company Law Board that the allotment of shares by the respondent no.1 in favour of the respondent no.6 were without any notice or were without knowledge of the appellant. It is submitted that the Company Law Board had dealt with this issue at length in the impugned order and have rendered various findings of fact which cannot be interfered with by this court in this appeal. It is submitted that the first of such resolution was passed on 15th February, 2007 whereas the company petition came to be filed by the appellant only on 3rd February 2014. It is submitted by the learned counsel that all the shareholders of the respondent no.1 company had thereafter signed the said

shareholder agreement dated 24th April, 2008 including the appellant.

27. My attention is also invited to the Annexture 'C' to the said shareholder agreement which provides a shareholding pattern. It is submitted that each and every page of the said shareholder agreement was also initialled by the appellant including the said Annexture 'C' which clearly reflected the percentage of the shareholding held by each of the member including the appellant. It is submitted that the appellant was fully aware that the appellant was holding 2,65,250 shares of the respondent no.1 company which shareholding was 5.30% of the total paid up capital of the respondent no.1. Learned counsel would submit that the appellant is an educated businessman and had signed the said shareholding agreement after reading and understanding the contents thereof.

28. It is submitted by the learned counsel that after execution of the said shareholder's agreement and after allotment of additional shares to the some of the respondents, respondent no.1 company had admittedly filed annual return and also updated the records of Registrar of Companies. It is submitted that the appellant however never applied for rectification of the register of shares.

29. It is submitted that the company appeal filed by the appellant itself was barred by law of limitation. My attention is invited to the findings rendered by the Company Law Board on the issue of limitation raised by the respondents. It is submitted that the Company Law Board rightly held that the appellant was aware of the alleged acts of oppression since 2007 but did not offer any sound reason as to why he could not approach the Company Law Board for seeking the appropriate relief. It is submitted that in view of gross delay and latches on the part of the appellant, company petition deserves to be dismissed on that ground

also.

30. Learned counsel for the respondent nos. 1, 2 and 6 also invited my attention to the Article 7 of the Articles of Association and would submit that even the said article which prescribes a particular procedure before allotment and transfer of shares of the respondent no.1 company is not absolute but is conditional. It is submitted that by passing appropriate resolution by the respondent no.1 company, the allotment and transfer of shares could be made by the respondent no.1 which had been done in this case. It is submitted that on the grounds now urged before this court across the bar for the first time, this court cannot interfere with the impugned order rendered by the Company Law Board in this appeal filed under section 10F of the Companies Act, 1956.

31. Mr.Kanade, learned counsel for the appellant in rejoinder submits that though the appellant had raised the issue of non compliance of the provisions of Article 7 before the Company Law Board which argument was also recorded specifically by the Company Law Board in the impugned order and judgment, no finding is rendered on the said issue. It is submitted that this court cannot render any finding on the said issue for the first time and thus the entire order and judgment rendered by the Company Law Board deserves to be set aside on this ground also. It is submitted that the Company Law Board being the last court of fact finding, no finding having been rendered of violation of Article 7, it raises question of law in this appeal under section 10F. It is submitted that even interpretation of Article 7 by the Company Law Board itself would be a question of law. It is submitted that the respondent did not urge any argument dealing with the violation of Article 7 before the Company Law Board and thus cannot be allowed to advance such arguments before this court. It is submitted that since the

respondent no.1 did not carry any amendment to the Articles of Association, the said Articles of Association including Article 7 was binding on all the members of the respondent no.1 company. It is submitted that the breach of Articles of Association by the board of management of the respondent no.1 amounted to oppression and mis-management and thus the Company Law Board ought to have allowed the company petition filed by the appellant and could not have dismissed the said petition.

32. Learned counsel for the appellant did not deal with other submissions made by the learned counsel for the respondent nos. 1, 2 and 6.

REASONS AND CONCULSIONS

33. There is no dispute that the appellant was one of the shareholder of the respondent no.1 company and was also a director for sometime. There is also no dispute that on 15th February, 2007, the respondent no.1 had allotted 7,75,000 shares to the respondent no.6 at Rs.26 per share. The appellant was present in the meeting held by the respondent no.1 in which the said resolution was passed to allot the said 7,75,000 shares to the respondent no.6. There is also no dispute that on 2nd April, 2007, the Term Sheet was entered into between the appellant, respondent no.2 and the Peninsula Group (respondent nos. 7 to 11) wherein it was proposed to offer 50% share of the respondent no.1 company to the Peninsula Group and that such shares would be held equally by the promoter group which included the appellant and the said Peninsula Group.

34. There is no dispute that the said Term Sheet was signed by the appellant also on 2nd April, 2007. There is also no dispute that a further resolution was passed by the respondent no.1 pursuant to which on 7th April, 2007 further 2,40,000 shares

were allotted by the respondent no.1 to the respondent no.6 at Rs.337 per share. The said allotment was made in favour of respondent no.6 pursuant to the said Term Sheet dated 2nd April, 2007 which was also signed by the appellant. The said allotment was notified to the Registrar of Companies by the respondent no.1 vide Form 2 dated 12th February 2008. In the said meeting, the shareholding of the appellant was reduced from 29% to 12%. No objection was raised by the appellant.

35. There is no dispute that on 25th March 2008, the board meeting of the respondent no.1 came to be held in which a resolution came to be passed allotting 7,25,000 shares to respondent no.6 and 22,60,000 shares to respondent nos. 7 and 9 to 11 at Rs.337/- per share. 24,750 shares of the appellant were transferred to the respondent no.2 and 2,40,000 shares of the respondent no.6 were transferred to Peninsula Group in accordance with the Term Sheet. It was the case of the appellant that after these allotments and transfers, shareholding of the appellant was further reduced to 5.3%. It is not in dispute that all these 3 resolutions were challenged by the appellant in the company petition filed in the year 2014.

36. A perusal of the shareholder agreement dated 24th April, 2008 indicates that the said shareholder agreement was signed by all the members of the respondent no.1 company including the appellant. Annexture 'C' to the said agreement which provides the shareholding pattern clearly indicates the shareholding of all the shareholders including the appellant which was at 5.30% of the total paid up capital of the respondent no.1. The appellant had initialled the said annexture admittedly and is fully aware of his shareholding held in the respondent no.1 on the date of the execution of the said shareholding agreement. It is not in dispute that the appellant did not annexe copy of the shareholder agreement to the

company petition filed by the appellant which was an important and crucial document for deciding the subject matter of the petition filed by the appellant before the Company Law Board.

37. A perusal of the record indicates that it was the case of the appellant before the Company Law Board that the appellant was not aware of the shareholder's agreement and did not annexe a copy of the said shareholder's agreement to which the appellant was a signatory. A perusal of the impugned order passed by the Company Law Board indicates that after perusing the said shareholder's agreement which was brought to its notice by the respondent no.1, the Company Law Board has rendered a finding that the appellant had signed each and every page of the said document. It was not the case of the appellant that the said document was blank when the appellant had signed it. It is held that the appellant himself is a property dealer and works as Land Aggregator and had been dealing in this kind of business and remained always cautious as to what is the nature of the document he was signing.

38. It is held by the Company Law Board that the appellant had full knowledge of the said document but he deliberately did not place on record nor pleaded this fact in his company petition deliberately in order to get interim order from the Company Law Board and had played an arm twisting tactics with a view to exert undue pressure on the respondents for oblique motive of extracting money. The Company Law Board also examined Form No.32 and held that by no stretch of imagination, it could be said that it was a forged document. It is observed that the appellant successfully made an attempt and misled the Court and obtained interim order from the Company Law Board, which was subsequently vacated after the Company Law Board was apprised by the respondents by bringing the correct

facts on record. The Company Law Board made an observation against the appellant that he had not approached the Company Law Board with clean hands and had approached with a malafide motive of suppressing the material and relevant facts and documents.

39. A perusal of the said order and judgment indicates that a finding is rendered that there was ample reliable evidence available on record that the appellant had himself has tendered his resignation as a director of the respondent no.1 and the said form No.32 was signed by the appellant.

40. Insofar as the case of the appellant that the allotment of shares by the respondent no.1 firstly of 7,75,000 equity shares on 15th February, 2007, secondly of 2,40,000 equity shares on 7th April, 2007 and thirdly of 22,60,000 equity shares on 25th March, 2008 to the respondent no.6 is concerned, the Company Law Board has dealt with these allegations at great length in paragraphs 41 to 56 of the impugned order and judgment. It is held by the Company Law Board that insofar as the first allotment of 7,75,000 equity shares on 15th February, 2007 is concerned, the appellant was present in the meeting dated 15th February, 2007 when the said shares were allotted to the respondent no.6 at a premium rate of Rs.16/- per share. The respondents had produced a copy of the minutes of the meeting of the Board of Directors dated 15th February, 2007 before the Company Law Board. The respondents have also produced the annual report of the respondent no.1 for the year 2006-2007 filed with the Registrar of Companies on 23rd February, 2008 which reflected the said allotment in favour of the respondent no.6.

41. Insofar as the second allotment of 2,40,000 equity shares to the respondent

no.6 made on 7th April, 2007 is concerned, the said allotment was also approved by the Board of Directors of the respondent no.1 vide minutes of the meeting dated 8th April, 2007. The Company Law Board also considered the term sheet dated 2nd April, 2007, which was admittedly signed by the appellant which clearly stipulated the fresh issue and allotment of shares to various parties. The appellant did not dispute the said term sheet and had annexed a copy thereof to the company petition filed by him before the Company Law Board.

42. Insofar as the third allotment of 22,60,000 equity shares on 25th March, 2098 to the respondent no.6 is concerned, the said allotment was also approved in the Board of Directors' meeting which was attended by the appellant also. The appellant did not challenge the said allotment, which was approved in the said minutes of meeting and had been accepted by the appellant to be valid.

43. A perusal of the record indicates that the respondent no.1 had filed annual returns with the Registrar of Companies in the year 2008-2009 which reflected the allotment of shares to some of the respondents. The Company Law Board in these circumstances, rightly rejected the contention of the appellant that the appellant was not aware of the reduction of his shareholding or about the execution of the shareholder's agreement. The Company Law Board rightly held that each page of the shareholder's agreement was signed by the appellant and objection of the appellant that he was influenced and pressurized into signing the shareholder's agreement was absolutely unreliable. It was observed that the submission of the appellant that after signing the said shareholder's agreement, he did not read its contents, is not only a false submission but also untenable in law.

44. In my view, the Company Law Board rightly rejected the contention of the

appellant that the allotment of shares was without prior consent of the appellant or that the same was bad in law as contemplated in Article 6.1.1 of the shareholder's agreement. It is rightly held that the allotment of shares by the respondent no.1 was absolutely valid and was made in accordance with law, which was within the knowledge and consent of the appellant. The Company Law Board also considered the issue of gross delay and latches on the part of the appellant in filing the petition under section 397 and 398 of the Companies Act, 1956.

45. In paragraphs 57 to 59 of the impugned order and judgment, the Company Law Board has considered the plea of limitation raised by the respondents. It is held that the nature of dispute raised by the appellant also involves rectification of Registrar of Companies with respect of the impugned shares and thus the provisions of the Limitation Act were attracted in the present case. It is held that even if the provisions of the limitation Act did not apply, the doctrine of delay and latches would apply in the proceedings under sections 397 and 398 of the Companies Act, 1956. The Company Law Board after considering the facts rightly rendered a finding that the appellant was fully aware of the alleged act of oppression since 2007 and had not offered any sound reason as to why he had not approached the Company Law Board immediately for seeking appropriate reliefs. The Company Law Board rightly held that in view of the delay and latches on the part of the appellant, the company petition deserved to be dismissed on that ground also. Mr.Kanade, learned counsel for the appellant did not controvert this submission on the issue of delay and latches advanced by Mr.Jagtiani, learned counsel for the respondent nos.1 and 3 and Mr.Khandeparkar, learned counsel for the respondent no.6.

46. A perusal of paragraph 60 of the impugned order and judgment indicates

that the Company Law Board has also considered the submission of the appellant regarding notice of pre-emption allegedly not having been issued by the Board of Directors of the respondent no.1 to the appellant to enable the appellant to exercise his right of preemption. The Company Law Board has recorded the submission of the appellant in paragraph 42 of the impugned order and judgment in this regard. A perusal of the said paragraph indicates that the appellant had not raised any ground as sought to be urged before this Court across the bar, that the respondent no.1 had not followed the procedure prescribed under Article 7 or that execution of shareholder's agreement was contrary to and in violation of Article 7 of the Articles of Association.

47. A perusal of paragraph 42 indicates that the appellant had contended that the said Article 7 provides that any new issuances of shares had to be made to all existing members in proportion to their existing shareholding. It appears that it was also contended by the appellant that new issuance of 12,50,000 equity shares which would be made so as to maintain the existing shareholding as required under Article 7 of the Articles of Association of the company. It is thus clear that the arguments now advanced before this Court by the learned counsel for the appellant were neither raised in the company petition filed before the Company Law Board though amended, nor were advanced even across the bar before the Company Law Board. In my view, the arguments advanced before the Company Law Board as recorded in paragraph 42 of the impugned order is contrary to the provisions of Article 7.

48. Mr.Kanade, learned counsel for the appellant does not dispute that by passing appropriate resolution, the respondent no.1 company could issue shares to others in the manner prescribed therein. A perusal of paragraph 42 of the

impugned order and judgment indicates that such submission made by the appellant was in the context of his alleged right of pre-emption and not what was sought to be urged before this Court across the bar. In my view, there is thus no substance in the submission of the learned counsel for the appellant that the Company Law Board did not consider the said submission recorded in paragraph 42 regarding the alleged violation of Article 7 of the Articles of Association of the respondent no.1 company. I am thus not inclined to accept the submission of the learned counsel for the appellant that any question of law arises in view of the Company Law Board not having considered the alleged submissions made by the appellant before the Company Law Board. The judgment of the Supreme Court in case of ***Purnima Manthena & Anr.*** (supra) and the judgment of this Court in case of ***Maharashtra Power Development Corporation*** (supra) relied upon by the learned counsel for the appellant thus would not assist the case of the appellant and are clearly distinguishable.

49. This Court while considering the appeal under section 10-F of the Companies Act, 1945 has to consider the over all effect of the impugned order and judgment of the Company Law Board and cannot interfere with the finding of fact recorded by the Company Law Board unless the same is perverse. I do not find any perversity in the impugned order and judgment of the Company Law Board. The Company Law Board has dealt with each and every issue raised by the appellant and the documents produced and have passed a detailed order and judgment. I do not find any infirmity with the said order and judgment. The appeal is devoid of merits and is accordingly dismissed. There shall be no order as to costs.

(R.D.DHANUKA, J.)