

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA
PRADESH**

COMPANY APPEAL No.14 OF 2016

Between:

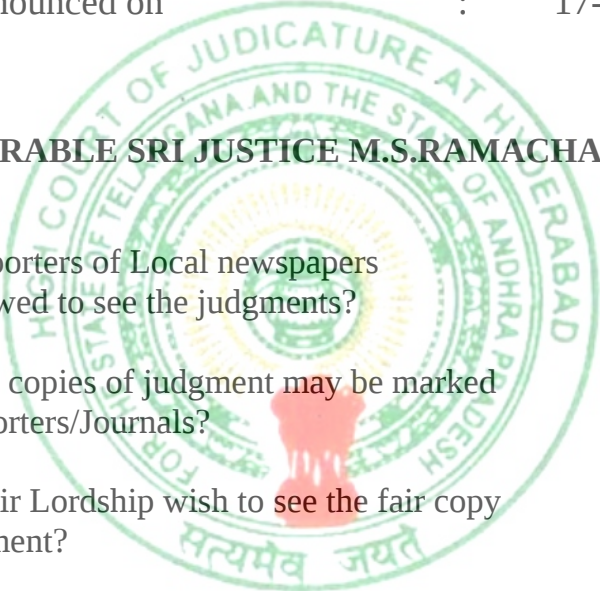
1. Dr.Renuka Datla and others ... Appellants

And

1. M/s.Biological E Limited and others ... Respondents

Judgment pronounced on : 17-11-2017

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

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1. Whether Reporters of Local newspapers may be allowed to see the judgments? : No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals? : **Yes**
 3. Whether their Lordship wish to see the fair copy of the Judgment? : No

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**COMPANY APPEAL No.14 OF 2016**

% 17-11-2017

Between:

1. Dr.Renuka Datla and others ... Appellants

Versus

\$ 1. M/s.Biological E Limited and others ... Respondents

< **GIST:**

> **HEAD NOTE:**

!Counsel for appellants : Sri Janak Dwarakadas, learned Senior Counsel for Sri P.Vikram, counsel for appellants.

^ Counsel for respondents : Sri P.S. Raman, learned Senior Counsel for Sri Y.Suryanarayana, counsel for R-1 and R-2.

Sri V.Venkata Ramana, learned Senior Counsel for Sri K.R.Sasidharan Nair, counsel for R-3.

Sri S.Niranjan Reddy, learned Senior Counsel for Ms.Rubaiana S.Khattoon, counsel for R-4.

? Cases referred

1. (2005) 11 SCC 314
2. 2001 (4) SCC 420
3. (2013) 179 Comp Cas 504 [A.P.]
4. (2008) 3 SCC 363
5. (2011) 164 Comp Cas 315 (Delhi)
6. AIR 1956 SC 213
7. AIR 2005 SC 1624
8. (2010) 158 Comp Cas 505 (Madras)
9. (2009) 151 Comp Cas 413 (Karnataka)
10. (1970) 1 SCC 437
11. (1997) 9 SCC 651
12. AIR 1992 SC 453
13. (1907) 2 Ch D 370
14. (1993) 2 SCC 725
15. (1976) 46 Comp. Cas 613 = 89 LW 693
16. (1921) 36 ILR Bom 564

17. (1981) 3 S.C.C. 333
18. (1981) 1 ALL E.R. (Ch. D)
19. (1991) BCLC 705
20. (2003) EWCA Civ 105
21. (2013) 180 Comp Cas 168
22. (1994) 1 BCLC 797 at Pg.814
23. (1984) 56 Comp. Case 194 (Punjab and Haryana)
24. (1911) 2 Ch 430
25. (1880)16 Ch D 681

26. AIR 1959 SC 689
27. (2017) 1 SCC 487
28. (2004) 8 SCC 229
29. (2007) 11 SCC 447
30. AIR 1961 SC 1353
31. (1996) 4 S.C.C. 127
32. (1995) 2 SCC 768
33. (1991) 71 COMP CAS 136 (Madras)
34. (1984) 55 COMP CAS 462 (Delhi)
35. AIR 2008 SC 1738
36. (1977) 47 Comp Cas 92(Bom)
37. (2006) 7 SCC 613



HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**COMPANY APPEAL No.14 OF 2016****ORDER:**

This appeal is filed under Section 10-F of the Companies Act, 1956 (for short 'the Act') challenging order dt.30-05-2016 in C.P.No.36 of 2014 of the Company Law Board, Chennai Bench (for short 'the CLB').

THE RELIEF SOUGHT IN THE C.P.

2. The said C.P. was filed by the appellants before the CLB under Sections 111A, 237, 397, 398, 402, 403, 404 and 406 of the Companies Act, 1956 and Sec.58 and 59 of the Companies Act, 2013 on 30-07-2014 complaining that certain acts of respondent Nos.2 to 9 are oppressive and prejudicial to the interest of M/s.Biological E. Limited (1st respondent) (hereinafter referred to as the "Company"); for a direction to supersede the Board of Directors of the said Company by appointing an Administrator and/or Special Officer to take over its management and affairs, as well as its assets and properties; alternatively to constitute a Committee consisting of representatives of the appellants to function as such Administrator and/or Special Officer; to declare as illegal, null and void, the Board Meetings of the Company held on 09-04-2013, 10-04-2013 and 11-04-2013; to remove respondent Nos.2 to 5 as Directors of the said Company and set aside all Form Nos.32 filed for appointment as Directors/Managing Director/Whole Time Director as null and void;

to declare the transmission of 4,00,961 equity shares held by late Dr.Vijay Kumar Datla to the 2nd respondent as illegal, null and void and consequently rectify the Register of Members by ordering transmission of those shares to appellant No.1; to declare that respondent Nos.6 and 7 are not shareholders/members of the Company and consequently rectify the Register of Members of the Company by deleting their names; to restrain respondent Nos.2 to 9 from permanently dealing with the properties of the Company in any manner whatsoever; to declare that respondent Nos.2 to 9 are jointly and severally liable for all damage caused to the Company and to the appellant No.1 as may be determined by an independent Auditor appointed by the CLB; to direct the cancellation and setting aside of all Forms, documents, returns filed by respondent Nos.2 to 7 on behalf of the Company with/before any Government authorities on or after 20-03-2013; to declare Resolutions passed at the Annual General Meeting of the Company held on 18-12-2013 as null and void and set aside the Forms filed by respondents with regard to the resolutions passed at the said Meeting; to declare the Board Meeting allegedly held on or after 20-03-2013 as null and void and set aside all resolutions allegedly passed at the said Meeting; for grant of appropriate relief under and in accordance with Section 402 of the Act; and to frame a scheme for management and control of the affairs of the Company and running its operations. Certain interim reliefs were also sought for.

3. The genesis of this litigation is disputes between the appellant No.1 on one hand and her 3 daughters, who are respondent Nos.2 to 4 herein, which arose after the death of late Dr.Vijay Kumar Datla, husband of appellant no.1 and father of respondent No.s 2-4 on 20-3-2013.

THE PARTIES TO THE APPEAL

4. Respondent No.6 is the husband of respondent No.3 and respondent No.7 is the husband of respondent No.4.

5. The respondent No.5, G.V.Rao, according to the appellants, was a Director of the Company till 06-04-2013 and he had resigned from the said post on 06-04-2013. This is disputed by the respondents who contend that on 09-04-2013, he withdrew his resignation and continued as a member of the Board of Directors. He died pending the C.P.

6. Respondent Nos.8 and 9 are Private Limited Companies incorporated on 07-02-2014 and 20-05-2014 and are promoted and managed by respondent Nos.2 to 4.

The facts leading to the litigation/ contentions of both parties in the C.P. in brief

7. The respondent No.1 Company is a closely held Public Limited Company which was incorporated under the Companies Act on 10-12-1953 under the name “Biological Products Private Limited” and was subsequently renamed as “Biological E Limited”.

8. Admittedly G.A.Narasimha Raju, father of the appellant No.1 founded the Company.

9. Appellant No.1 married late Dr.Vijay Kumar Datla and on 01-05-1972, the management of the Company was handed over to him and he became the Chairman and Managing Director thereof.

10. On 23-12-1974, a trust deed was executed by D.Vasanth Kumar (settler), Dr.D.V.K.Raju and Vijay Kumar Datla (Trustees) settling an amount of Rs.1000/- for the benefit of respondent Nos.3 and 4. The duration of this trust was till 1992. The trust deed was amended by Dr.Vijaykumar Datla and the 1st appellant for the benefit of respondent Nos.2 and 3 on 31-03-1992 and the duration of the Trust was extended up to 2010. This trust is 2nd appellant in this appeal.

11. Another trust deed had been executed on 08-12-1980 by G.Bharathi (settler), Dr.Vijaykumar Datla and Dr.D.V.N.Raju (Trustees) for settling an amount of Rs.500/- for the benefit of the 2nd respondent and the children who may be born to her, and the duration of the trust was till she reached 18 years of age. The above trust deed was amended on 16-07-1995 by Dr.Vijaykumar Datla and appellant No.1 and its duration was extended till 31-03-2010. This trust is the 3rd appellant in this appeal.

12. The appellant No.1 is a qualified medical professional with a doctorate in Clinical Pharmacology and was appointed as

Medical Director of the Company in 1988 and was involved in the affairs of the Company. On 29-08-1991, she was appointed as the Executive Director of the Company. According to her, she still held the position as on the date of filing of the C.P.

13. Till 1991, the shareholding of the Company was held by various family members of appellant No.1 and additionally 25% of the shareholding was held by M/s.Glaxo India Limited.

14. Between 1991 and 2007, Dr.Vijaykumar Datla and appellant No.1, through a series of transfers and by mortgaging and pledging their various properties, took control of the Company.

15. As a result, the combined shareholding of appellant No.1 and Dr.Vijaykumar Datla increased from 16% of shares of the Company to 99%.

16. According to the appellant No.1 though 81% of the shares in the Company were transferred to Dr.Vijaykumar Datla, her self earned and ancestral income were also utilized to purchase these shares.

17. On 20-03-2013, Dr.Vijay Kumar Datla passed away.

18. According to appellant No.1, respondent Nos.2 to 4 were never inducted into the Board of the Company during his lifetime, though certain shares had been issued to them and respondent No.2 joined the Company as its employee and continued in that capacity till the death of Dr.Vijay Kumar Datla.

19. Admittedly as on the date of death of Dr.Vijay Kumar Datla, only the appellant No.1 and respondent No.5 were the Directors of the Company.

20. According to the appellant No.1, Dr.Vijay Kumar Datla executed an unregistered Will dt.04-12-1987 wherein all his properties were bequeathed to the appellant No.1 and not to respondent Nos.2 to 4 and appellant No.1 was appointed as the sole executrix of the Will. The execution of this Will by him is disputed by the respondents. They contend that he executed a later unregistered Will dt.14-2-2005 bequeathing his shares in the Company to respondent No.2.

21. Appellant No.1 contends that after the death of her husband, she was in deep mental agony and stress and took almost a month to come to normalcy and taking undue advantage of her weak state of mind, respondent Nos.2 to 7 and some employees of the Company took over its control illegally by changing the Board's composition and shareholding pattern, that the said respondents did not want her to have ownership and management of the Company and adopted illegal means to hijack the Company.

22. There is no dispute that respondent No.5 resigned as Director of the Company on 06-04-2013 by addressing a letter to that effect to the Company which was acknowledged on 08-04-2013. However he addressed a letter on 09-04-2013 purporting to withdraw his resignation from the Board of Directors of the Company and held

a Board Meeting on 09-04-2013 inducting respondent No.4 as a Director of the Company in the place of late Dr.Vijay Kumar Datla.

23. According to appellant No.1, the resignation of a Director of a Company is not required under law to be accepted by the Board of Directors and becomes effective from the moment it is given, and therefore respondent No.5 ceased to be a Director from 06-04-2013. She contends that the resignation cannot be unilaterally withdrawn by respondent No.5, that he cannot act as a Director after 06-04-2013, that he had to be re-elected as an Additional Director by the Board of the shareholders at a General Body Meeting, which did not happen, and therefore he could not have called for or held any Board Meeting on 09-04-2013. It is further contended that as per Article 150 of the Articles of Association, no Board Meeting could be held without a ten day notice in writing being given to the other Directors; that no such notice was given to appellant No.1 by respondent No.5 of the Board Meeting of 09-04-2013; that as per Article 151 of the Articles of Association, quorum for a Board Meeting shall be $1/3^{\text{rd}}$ of the total strength or two Directors, whichever is higher; and even assuming for the sake of argument without conceding that respondent No.5 was validly acting as a Director, since the appellant No.1 did not attend the Board Meeting of 09-04-2013 for want of notice to her, there was no quorum for it as only respondent No.5 attended it and the appellant No.1, being the only other Director, was not there. Appellant No.1 therefore contends that the said Board

Meeting of 09-04-2013 whereunder respondent No.4 was inducted as a Director by respondent No.5 in the place of late Dr.Vijay Kumar Datla, is illegal, null and void and of no effect whatsoever.

24. On 10-04-2013, another Board Meeting was held which was attended by respondent Nos.5 and 4 and at that meeting, 4,00,961 shares (81%) standing in the name of late Dr.Vijay Kumar Datla were transferred to respondent No.2 on the basis of Will dt.14-2-2005 produced by respondent No.2. At the same meeting, respondent Nos.2 and 3 were also appointed as Additional Directors of the Company.

25. According to the appellant No.1, there was no notice given to her of the Board Meeting of 10-04-2013 also and no advance agenda was circulated to her. She also contends that when the Board Meeting of 09-04-2013 was itself invalid, the appointment of respondent No.4 as Director was itself illegal and there was no quorum even for the Board Meeting dt.10-04-2013.

26. She further contends that as per Article 66 of the Articles of Association of the Company, title to shares of a deceased member would pass only to executors or administrators or holders of a probate or succession certificate, and the Company was not bound to recognize executors or administrators who did not obtain probate or letters of administration or succession certificate from a duly constituted Court in the country; and that no such probate or letters of

administration or succession certificate was produced by respondent No.2, as mandated by Article 66.

27. She contends that under Art.66, though the Board may dispense with production of said documents upon such terms as to indemnity or otherwise as the Board, in its absolute discretion, may think necessary, without recording that it is exercising any such discretion and without insisting on any indemnity from respondent no.2, the Will dt.14-2-2005 produced by respondent No.2 was accepted by the Board for transmitting 4,00,961 shares (81%) of late Dr.Vijay Kumar Datla to respondent No.2.

28. The appellant No.1 contended that on 10-04-2013, when she was sitting in the chambers of her late husband, the Company Secretary of the Company rushed to her and informed that the Vice President and Assistant Vice President of the Company were illegally removing all records from her chamber, and that when she and the Company Secretary tried to come out of her chambers, they found that the main door was locked till 9-30 p.m., and that she lodged a police complaint against the said persons with the Chikkadapally Police Station, Hyderabad. She contended that these persons acted at the instance of respondent Nos.2 to 4.

29. On 11-04-2013, another meeting of the Board of Directors was conducted in which respondent No.2 was appointed as Managing Director of the Company and 11 shares were purportedly transferred by respondent No.2 in favour of respondent Nos.6 and 7.

30. Appellant No.1 contended that as with the previous two Board Meetings, no notice regarding this Meeting was received by her and no advance agenda was circulated.

31. She contended that till the holding of this Board Meeting, there were only 10 members on the register of the Company and by this method, an attempt was made to increase the number of members of the Company to 13, knowing fully well that she might, on discovering the illegal and oppressive acts, file a petition under Section 397 and 398 of the Act which would require her to have strength of 1/10th of the members. She contended that even this meeting was illegally conducted and respondent Nos.6 and 7 cannot be treated as shareholders of the Company.

32. The appellant No.1 contends that filing of Forms 32 by respondent No.1 is illegal and that by the above acts, the respondent Nos.2 to 7 took over the management of the Company illegally with a *mala fide* intention of hijacking the affairs of the Company.

33. Appellant No.1 claimed that she attended meetings of the Board held on 22-08-2013 and 25-09-2013 to find out the real intentions of the respondents, but her objections to the agenda in the said meetings were not duly recorded, and that the respondents lodged a police complaint against her making false allegations that she removed records of the Company.

34. The appellant No.1 also filed in February, 2014 O.S.No.189 of 2014 before the City Civil Court, Hyderabad against respondents challenging the illegal transmission of shares of late Dr.Vijay Kumar Datla in favour of respondent No.2 and to declare that appellant No.1 is the absolute owner of all his shares in view of the Will dt.04-12-1987 allegedly executed by him in her favour and to transmit the same by recording her name and delivering of possession of share certificates to her by way of mandatory injunction apart from seeking other alternative reliefs. The said suit is pending in the said Court.

35. Appellant No.1 alleged that the respondents, after taking control of the Company, started to negotiate with private equity investors to sell off their stake in the Company but those deals did not go through; that respondents attempted to sell off the Company to P.E.Investors but failed; and then they decided to sell the immovable properties of the Company to M/s.ITC Limited. She contended that she wrote to M/s.ITC Limited cautioning them about the illegal share holding and Directorship of the Company and so the respondents could not sell properties to M/s.ITC Limited. She contended that they then decided to hive off undertakings of the Company to companies incorporated and managed by respondent Nos.2 to 4 so that it would be convenient for them to dispose of assets of the Company and siphon off the monies to the detriment of the Company and the shareholders; that they filed scheme of arrangement under Sections

391 to 394 of the Act before this Court for de-merger of livestock business undertaking in favour of B.E.Immunology Private Limited (Respondent No.8) and of the vaccine business undertaking of the Company to B.E.Vaxco Private Limited (Respondent No.9); and these acts are acts of mismanagement committed by respondent Nos.2 to 7. She alleged that respondent Nos.2 to 4 bought three high-end cars each worth Rs.1.5 crores using the funds of the Company for their personal use and this indicates their intention to reduce the Company into a shell company.

36. She therefore contended that for the alleged acts of oppression and mismanagement, reliefs sought by her should be granted.

37. The respondents however contend that the appellant No.1 had consented to all the above Board Meetings in consonance with past practices of the Company, though she did not attend them. They contend that appellant No.1 addressed a letter on 15-04-2013 welcoming the appointment of respondent No.2 as Managing Director and of respondent Nos.3 and 4 as Directors of the Company, and she thus acquiesced in all the decisions taken in the Board Meetings held on 09-04-2013, 10-04-2013 and 11-04-2013. They further contend that she suppressed the said letter and filed the C.P. with untenable allegations.

38. The execution of this letter dt.15-04-2013 is disputed by appellant No.1. She also filed a complaint with the police denying

that she is the author of the said letter and it is stated that at the Bar that the police filed a final report dt.13.8.2014 that no case is made out and the criminal Court passed orders closing the complaint; that protest petition filed by appellant no.1 thereto was dismissed vide order dt.13.4.2016 in CrI.M.P.No.795 of 2016 in Cr.No.207/2014 by XII Addl.CMM, City Criminal courts, Hyderabad. The counsel for appellants states that steps will be taken to assail the final report of the police and the order passed by the Criminal Court, and the dismissal of the same would have no bearing in the instant case.

39. The respondents however contend that the appellant No.1 took different stands at different points of time in regard to the said letter i.e. that she denied it sometimes/stated that it was obtained under coercion etc. at other times, and such conduct of appellant No.1 should disentitle her to relief in the C.P.

40. The respondents also contend that there was a Annual General Meeting held on 18-12-2013 wherein respondent Nos.2 to 4 were duly recognized as Managing Director and Directors respectively in law and therefore allegations of appellant No.1 regarding actions taken prior to that date have become redundant and have no relevancy any longer.

41. The contentions of the respondents have been indicated more in detail supra and will be referred to and dealt with more in detail at the appropriate places in this order.

42. However, one important contention in regard to locus of the appellant No.1 to file this C.P. needs to be noted.

43. According to respondents, as per Section 399 of the Act, in the case of a Company having a share capital, not less than 100 members of the Company or not less than 1/10th of the total number of its members, whichever is less, are entitled to maintain a petition under Section 397 or 398 of the Act; this restriction was sought to be bypassed by appellant No.1 by incorrectly arraying appellant Nos.2 and 3 as petitioners in the Company Petition; appellant Nos.2 and 3 are Trusts which hold shares in the Company and the beneficiaries of those shares are respondent Nos.2 to 4; and so this C.P. could not have been preferred by the Trusts against their own beneficiaries.

44. It is also contended that appellant No.1 cannot represent appellant Nos.2 and 3 in view of a notice dt.04-12-2013 issued by respondent Nos.2 to 4 to the appellant No.1 and that since respondent Nos.2 to 4 have not given any consent for filing of the C.P., it has to be dismissed.

45. This contention is refuted by the appellants by relying on Section 153 of the Act. They contend that no notice of any Trust, express, implied or constructive, shall be entered on the register of members; that as per annual return of the Company for the Annual General Meeting held on 30-09-2011, there were 13 members of whom one was Dr.Vijay Kumar Datla, who died on 20-03-2013; so excluding him there were 12 members including appellant Nos.2 and

3 Trusts; if these Trusts are also excluded, there would be only 10 members of whom the appellant No.1 was one; but the actual members would be only appellant No.1 and respondent Nos.2 to 4, M/s.V.R. Investments Private Limited and Mr.Pumedu Gupta and Ms.Krishna Gupta; thus the appellant No.1, being one out of 7 members, the requirement of having more than 1/10th of the total number of members, prescribed under clause (a) of sub-section (1) of Section 399 of the Act, would be satisfied, and they can maintain the C.P.

Other relevant facts :

46. Admittedly, appellant No.1 filed on 13-11-2013, C.P.No.1 of 2013 under Section 409 of the Act before the CLB and also filed an application seeking an injunction to stop the Annual General Body Meeting to be held on 18-12-2013, but the interim application was rejected on 17-12-2013 by the CLB on the ground that holding of AGM is mandatory in law. It directed the appellant No.1 also to participate in it observing that any resolutions passed therein would be subject to outcome of the C.P.

47. This was challenged in C.A.No.1 of 2014 by appellant No.1 before this Court, but this Court, did not express any opinion on the legality or otherwise of the order under appeal, but directed the CLB to dispose of C.P. No.1 of 2013 within 3 months. Later the said C.P. was withdrawn and the present C.P. No.36 of 2014 is filed.

48. In this C.P. also appellants filed application seeking temporary injunction restraining the Directors from functioning as such and also for restraining appellant No.1's removal as Executive Director. She also complained that there is a threat of alienation of immovable properties of the Company.

49. On 06-08-2014, the CLB recorded the statement of the Senior Counsel for respondents that respondents had no intention to alienate movable and immovable properties of the Company except which may arise under the scheme of de-merger and also stated that the respondents will not remove appellant No.1 from the post of Executive Director, without leave of the CLB and declined to grant any other interim reliefs.

50. The appellant No.1 questioned the same before this Court in C.A.No.17 of 2014. On 15-04-2015, the said appeal was allowed and this Court directed to constitute an *ad hoc* Board with the appellant No.1 as Managing Director thereof and also issued detailed guidelines as to the conduct of business of the Company, pending disposal of the C.P.

51. This was questioned by the respondents in S.L.P.Nos.12831, 12835 and 20338 of 2015 before the Supreme Court.

52. On 06-04-2015, the Supreme Court allowed the S.L.Ps. and set aside the order dt.15-04-2015 observing as under:

“As in the course of hearing, some grievance was expressed on behalf of Respondent No.1 that her status on the Executive Director of the company, stands undermined due to uncalled for surveillance imposed at the instance of the existing Board of Directors, we make it clear, as has been assured before us, that she ought to be allowed to function in the aforesaid capacity being provided with all facilities and privileges attached to the office as permissible in law, so much so that she does not have any occasion to complain in this regard. This indeed ought to be in accord with the letter and spirit of the undertaking offered by the Board of Directors to the CLB. The Respondent No.1 too would cooperate in the day to day management of the affairs of the company in her said capacity. The existing Board of Directors would also abide by the undertaking as recorded in the order dated 6.8.2014 of the CLB qua the alienation of the assets of the company. The set-up of the Board of Directors and the arrangement vis-à-vis the administration of the affairs of the company, as was existing on the date on which the order dated 6.8.2014 was passed by the CLB, would continue until further orders by it. (Emphasis supplied) ”

The unnumbered applications filed by appellants in the C.P. :

53. It is not in dispute that appellants filed on 03-02-2015:

- (i) an unnumbered application to direct respondent Nos.2 to 4 to disclose on oath the original Will dt.14-02-2005 allegedly executed by late Dr.Vijay Kumar Datla in favour of respondent No.2;
- (ii) a second unnumbered application on 03-02-2015 to withdraw an undertaking made by appellant No.1 in C.P.No.36 of 2014 in relation to O.S.No.184 of 2014 before the XXIV Additional Chief Judge, City Civil Court, Hyderabad;

(iii) a third unnumbered application before the CLB to disclose on oath the original copies of share certificate alleged to have been issued by the Company in favour of respondent No.2 transmitting the shareholding of late Dr.Vijay Kumar Datla in favour of respondent No.2 on the basis of the Will dt.14-02-2005 propounded by her.

Company Application no.1 of 2016 for amendment of pleadings/prayers in C.P.

54. On 09-03-2016, Company Application No.1 of 2016 (this being the 4th application) was filed by appellants in the C.P.No.36 of 2014 before the CLB for amending the Company Petition by adding certain paragraphs in the body of the said petition and also amend/modify the prayers made therein and also to add certain prayers.

55. In April 2016, a fifth unnumbered application was also filed by the appellant No.1 against the respondent Nos.2 to 4 alleging that the latter had committed breach of the order dt.06-08-2014 in C.P.No.36 of 2014 wherein respondent Nos.2 to 4 undertook not to alienate the movable and immovable properties of the Company and also to continue appellant No.1 as Executive Director of the Company.

56. It is important to note that the respondents had contended before the CLB that filing of C.A.No.1 of 2015 seeking amendment of the CP by the appellants is only a dilatory tactics to delay the hearing of the CP. The Company and the 2nd respondent, however, filed a

memo on 28-03-2016 before the CLB, agreeing to some of the amendments sought by the appellants, without prejudice to their right to contest the amendments. They opposed the amendments sought to some of the interim applications by the appellants.

57. However on 24-03-2016 (according to para-97 of the impugned order of the CLB), the CLB recorded that the respondents orally agreed to the proposed amendments to be carried out to the main petition i.e. from para (i) to (vii) and that amendment to para (viii) can also be allowed, subject to objections of the respondents. *However no order in fact allowing the said amendments or C.A.No.1 of 2016 was passed by the CLB.*

58. Appellants filed an amended Company Petition on 05-04-2016 and the CLB states in the impugned order that it considered the contentions in the amended C.P. filed by the appellants.

59. It is contended by appellants that though amended CP was filed by the appellants incorporating the amendments agreed to by the respondents, they did not at any point of time, give up their right to seek the other amendments opposed by the respondents, and that without deciding why the other amendments opposed by the respondents should not be allowed, the CLB proceeded and thus committed a serious error of law causing grave prejudice to appellants.

60. It is the grievance of the appellants in the appeal that all the above five applications were taken by the CLB *at the time it was deciding the C.P.No.36 of 2014* and in para-100 of its impugned order, it merely stated that “*all the unnumbered applications pending as on that date stand disposed of.*” The appellants contend that orders ought to have passed by the CLB on each of these unnumbered applications separately within a reasonable time of their filing since some have been pending from February 2015, and they ought not to have been kept pending and taken up along with the main CP on 02-05-2016.

61. Admittedly on 24-03-2016, the CLB granted time to the respondents to file their response to C.A.No.1 of 2016 by 29-03-2016 and granted appellants time to file rejoinder by 31-03-2016 and posted the CP for final hearing on 06-04-2016. On 04-04-2016, the appellants filed rejoinder reiterating that all amendments as proposed by them in C.A.No.1 of 2016 ought to be allowed, including the amendment for prayers for interim reliefs. They also filed a memo requesting the CLB to hear them before deciding whether to hear the CP finally or on the grant of interim reliefs. On 21-04-2016 the CLB passed an order adjourning the matter to 2/3-05-2016 for final hearing recording that no further adjournment would be granted, and if for any reason, appellants seek adjournment and did not commence arguments, it will hear the respondents and close the matter and pass orders on the basis of pleadings.

62. This was questioned in Company Appeal No.5 of 2016 by the appellants before this Court. This appeal is pending.

63. The appellant also filed on 27-04-2016 a Civil Revision Petition under Article 227 of the Constitution of India challenging the order dt.21-04-2016 of the CLB. (It was dismissed on 30-09-2016 as infructuous).

64. The appellant No.1 filed a memo before the CLB on 27-04-2016 to adjourn the proceedings in CP pending disposal of the CRP. Another memo was filed subsequently requesting adjournment of the matter scheduled to be heard on 02-05-2016 stating that the four unnumbered applications filed by her were pending.

65. On 02-05-2016, the appellant No.1 in person requested for adjournment of the Company Petition again, but the same was refused on the ground that adequate opportunity had been given to the appellants to present their case by order dt.21-04-2016 itself. The CLB then heard Senior Counsel for respondents as well as the Counsel Sri C.Ramachandra Raju for appellants and appellant No.1 in person, who sought adjournment, and then reserved the matter for orders by closing arguments. It gave opportunity to the parties to file their written submissions within ten days before 16-05-2016.

66. This order was questioned in Company Appeal No.6 of 2016 in this Court, but the said appeal was dismissed on 22-07-2016 stating that only against the final order of the CLB, appeal would lie

and that this appeal is not maintainable challenging the order 03-05-2016. This Court opined that it would be premature to go into the issue, whether in the given facts, the CLB erred in not granting adjournments, or not dismissing the appeal for default and instead reserving the case for passing final orders, whether sufficient opportunity ought to have been afforded, and refusal of request for adjournment was not validly made; and that these matters can be gone into when proceedings are taken against the final order of the CLB.

67. The learned counsel for the appellants vehemently contended that there was denial of opportunity to present arguments by the CLB to the appellants and that this has caused grave prejudice to the appellants. The learned counsel for the respondents however refuted the said contentions and stated that in spite of adequate opportunity, appellants did not submit arguments on merits before the CLB, and so they cannot complain of denial of opportunity.

The order dt.30-05-2016 of the CLB in C.P.No.36 of 2014:

68. The CLB framed the following issues :

“(i) Whether the petitioner has requisite qualification as contemplated under Section 399 of the Companies Act, 1956 to invoke the jurisdiction of this Bench under Section 397/398 and other provisions of the Companies Act, 1956 and whether any case has been made out even under Section 111-A of the Companies Act, 1956?

(ii) Whether the Board Meetings held on 09.04.2013, 10.04.2013 and 11.04.2013 are legal and valid ?

(iii) *Whether the transmission of shares to an extent of 4,00,961 equity shares held by (Late) Dr. Vijay Kumar Datla in favour of the 2nd respondent is in accordance with the Articles and Law ?*

(iv) *Whether the A.G.M. conducted on 18.12.2013 is legal and valid ?*

(v) *Whether the acts of respondents are oppressive to the petitioner and whether the respondents have committed any acts of mismanagement in the affairs of the R1 Company ?*

(vi) *To what extent (family relationship in a company, whether the respondent Company failed to adhere to the request of the petitioner regarding furnishing the documents and inspection of books and accounts of the R1 Company) ?”*

69. With regard to the application for amendment to C.A.No.1 of 2016 filed by the appellants seeking amendment to the Company Petition on 31.07.2014 by incorporating certain paragraphs to the pleading as well as to amend the main and interim reliefs, the CLB recorded that on 24.03.2016, respondents had orally agreed to certain amendments to be carried out in the main petition; that after the said order, the appellants had filed an amended Company Petition on 05.04.2016, and the CLB, for deciding the matter took into consideration the averments made in the amendment petition including the main reliefs. It is stated that it was inclined to dispose of the main petition itself and the question of taking up interim reliefs at that stage did not arise, and so the portion of the amended Company Petition dealing with interim reliefs cannot be considered.

70. It also noted that appellants did not file any written submissions in the Registry in spite of opportunity being granted on 03.05.2016 in its order to file such written submissions.

71. Dealing with the issue No.(i) relating to the *possession by the appellant No.1 of requisite qualification under Section 399 of the Act* to invoke jurisdiction of the CLB under Section 397 / 398, and the issue as to whether any case had been made out under Section 111-A of the Act, the CLB observed that appellant No.1 had filed O.S.No.184 of 2014 in the Civil Court to declare that she is the absolute owner of 4,00,961 shares which belong to her late Husband (Late) Dr. Vijay Kumar Datla by virtue of a Will propounded by her and had sought direction to defendants nos.4 to 13 therein to transmit the same for recording her name, and delivery possession of share certificates to her by way of mandatory injunction, etc.; that the said suit was filed prior to the filing of the Company Petition; and since the Supreme Court in its order dt.06.10.2015 directed the Civil Court to dispose of the suit for the same relief sought in the C.P, the appellant No.1 cannot seek the same relief in the Company Petition. It therefore rejected the relief relating to Section 111-A, Sections 58 and 59 of the Act and held that the appellants cannot take a stand that the Company Petition is a composite petition filed under Section 111-A and other provisions of the Companies Act,1956 or Section 58 – 59 Companies Act,2013; and the CLB will treat the Company Petition as having

been filed only under Sections 397 / 398, 402, 403, 404 and 406 of the Companies Act,1956.

72. It then noted that appellant No.1 in the Company Petition stated that she held 6.63% of the paid-up share capital in the company which had 13 shareholders; that the respondents took the stand that the appellant no.1 had only 5.68% of the total paid up share capital of the company; that the CLB will take only the factual position as on the date of the petition; that appellants collectively held only 7.37 % of the paid up share capital; there was an order dt.07.08.2015 in I.A.No.748 of 2015 in O.S.No.599 of 2015 in respect of appellant no.2 and I.A.No.749 of 2015 in O.S.No.598 of 2015 in respect of appellant no.3, restraining the 1st appellant from acting as trustee of appellant no.2 and 3 trusts; though CRPs were filed in the High Court assailing the same, they were dismissed and the said interim injunction was operating against the appellant no.1 from acting as trustee; and therefore, the appellant no.1 cannot act as a trustee of appellant nos.2 and 3. It also held that there is no authorization by the said trusts to the appellant no.1 to act on their own behalf, and so the appellant no.1 had no *locus standi* to file the Company Petition on behalf of appellant nos.2 and 3. It also took note of a letter dt.04.12.2014 addressed by respondent nos.2 and 3 informing appellant no.1 not to act as a trustee of the appellant nos.2 and 3 trusts (of which the respondent nos.2 to 4 are beneficiaries), and held that

appellant no.1 cannot take the support of appellant nos.2 and 3 for the purpose of maintaining the Company Petition.

73. It then held that as per documents filed by appellant no.1, the company had 13 shareholders as on 30.09.2011 even without taking into account the additional members of the company; it is evident from documents that the Company was having 14 shareholders as on the date of filing the Company Petition; and so, the first criteria of possessing support of 1/10 of shareholders to maintain a petition under Section 397, as prescribed under Section 399, has not been fulfilled. It therefore held that the Company Petition is not maintainable and was liable to be dismissed as not maintainable.

74. Having taken the said view, however, the CLB went into the other issues also claiming that it would give a quietus to the lingering litigation.

75. Then the CLB dealt with the issue “*whether the Board meetings held on 09, 10 and 11th of April, 2013 were legal and valid?*”.

76. It noted that though 5th respondent received letter dt.06.04.2013 addressed to the Board of Directors of the Company and requested to file Form-32, the appellant no.1, being the other Director, received the resignation on 08.04.2013; that there was a meeting among the family members of (Late) Dr. Vijay Kumar Datla which was attended by respondent no.5 wherein it was agreed by

appellant no.1 and all other family members unanimously to appoint respondent no.2 as Managing Director of the Company and to induct respondent nos.2 to 4 as Additional Directors to the Board of the Company; that the family members felt that the continuance of the services of respondent no.5 was desirable keeping in view his credentials; and that the appellant no.1 had personally requested respondent no.5 to continue officiating as Director. It held that on such a request, the respondent no.5 agreed to continue as Director and withdrew his resignation on 09.04.2013 and handed it over directly to appellant no.1. It noted that appellant no.1 received the said letter on 08:30 a.m. and put initials on it and she did not dispute the withdrawal of the resignation. It held that respondent no.5 addressed a similar letter to the Company Secretary of the Company, who also put in initials on the said letter, and thus he continued to be Director of the Company. It rejected the contention of the appellants that respondent no.5, after his resignation, cannot continue as Director. It also held that appellant no.1 did not take any steps to call for an Extraordinary General Body Meeting for appointment of Directors to fulfill the requirement as per Articles or Law.

77. It held that the Board meeting dt.09.04.2013 was convened by the respondent no.5 and he took the Chair to conduct the proceedings, but appellant no.1 did not attend the Board meeting and was granted leave of absence, and in that meeting it was resolved that the respondent no.4 would be appointed as a Director in the casual

vacancy which has arisen on the demise of (Late) Dr. Vijay Kumar Datla; as per Article 123 of the Articles of Association of the Company, the Board would have the power at any time to appoint any other qualified person to be Director to fill up the cadre of vacancy; and therefore, the meeting dt.09.04.2013 was validly held.

78. Coming to the meeting on 10.04.2013, the CLB held that at the said meeting respondent nos.4 and 5 were present and the sons-in-law of appellant no.1 were present as invitees; that respondent no.5 took the Chair to conduct the proceedings, but appellant no.1 did not attend the meeting; that minutes of the previous Board meeting held on 09.04.2013 were confirmed in this meeting; that on the basis of original Will dt.14.02.2005, allegedly executed by (Late) Dr. Vijay Kumar Datla and produced by 2nd respondent, 4,00,961 shares were transferred to her and a decision was taken to give effect to the aforesaid share transmission on the share certificates.

79. The CLB rejected the contention of appellant no.1 that she is entitled to the said shares on the basis of the Will dt.04.12.1987 stating that the said issue is subject matter of O.S.No.184 of 2014, and opining that the CLB cannot decide such disputed issues with regard to inheritance of the shares which is pending before the Civil Court. It therefore, held that the said Board meeting on 10.04.2013 was also valid and the share transfer in favour of respondent no.2 is in conformity with Section 109 of the Act. It noted that in the very same Board meeting, respondent nos.2 and 3 were appointed as Additional

Directors, that appellant no.1 was aware of the Board meeting and did not challenge it till C.P.No.1 of 2013 was filed, and so the said Board meeting held on 10.04.2013 was valid.

80. Coming to the Board meeting dt.11.04.2013, the CLB held that the said meeting was attended by respondent nos. 2 to 5, and in that meeting, the respondent no.2 was appointed as Managing Director of the Company and proposed transfer of shares in the names of respondent nos.6 and 7, and as per Article 145 of the Articles of Association of the Company, the respondent no.2 was validly appointed as Managing Director.

81. It opined that the appellant no.1 was aware of all the meetings, but no grievance was raised in relation to either transmission of shares which took place in the 2nd Board meeting held on 10.04.2013 or to the appointment of 2nd respondent as Managing Director, till C.P.No.1 of 2013 was filed. It opined that the respondent no.2's credentials were endorsed and recognized even by appellant no.1 also in her letter dt.15.04.2013 addressed to 2000 employees of the company, that appellant no.1 allegedly made appropriate additions and modifications to the said letter personally before circulating the same, but suppressed it in the C.P.

82. It held that appellant no.1 has thus consented to all the meetings and decisions taken in the three Board meetings and she cannot make a *volte face* and challenge the same in this C.P; that the appellant no.1 acquiesced in all the events that had taken place and is

now *estopped* from raising any grievance in regard thereto; and that this conduct is only because appellant no.1 wanted to become Executive Chair Person of the Company, which was not agreeable to the other Board members.

83. It held that appellant no.1 had addressed letters dt.19.10.2013 and 20.10.2013 clearly mentioning the respondent no.5 and his position as director.

84. It then referred to 4,594 shares held by Dr. Vijay Kumar Datla (H.U.F.) which was requested to be divided equally among the appellant no.1 and respondent nos.2 to 4 by letter dt.24.05.2013 of respondent nos.2 to 4, and held that as per an MOU dt.10.05.2013, the said shares devolved among the said four persons; and in the Board meeting held on 24.05.2013, they were transferred proportionately among them. It observed that leave of absence was granted to appellant no.1 and she still got 1,148 shares and this letter dt.24.05.2013 also indicated that appellant no.1 had knowledge of all prior Board meetings and the decisions taken therein were with her consent.

85. It then held that appellant no.1 attended the Board meeting dt.22.08.2013 in which the minutes of the earlier Board meeting held on 26.06.2013 were confirmed, and in that meeting the remuneration payable to appellant no.1 was revised, and by her participation in the said Board meeting, she is estopped from challenging the previous Board meetings.

86. Coming to issue no.(iii) relating to *validity of transmission of shares of extent 4,00,961 equity shares in favour of the respondent no.2*, it noted that the said event took place in the Board meeting held on 10.04.2013, that appellant no.1 had already filed O.S.No.184 of 2014 in that regard even prior to the filing of the present C.P.; that the Supreme Court also directed the Civil Court to dispose of the suit; and so appellant no.1 cannot ask for any declaration in respect of the above shares before the CLB since the same is subject matter of the said suit. It also relied on the judgment of the Supreme Court in **Sangramsinh P. Gaekwad and others v. Shantadevi P. Gaekwad (Dead), through LRs**¹ to hold that issues relating to inheritance of shares being civil in nature, the CLB cannot deal with it.

87. Coming to issue no.(iv) relating to *the validity of the Annual General Meeting on 18.12.2013*, the CLB held that in C.P.No.1 of 2013 appellant no.1 had sought for stay of the said Annual General Meeting, but the stay was declined on 17.12.2013 and the resolutions passed therein were made subject to the outcome of the C.P.; that the Annual General Meeting was then held on 18.12.2013; and in that Annual General Meeting, the decisions taken in the Board meeting on 9th, 10th and 11th of April, 2013 were ratified by the General Body. It noted that appellant no.1 took part in the Annual General Meeting wherein her remuneration was also approved and this also indicates her acquiescence and she is *estopped* from raising

¹ (2005) 11 SCC 314

the same issues again and again. It held that the appointment of respondent nos.2 to 4 as Directors thus attained finality, and became binding on the Company and its members.

88. It referred to the Annual General Meeting held on 19.09.2014 wherein a decision was taken by the members not to fill vacancy due to retirement/rotation of appellant no.1 who had not offered herself for reappointment for furnishing her consent as per Section 152 (5) and Rule 8 of the Companies (Appointment and Qualification of Directors) Rules, 2013; that in the said meeting, respondent no.5 was re-appointed as Director, and respondent no.3 was appointed as whole-time Director for 3 years, and M/s. Brahmayya and Co., Chartered Accountants were appointed as statutory auditors of the company. It also referred to another Annual General Meeting held on 08.12.2015 and observed that this indicates that the Company is regular in conducting Annual General Meetings and is acting in compliance with law.

89. Coming to issue (v) which dealt with the question *whether the acts of respondents were oppressive to appellant no.1 and whether the respondents had committed any acts of mismanagement in the affairs of the company*, it held that the appellant no.1 did not have *locus* to maintain the company petition raising the said grounds as she was holding less than 10% of the paid up share capital of the Company and had support of less than 1/10th of the shareholders; that the Company is a profitable company; and it cannot be said that its

affairs were being taken in a manner prejudicial to the interests of shareholders and public at large. It held that there is no iota of evidence placed by appellant no.1 that the affairs of the Company were being conducted in a manner prejudicial to her interest in the capacity of shareholder and prejudicial to public interest. It noted that the Company was in the business of manufacturing vaccines and was making good profits as can be seen from the balance sheet for the financial years 2014-15 and 2015-16, and there was no evidence as to mismanagement of the affairs detrimental to the interests of the shareholders. It held that there is no situation warranting winding up of the company and unless such a situation exists, no relief can be granted under Sections 397 and 398, as held in **Hanuman Prasad Bagri v. Bagress Cereals Private Limited**².

90. It held that time and again the Company stated to the appellant no.1 to visit its registered office during business hours to inspect the documents, but she did not avail of the said offer and this shows that fair opportunity was given to her by the company and its management.

91. It also held that appellant no.1 suppressed the letter dt.15.04.2013, and therefore, did not come with clean hands for seeking equitable relief under Section 397 of the Act.

92. On issue no.(vi), *as to what relief should be granted and to what extent*, the CLB held that there is not a single act of

² 2001 (4) SCC 420

oppression or mismanagement made out by appellant no.1; that acts complained of by appellant no.1 are in the nature of directorial complaints; and no case had been made out by her for winding up of the company.

93. It thus dismissed the C.P. vacating all interim orders passed by it therein including an undertaking recorded by it made by respondents on 06.08.2014 and also unnumbered applications pending by then, stating that 'they stood disposed of'.

The present C.A.No.14 of 2016 :

94. The above order dt.30.05.2016 in CP.No.36 of 2014 is challenged in this appeal filed under Section 10-F of the Act.

95. On 13.10.2016, this Court passed an interim order stating that any corporate action dealing with assets, shares or properties that may be taken by the respondents shall be subject to the orders that may be passed in C.A.No.1427 to 1434 of 2016 in this Appeal. On 21.02.2017, this Court directed that till the next date of hearing there shall not be any transfer of shares by any of the parties concerned. This interim order was extended on 14.03.2017 till 30.04.2017 or till the pronouncement of the order in appeal, whichever is earlier. It was again extended on 11.04.2017 to 30.06.2017. On 29.06.2017, it was again extended till 24.08.2017. On 17.08.2017, it was extended to 21.09.2017.

96. On 14.09.2017, arguments of Sri Janak Dwarakadas, Senior Counsel on behalf of Sri P. Vikram, counsel for appellants were heard, and the matter was posted to 15.09.2017 and further arguments of the counsel for appellants were heard. Arguments of Sri P.S. Raman, Senior Counsel for Sri Y. Suryanarayana, counsel for respondent nos.1 and 2, Sri V. Venkata Ramana, Senior Counsel for Sri K.R. Sasidharan Nair, for 3rd respondent, and Sri S. Niranjan Reddy, Senior Counsel for Ms.Rubaiana S. Khatoon, counsel for respondent no.4, were heard on 21.09.2017. The earlier interim order was further extended on 21.09.2017 for six weeks.

97. On 21.9.2017, the matter was reserved for orders, and time was granted to both parties to file written submissions by 04.10.2017, if they so desired. The oral submissions as well as the written submissions filed by the parties are considered in this order.

Scope Of Sec.10-F

98. Under Section 10-F, appeal is maintainable only on *question of law* arising out of the order of the CLB.

99. In **Manoj Kumar Kanunga and others v. Marudhar Power P. Ltd. and others**³, this Court followed the decision of the Supreme Court in **V.S. Krishnan v. Westfort Hi-tech Hospital Ltd.**⁴) and held that unless findings on fact by the CLB are perverse, based on no evidence or are otherwise arbitrary, interference with the

³ (2013) 179 Comp Cas 504 [A.P.]

⁴ (2008) 3 SCC 363

order of the CLB in an appeal under Section 10-F is not permissible. The jurisdiction of the appellate forum is restricted to the question whether, on the facts as noticed by the CLB and as placed before it, an inference can 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. This Court would interfere under Section 10-F if the conclusions of the CLB are (a) against the law or (b) arise from a consideration of irrelevant material or (c) omission to consider relevant material. It is ordinarily not open to the appellate court to substitute its own discretion for that of the CLB and if the CLB has acted unreasonably or capriciously, or has ignored relevant facts or has adopted an approach which is incorrect, the appellate court is not only empowered, but is under a duty to interfere with the discretion of the CLB. This Court however, while exercising jurisdiction under Section 10-F, would not re-appreciate evidence analysed by the CLB and a finding on a question of fact is open to attack as erroneous in law only if it is not supported by any evidence or if it is unreasonable or perverse.

100. In **Manoj Kumar Kanunga and others** (3 supra) it was further held that when a question is raised before the CLB and is dealt with by it, it is clearly one arising out of its order. Even when a question of law raised by the parties is not dealt with by it, it must be deemed to have been dealt with. Even if a question is not raised before the CLB, but it deals with it, it will be a question arising out of

its order. It is only when a question of law is neither raised before the CLB, nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it.

101. These principles will be kept in mind while considering the appeal.

102. The respondents contended that appellants cannot raise questions or issues not argued by them or pressed for arguments before the Court below. In other words, they contended that since no arguments were advanced on merits by appellants before the CLB, the CLB order cannot be touched by this Court even if there are serious errors of law which vitiate it.

103. I do not agree with the said contention. As I already said above, even if a question is not raised before the CLB, but it deals with it, it will be a question arising out of its order. If a question is raised by the respondents before it and it deals with it, such question is one clearly arising out of its order. If the contention of the respondents is accepted, even where serious errors of law are committed by CLB, this Court sitting in appeal, would be powerless. This is not the intention of the Legislature.

104. Though in the grounds of appeal, 79 grounds raising questions of law are mentioned, the counsel for the appellants confined himself to only 29 of those grounds.

105. I have dealt with the grounds under several sub-headings and will refer to them at the appropriate place.

The maintainability of Composite Petition by appellants before CLB under Section 111-A read with Section 397, 398, 402 to 404 and 406 of the Act :

106. Under this head I will consider the following question:

(i) Whether the CLB erred in holding that the appellants could not take a stand that the petition is a composite petition under Section 111A, Section 58/59 and other provisions of the Companies Act, 1956/2013?

107. The CLB, in the impugned order at para 99 dealt with this issue and held that since relief under Section 111-A was in relation to the transmission of 4,00,961 shares in favour of appellant no.1 and this is subject matter of O.S.No.184 of 2014, even prior to the filing of the C.P., such relief under Section 111-A cannot be claimed by appellants in the C.P. It observed that appellants cannot take a stand that the C.P. is a composite petition filed under Section 111-A and other provisions of the Act and that it will treat the C.P. as if it is filed only under Sections 397 / 398, 402 to 404 and 406 of the Act.

108. This issue has been considered in **Manoj Kumar Kanunga and others** (3 supra). In that case, there was a composite petition filed under Section 111 and Section 397 / 398 of the Act. It was held therein that the composite petition is maintainable, and there is no bar for filing such a composite petition in law. This Court held that Regulations 13, 14, 16 and 20 of the Company Law Board

Regulations, 1991 permit filing of composite petitions provided if appropriate fee is paid.

109. The Court in **Manoj Kumar Kanunga and others** (3 supra) noticed that in a large number of petitions filed under Section 397, the primary allegation of oppression is that the faction in control of the company has either intentionally reduced the rival faction to less than 1/10th of the total number of members of the Company, or has removed the names of rival faction from the register of members. It held that in such cases, where the allegation of oppression is inexplicably intertwined with the issue of maintainability of the petition under Section 399 of the Act, a composite petition has to be held to be maintainable; and to ask a petitioner to file two separate petitions under Section 111 and 397 in such circumstances, would be unfair. It followed the judgment of Delhi High Court in **Charanjit Khanna and others v. M/s. Khanna Paper Mills Ltd. and others**⁵.

110. This Court further held in **Manoj Kumar Kanunga and others** (3 supra), that compelling a petitioning shareholder to first file a petition seeking relief under Section 111 and if, and only after, he succeeds therein, to file a petition under Section 397 of the Act, would enable an unscrupulous majority to oppress the minority shareholders by removing their names from the Register of members, and force them to undergo the ordeal of first seeking an adjudication under

⁵ (2011) 164 Comp Cas 315 (Delhi)

Section 111 and only, after they succeed therein, to file a fresh petition under Section 397 of the Act. It held that this would not only cause needless and undue delay in the minority shareholders obtaining relief against an oppressive majority, but would also result in multiplicity of legal proceedings. On the other hand, if a composite petition is held maintainable, the CLB can first decide the petitioner's entitlement to relief under Section 111 and, if the relief under Section 111 is granted and the petitioners are thereafter found to satisfy the requirements of Section 399, it can then examine the allegations of oppression under Section 397 of the Act.

111. Since Section 111 deals with rectification of register of shares of private companies and Section 111-A deals with public limited companies like the 1st respondent – Company in the instant case, the principle laid down in the said decision would equally apply to a composite application under Section 111-A and 397 / 398 of the Act.

112. Therefore, this objection raised by the respondents is rejected. I also hold that the view of the CLB that appellants cannot take the stand that the C.P. is a composite petition filed under Section 111-A and Sections 397 / 398 is contrary to law since the C.P. is filed under both provisions *as permitted by law*. The CLB cannot, in law, take a view that such composite petition either is not maintainable, or that it will not treat it as one under sec.111-A and will treat it as one only under Sec.397/398 of the Act.

113. Question (i) is thus answered in favor of the appellants.

Objection raised by respondents in this Appeal as to appellants not possessing requisite shares under Section 399 for maintaining the C.P. before the CLB

114. Under this head, I will consider the following questions:

(ii) *Whether the shareholding required for maintaining a petition under Section 397 to 399 of the Act has to be reckoned from the date of dispute about the legality and validity of an act amounting to an act of oppression and mismanagement or from the date subsequent to the illegal act leading to acts of oppression and mismanagement being committed?*

(iii) *Whether the learned CLB erred in relying on the illegally amended shareholding for purposes of Section 399 of the 1956 Act when it is settled law that the shareholding has to be counted prior to the date that the issue arose?*

115. Section 399 of the Act deals with the right to apply under Section 397 and 398. It states that in the case of a Company having a share capital, not less than 100 members of the company or not less than 1/10th of the total number of its members, whichever is less, or any member or members holding not less than 1/10th of the issued share capital of the company, can alone maintain an application under Sections 397 and 398.

116. No doubt, in the C.P., the appellant no.1 pleaded that she held 6.63 %, that appellant no.2 had 0.40 % and appellant no.3 had 0.34% of the paid-up share capital of the company. She contended

that there were ten members for the purpose of Section 399 as per the annual return in Schedule V of the Company filed for the year 2012 and so the appellants are entitled to maintain the C.P. under Section 111-A read with Sections 397 and 398, etc., of the Act.

117. The respondents however dispute the same and contend that the petition was not maintainable before the CLB.

118. The requirement of qualification shares has been held to be relevant only at the time of institution of the proceedings in **Rajahmundry Electric Supply Corporation Ltd. V. A. Nageswar Rao**⁶, and in **Dale and Carrington Invt. P. Ltd. V. P.K. Pratapan**⁷.

119. However, in **Manoj Kumar Kanunga and others** (3 supra), this Court and in **V.L. Sridharan v. Econo Valves P. Ltd.**⁸, the Madras High Court, have held that where the main issue as in the instant case is of oppression, which requires appreciation of evidence, C.P. cannot be thrown out on the ground of maintainability as the equitable jurisdiction of the CLB is invoked. Keeping in mind the provisions of Sections 397 and 399, it was held therein that for the purpose of deciding the eligibility of a member of a Company to maintain a petition under Section 397 of the Act, the qualification, in respect of the requisite shareholding in the company of such person, *prior to the act of oppression complained of, has to be taken into consideration, and not the qualifying shares thereafter.* It was held

⁶ AIR 1956 SC 213

⁷ AIR 2005 SC 1624

⁸ (2010) 158 Comp Cas 505 (Madras)

that if the date of presentation of the petition is taken as the relevant date, it could defeat the very purpose of the legislative enactment of Section 397 of the Act, as the overbearing majority shareholders can simply, by high-handed action and by oppressive methods, dismember the minority shareholders and leave them with no remedy. This is because the dismembered minority shareholders would then, technically, not qualify for maintaining a petition under Section 399 of the Act, being not members at all. As the minority shareholders can complain only after the acts have occurred, and when they have been removed from the membership of the company, *Section 399 should be so understood and interpreted so as to further the object of the relief to be given in a situation governed by Section 397 of the Act, and not to foreclose the options of an aggrieved person and deny the very relief sought to be extended to the complaining minority shareholders.* This Court in **Manoj Kumar Kanunga and others** (3 supra), also relied upon the decision in **Vijayan Rajes v. M.S.P. Plantations P. Ltd**⁹, where such a view was taken.

120. In the instant case, there is no dispute that after the death of (Late) Dr. Vijay Kumar Datla on 20.03.2013, prior to the Board meeting of 09.04.2013, the only two Directors of the Company were the appellant no.1 and respondent no.5. It was only in the Board meeting of 10.04.2013 that 81% shareholding of (Late) Dr. Vijay Kumar Datla comprising of 4,00,961 shares was transferred to respondent no.2.

⁹ (2009) 151 Comp Cas 413 (Karnataka)

121. Therefore, the shareholding prior to 10.04.2013 has to be taken into account since the oppressive event, according to the appellants, is the transfer of those shares to respondent No.2.

122. Question (ii) is accordingly answered that for purpose of deciding the eligibility of a member of a Company to maintain a petition under Section 397 of the Act, the qualification, in respect of the requisite shareholding in the company of such person, *prior to the act of oppression complained of*, has to be taken into consideration, *and not the qualifying shares thereafter*.

123. Question (iii) is answered holding that the CLB erred in relying on the illegally amended shareholding for purposes of Section 399 of the 1956 Act when it is settled law that the shareholding has to be counted prior to the date that the issue arose.

124. Now I will consider the following questions:

(iv) *Whether the CLB can ignore the law and the provisions of the Articles of Association with relation to the transmission of shares in case of death of a shareholder and more particularly on the basis of an alleged Will dt.14-12-2005 which is disputed, and yet hold that such transmission is valid?*

(v) *Whether the CLB ought not to have relied upon the Will dt.14-12-2005 and held that transfer of shares on 10-04-2013 was valid?*

(vi) *The main issue as to transfer of 4,00,916/- shares being subject matter of the suit as well as before CLB, and both being subject matter of the suit as well as before CLB, both being interlinked in that any expression by one will impact the decision of the other, whether the CLB has committed a palpable illegality in holding that respondent No.2 is entitled for the shares, the foundation of the claim being the Will dt.14-12-2005?*

125. Admittedly as on 30.09.2011, the following persons were shareholders:

M/s.BIOLOGICAL E. LIMITED				
LIST OF SHAREHOLDERS AS ON 30 th September 2011				
Sl. No.	Name of Shareholder	No. shares	Value in Rs.	% of shares
1.	Dr.Vijay Kumar Datla	400961	40096100	81.00
2.	Dr.Vijay Kumar Datla(HUF)	4594	459400	0.93
3.	Mrs. Poomima Mantena	4357	435700	0.88
4.	Mrs. Indira P.Raju	4357	435700	0.88
5.	Miss Mahima Datla	11205	1120500	2.26
6.	Dr.Vijay Kumar Datla (Trustee Poomima & Indira Trust)	1999	199900	0.40
7.	Dr.Vijay Kumar Datla (Trustee of Mahima Trust)	1685	168500	0.34
8.	Poornima Indira & Mahima	187	18700	0.06
9.	Dr.Vijay Kumar Datla & Dr.(Mrs) Renuka Datla	5813	581300	1.17
10.	Miss Mahima Datla & Dr.(Mrs) Renuka Datla	14172	1417200	2.86
11.	Dr.(Mrs) Renuka Datla Miss Mahima Datla	26995	2699500	5.45
12.	M/s.V.R.Investments Pvt. Ltd	18425	1842500	3.72
13.	Mr.Pumedu Gupta & Ms.Krishna Gupta	250	25000	0.05
	Total	495000	49500000	100

126. The claim of appellant no.1 that these 4,00,961 shares should be transferred to her on the basis of the Will dt.04.12.1987 of (Late) Dr. Vijay Kumar Datla is no doubt subject matter of O.S.No.184 of 2014.

127. However, in the Board meeting of 10.04.2013, the claim by respondent no.2 that she is entitled to these shares on the basis of Will dt.14.2.2005 of Dr.Vijay Kumar Datla, was accepted.

128. Article 66 of the Articles of Association of the Company states :

“66. The executors or administrators or holders of a Succession Certificate or the legal representatives of a deceased Member (not being one of two or more joint holders) shall be the only persons recognized by the Company as having any title to the shares registered in the name of such Member, and the Company shall not be bound to recognize such executors or administrators or legal representatives shall have first obtained probate or Letters of Administration or Succession Certificate, as the case may be, from a duly constituted Court in the Union of India; provided that in any case where the Board in its absolute discretion thinks fit, the Board may dispense with production of Probate or Letters of Administration or Succession Certificate upon such terms as to indemnity or otherwise as the Board in its absolute discretion may think necessary and under Article 70 register the name of any person who claims to be absolutely entitled to the shares standing in the name of a deceased Member, as a Member.”

129. The above Article admittedly requires a letter of probate, letter of administration or succession certificate to be produced by a claimant from a duly constituted Court before he is recognized as having title to the shares.

130. The Articles of Association of a company under Section 36 of the Act, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the Company and by each member, and the contained covenants on its and his part to observe all the provisions thereof. They constitute the contract between a Company and its members in respect of their

ordinary rights as members. (See **H.P.Gupta v. Heeralal**¹⁰ and **John Tinson & Co Pvt Ltd v. Surjeet Malhan (Mrs) and another**¹¹)

131. In **V.B. Rangaraj v. V.B. Gopalakrishnan**¹², the Supreme Court held that though shares are transferable like any other movable property, if there is a restriction on the transfer of shares of a Company in the Articles of Association, it will bind. It was also held that in determining the extent of any restriction on transfer contained in the Articles, a strict construction is to be adopted.

132. Therefore, when respondent no.2 did not produce any probate or letter of administration or succession certificate in relation to the Will dt.14.2.2005 propounded by her, the Board in its meeting dt.10.04.2013 could not have transferred the 4,00,961 shares (81% shareholding) to respondent No.2 and such transfer is illegal.

133. No doubt the proviso to Article 66 stated that the Board may dispense with the above requirements in any case where in its absolute discretion it thinks fit to do so, and insist on an indemnity or other terms and proceed under Article 70 to register the name of any person who claims to be entitled to the shares standing in the name of a deceased member, as a member. But, admittedly in the minutes of the said Board meeting of 10.04.2013, there is no mention that the Board had dispensed with the requirement of production of probate or letters of administration or succession certificate. It is also not case of

¹⁰ (1970) 1 SCC 437

¹¹ (1997) 9 SCC 651

¹² AIR 1992 SC 453

respondents that any indemnity was taken from respondent no.2 to affect the transfer of the above shares in her favour. Thus the share transfer to respondent No.2 is in violation of Article 66 of the Articles of Association.

134. Though Section 109 of the Act was relied upon in the minutes of the Board meeting of 10.04.2013 to justify the transmission of the said shares to respondent no.2, the said provision does not apply as it deals with transfer of shares in a Company of a deceased member made by his legal representative, and admittedly that was not the situation in the instant case.

135. Even the CLB in its order at para no.99(c) placed reliance on Section 109 to uphold the said transfer in favour of respondent no.2. So it thus committed a serious error of law.

136. The contention of the respondents that appellant No.1 cannot invoke Section 111-A because she had never approached the Company for transmission of shares as per the Will dt.04-12-1987, and unless there was such a request by her and there is a refusal by the Board of the Company, Section 111-A cannot be invoked, is untenable.

137. A reading of Section 111-A of the Companies Act, 1956 shows that while proviso to sub Section (2) thereof entitles a transferee of shares to appeal against a refusal by the company to register the transfer of shares in his favour, sub Section (3) entitles

party to question in the CLB a transfer of shares contrary to law i.e. a wrongful allotment of shares. While the former applies before register of transfer of shares, the latter will apply after the register of transfer of shares. The latter permits rectification of register of shares of company on transfer. The respondents do not seem to have noticed sub Section (3) of Section 111-A, and ignoring it cannot simply rely on proviso to sub Section (2). So their contention is meritless.

138. Therefore question (iv) is answered that the CLB cannot ignore the law and the provisions of the Articles of Association with relation to the transmission of shares in case of death of a shareholder and more particularly on the basis of an alleged Will dt.14-2-2005 which is disputed, and yet hold that such transmission of shares is valid.

139. Question (v) is answered in favor of the appellants that the CLB ought not to have relied upon the Will dt.24-12-2005 and held that transfer of shares on 10-04-2013 was valid.

140. Question (vi) is also answered in favor of the appellants holding that when suit relating to the validity of the Will dt.04.12.1987 is pending, it could not have expressed any opinion on the entitlement of respondent no.2 to the 4,00,916 shares on the basis of the Will dt.14.12.2005.

141. In view of the above, I hold that on the death of (Late) Dr. Vijay Kumar Datla, since inheritance cannot be kept in abeyance,

and since neither the Will dt.04.12.1987 set up by appellants nor the Will dt.14.2.2005 propounded by respondent no.2 can be accepted in view of Article 66, both of them have to be ignored till either is established as valid and true in a competent court or till a succession certificate is obtained by either of them with regard to the Wills propounded by them, and the provisions of Hindu Succession Act, 1956 relating to succession to the property of a Hindu male contained in Section 8 would come into operation.

142. So, the 81% shares of late Dr.Vijaykumar Datla would have to be divided equally among appellant no.1 and respondent nos.2 to 4, pending a decision of the Civil Court in regard to validity of either of the Wills mentioned above or obtaining of succession certificates by either of them.

143. The appellant no.1 would then get 20.25% shares ($\frac{1}{4}^{\text{th}}$ of 81%). If so, even her individual shareholding would cross the 10% prescribed in Section 399 to maintain the CP under Sec.397.

144. So I hold that the view of the CLB that appellant no.1 cannot seek relief under Sec.111-A is contrary to law since the rectification of the register of the Company on the above lines is necessary, subject to the adjudication in the Civil suits on the validity of the Wills propounded by the both sides, or until a succession certificate is obtained by either of them.

145. So I hold that the CLB erred in Law in upholding the transfer of 81% shares to 2nd respondent in the Board meeting of 10.04.2013 on the pretext that the Will dt.04.12.1987 set up by the appellant no.1 is subject matter of O.S.No.184 of 2014.

146. It thus acted perversely in applying a different standard when it considered the Will dt.14.2.2005 set up by the respondent no.2, and erred in law in accepting the transmission of shares by the Board in her favour contrary to Article 66, even though the requirement of Article 66 was not fulfilled by the respondent no.2.

147. I shall now consider the question :

“(vii)Whether the learned CLB erred in not recognizing that the order of the Hon’ble Civil Judge vide its order dt.07-08-2015 made in I.A.No.748 of 2015 in O.S.No.599 of 2015 and I.A.No.749 of 2015 in O.S.No.598 of 2015 was prospective in nature and that there was no bar against the appellant in filing the present petition before the CLB?”

148. The CLB, in it’s order at para 99(b) held that it would taken into account the extent of shareholding of the appellants as on 31.07.2014 when CP.No.36 of 2014 was filed, but it then placed reliance on the temporary injunction orders granted on 07.08.2015 in I.A.No.748 of 2015 in O.S.No.599 of 2015 in respect of 2nd appellant and I.A.No.749 of 2015 in O.S.No.598 of 2015 in respect of 3rd appellant wherein the appellant no.1 was restrained from acting as trustee of the said trusts. How an order passed by the Civil Court on

07.08.2015, *subsequent to the date of filing of the C.P. on 31.07.2014*, can be taken into account by the CLB (to say that as on 31.07.2014, the appellant no.1 cannot act on behalf of appellant nos.2 and 3), is not explained by the CLB. Thus its action is perverse and contrary to law.

149. Therefore question (vii) is answered in favor of the appellants that CLB cannot rely on the interim order in the civil suit passed subsequent to filing of the C.P.

150. Likewise, how the CLB can rely on the letter dt.04.12.2014 allegedly written by respondent nos. 2 and 3 informing appellant no.1 not to act as trustee of the appellant no.2 and 3 trusts, if it were to consider the extent of shareholding as on 31.07.2014, is also not explained by the CLB.

151. In view of the above reasoning, the objection raised by the respondents as to the *locus* of the appellants to file the C.P., and the findings of the CLB that appellant no.1 was not competent to maintain the C.P. by herself or along with appellant no.s 2 and 3, are both rejected.

The unreasonable conduct of the CLB in the proceedings in C.P :

152. I will now consider the following questions:

(viii) *Whether the CLB was justified in deciding the Company petition filed under Section 397 to 399 of the Act, without adjudicating (4) crucial applications dealing with (a) Amendment of Company Petition, (b) Production of crucial documents (in this case alleged Will*

dt.04-02-2005 propounded by respondent No.2 on the basis of which she got 81% shares of her deceased father in contrast to the claim of the 1st petitioner of a Will executed in her favour and the share certificates), (c) Receiving documents which are opposed and (d) application filed by respondents to declare that 1st petitioner has ceased to be a Director?

(ix) Whether the Company Law Board was right in interpreting the judgment of the Hon'ble Supreme Court in a manner whereby justice has been sacrificed to speed?

(x) Whether the conduct of the CLB in making the order under appeal in unwarranted haste by treating a request for adjournment by the petitioners so as to engage a Senior Counsel for arguments and treating it as the arguments in the case by the petitioners while denying the adjournments as sought under Order 17 Rules 1 and 2 C.P.C. and proceeding to make orders does not amount to making an ex-parte order actuated by bias and prejudice?

(xi) Whether the Company Law Board exercised its discretion under Regulation 26(1) of the Company Law Board Regulation, 1991 in a judicious, just and fair manner by refusing the grant of adjournment to the appellant on 02-05-2016?

(xii) Whether the doctrine of audi alteram partem would be applicable to the facts and present circumstances?

153. Admittedly, though the C.P. was filed on 30.07.2014, it is not in dispute that appellants filed on 03-02-2015:

(i) an unnumbered application to direct respondent Nos.2 to 4 to disclose on oath the original Will dt.14-02-2005 allegedly executed by late Dr.Vijay Kumar Datla in favour of respondent No.2;

(ii) a second unnumbered application on 03-02-2015 to withdraw an undertaking made by appellant No.1 in C.P.No.36 of 2014 in relation

to O.S.No.184 of 2014 before the XXIV Additional Chief Judge, City Civil Court, Hyderabad;

(iii) a third unnumbered application before the CLB to disclose on oath the original copies of share certificate alleged to have been issued by the Company in favour of respondent No.2 transmitting the shareholding of late Dr.Vijay Kumar Datla in favour of respondent No.2 on the basis of the Will dt.14-02-2005 propounded by her.

154. On 09-03-2016, appellants filed in the C.P.No.36 of 2014, Company Application No.1 of 2016 before the CLB for amending the Company Petition by adding certain paragraphs in the body of the said petition and also amend/modify the prayers made therein and also to add certain prayers.

155. They also filed in April 2016, a fifth unnumbered application against the respondent Nos.2 to 4 alleging that the latter had committed breach of the order dt.06-08-2014 in C.P.No.36 of 2014 wherein respondent Nos.2 to 4 undertook not to alienate the movable and immovable properties of the Company and also to continue appellant No.1 as Executive Director of the Company. The C.P. was finally heard by it on 2nd / 3rd May, 2016 and final order was passed on 30.05.2016.

156. In para 96 of its order, the CLB only makes a reference to its order dt.03.05.2016 to justify it's actions, but the said order only explains what transpired *after* 16.11.2015 but not before that date.

157. The respondents contended that it was due to appellants' inaction, these applications were not numbered. I find it difficult to accept this contention. It is not the case of the respondents, that there were any defects in filing of those applications. Had there been any defects, the applications ought to have been returned to the appellants by the Office/Registry of the CLB. But this did not happen.

158. Why applications filed from February, 2015 were kept pending by the CLB without even numbering them and without passing any order till 30.05.2016, is inexplicable and is a serious procedural impropriety which caused grave prejudice to the appellants. It is clear that the CLB has acted unreasonably and capriciously in not even numbering 4 of them or deciding them till 30.05.2016.

159. Also, its action in regard to C.A.No.1 of 2016 wherein appellants sought for amendment of pleadings and prayers in the CP.NO.36 of 2014, i.e., accepting only those amendments which are agreed to by respondents and deciding the C.P. only on the said basis, without allowing the appellants to make submissions for allowing of the other amendments opposed by the respondents, or deciding why the other amendments ought not to be allowed by passing a separate order, is highly irregular and very strange.

160. Nowhere had the appellants given up their right to seek the amendments opposed by the respondents. Merely because the appellants filed an amended C.P. on 05.04.2016 on the basis of the

amendments agreed to by respondents, there is no justification for this action of CLB.

161. In fact, it ought to have decided all the unnumbered applications as well as C.A.No.1 of 2016 by passing separate orders before passing of the final order in C.P.No.36 of 2014, and it ought not to have dealt with the said C.A.No.1 of 2016 in the final order passed by it in CP.No.36 of 2014.

162. I hold on point (viii) that the CLB was not justified in deciding the C.P. without adjudicating the interim applications filed by appellants.

163. This is also a perverse conduct on its part particularly because the order dt.06.10.2015 of the Supreme Court, on which the CLB placed much reliance, merely directed it to decide the CP as expeditiously as possible. The said order ought not to have been interpreted by the CLB as a mandate to decide the C.P. without deciding the interim applications filed by appellants and which were pending before it.

164. So I also hold on question (ix) that the CLB was not right in interpreting the order of the Supreme Court in a manner whereby justice was sacrificed for speed.

165. This above unreasonable and capricious conduct of the CLB makes it imperative for this Court to interfere with its order.

166. However, I wish to make it clear that the plea of the appellants that there is no adequate opportunity given to them by the CLB to contest the C.P. by addressing arguments cannot be accepted since after 16.03.2016, appellants did not get ready for arguments, though the CLB insisted on various dates that they should make their submissions.

167. So I hold that except to the extent that it did not consider the interim applications filed by appellants in the C.P before deciding the C.P., on point (x) that no bias and prejudice can be inferred from denial of the CLB further time to appellants; on question (xi) that it cannot be said to have wrongly exercised its discretion under regulation 26(1) of the CLB regulations, 1991; and that there is no violation of the *audi alteram partem* doctrine.

Re: Withdrawal of resignation of respondent No.5.

168. In this part, I will consider the following questions of law:

(xiii) Whether resignation of Director in writing with immediate effect does not take effect immediately and whether it requires acceptance?

(xiv) Whether the concept of withdrawing arises with regard to the resignation dt.06-04-2013?

169. On 06-04-2013, respondent No.5 addressed a letter to the Board which reads as under:

“Due to unavoidable and compelling reasons, I regret my inability to continue my service as a member of the Board

and wish to relinquish my role as Director with immediate effect.

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

170. Though Section 283 of the Act envisages various contingencies in which Directors of a Company vacate their office, cessation by way of resignation is not contemplated by it. No other provision in the Act is brought to my notice by the parties which deal with resignation from office by a Director.

171. Article 129 of the Articles of Association of the Company deals with this aspect and states :

“Article 129. Subject to Section 283(2) and Section 314 of the Act, the office of a Director shall become vacant, if :

.a to (l)....

(m) he resigns his office by a notice in writing addressed to the Company.”

172. It is pertinent to note that there is no requirement in Article 129 of any acceptance by the Company or the Board of the resignation submitted in writing by a Director, for such resignation to take effect.

173. The issue whether the resignation of a Director of a company is required to be accepted was considered in **Glossop Vs. Glossop**¹³ by the Chancery Court in England. In that case, Article 84 of the Articles of Association of a company, while providing for

¹³ (1907) 2 Ch D 370

various situations where office of a Director would fall vacant, mentioned that it would also stand vacated *if by notice in writing to the company, a Director, resigns his office*. There was a proviso which stated that, except in case of loss of qualification in shares or of actual lunacy or bankruptcy, the vacation of office *shall not take effect unless the Directors shall pass a resolution to the effect that the Director has vacated his office, such resolution to be passed within 6 calendar months from the happening of the event whereby such Director has vacated his office*. On 16.05.1907, the Managing Director of the Company sent notice in writing to the company requesting the latter to accept his resignation as Managing Director and to send a cheque for salary. Before any meeting of the Board of Directors was held, the Managing Director sent another letter dt.23-05-1907, wherein he has stated that he sent his resignation under a misapprehension and that he absolutely withdraws the letter dt.16-05-1907. Both letters were received by the company on 24-05-1907 and on that day, a special meeting of the Directors was held and it was declared that he vacated his office. Neville J considered the question *whether the defendants were right in treating the plaintiff as having vacated his office as Managing Director in consequence of the written notice sent by him to the Company requesting their acceptance of his resignation as Managing Director*. He answered the said question in the following manner:

“..That seems to me to depend entirely upon the proper construction to be put upon the articles of association of the

company, and I think the most material articles are 84 and 85. I have no doubt that a director is entitled to relinquish his office at any time he pleases by proper notice to the company, and that his resignation depends upon his notice and is not dependent upon any acceptance. Consequently, it appears to me that a director, once having given in the proper quarter notice of his resignation of his office, is not entitled to withdraw that notice, but, if it is withdrawn, it must be by the consent of the company properly exercised by their managers, who are the directors of the company. But, of course, that is always dependent upon any contract between the parties, and that has to be ascertained from the articles of association. Now here, in the first place, I think that article 85, which declares that "The office of managing director shall be vacated on the happening of any of the contingencies mentioned in clause 84 thereof, whereby the office of director shall be vacated," reads in the whole of article 84, including the provision in the last paragraph. I have, therefore, to consider whether a managing director, giving notice to the company of resignation, is entitled to withdraw that notice prior to the passing of a resolution by the directors that the managing director has vacated his office. Such resolution has to be passed within six calendar months from the happening of the event whereby such director has vacated his office. Now what are the events whereby a director vacates his office. One of those events is "If by notice in writing to the company he resigns his office," and I think that, upon such notice, he has vacated his office, although by the proviso the effect of that vacation is not immediate, but is suspensory, and does not take effect until a resolution has been passed by the directors. It seems to me that is a different matter from saying that the director cannot vacate his office until such a resolution has been passed. The distinction, no doubt, is a fine one, but it seems to me that if the construction contended for by the plaintiff had been intended by the articles, the words would have been used would have been of this nature: "If by notice in writing to the company he resigns his office, and such resignation be accepted," instead of which the

resignation of the office is made to be the vacation of the office, and the proviso is added to the effect that the directors may suspend the matter until they pass a resolution accepting his vacation. It seems to me, therefore, that the second part of this motion fails."

174. Thus the Court held that the director who resigned cannot claim to continue as such till resolution by Directors is passed to the effect that the Director who resigned has vacated his office in spite of the proviso to Article 84. It held that as regards the Director who resigned, he vacates the office and the vacancy would arise upon a resolution being passed by the Board within 6 calendar months. It made a subtle distinction between vacation of office by a Director by resignation *and* arising of vacancy in the office of the Director.

175. The Supreme Court in **Moti Ram v. Param Dev**¹⁴, approved the decision in **Glossop** (13 supra) in the following terms:

"17... Similarly in Company Law, a Director of a company is entitled to relinquish his office at any time he pleases by proper notice to the company and acceptance of the resignation is not required. [See: Glossop v. Glossop and Halsbury's Laws of England, 4th Ed., Vol. 7, p. 316, para 536.]"

176. The Madras High Court in **T. Murari Vs. State**¹⁵ also took a view that there is no provision for vacancy by resignation in the Act, and even if there is no provision in the Articles of Association for resignation by a Director, the resignation tendered by a Director unequivocally in writing will take effect from the time when such resignation is tendered.

¹⁴ (1993) 2 SCC 725

¹⁵ (1976) 46 Comp. Cas 613 = 89 LW 693

177. Of course, if there is a specific provision in the Articles of Association which mandates acceptance of such resignation by the Board, it may not come into effect immediately unless there is such acceptance.

178. In the instant case, Article 129(m) did not contain any provision requiring acceptance of a Director's resignation to be accepted by the Board for it to come into operation. Therefore it would come into effect the moment it is tendered. The plea of respondents that the Board of the Company had not yet accepted the resignation and that before its acceptance, he is entitled to withdraw it, is thus not correct in law.

179. Therefore I hold that respondent No.5's resignation came into effect on 06-04-2013 itself and in law he had vacated the office of the Director on that day itself.

180. So I hold on question (xiii) that the resignation of the Director respondent no.5 in writing came into effect immediately and did not require acceptance.

181. It is also settled law that resignation once made cannot be withdrawn except with the consent of the Company or the Board. In **Glossop** (13 supra), it was held that *a Director, once having given in the proper quarter notice of his resignation of his office, is not entitled to withdraw that notice, but, if it is withdrawn, it must be by the consent of the Company properly exercised by their Managers, who*

are the Directors of the Company. Similar view was taken in **Shivlal Motilal Vs. Tricumdas Mills Co.**¹⁶

182. The stand of the 5th respondent in para-22 of the counter filed by him in the C.P. was that he had withdrawn the resignation letter dt.06-04-2013 on account of request made to the said effect by all the family members of late Dr.Vijay Kumar Datla including the appellant No.1. No oral evidence was adduced before the CLB by respondents in support of the said plea.

183. In para-24, he states that once resignation tendered by him was withdrawn and *the same was acknowledged by appellant No.1, it is not open for her to contend that she was the only Director of the Board of the Company.* Merely because the letter dt.09-04-2013 of respondent No.5 withdrawing the resignation tendered by him on 06-04-2013 was acknowledged by the appellant No.1, it does not follow that the resignation stood automatically withdrawn in law.

184. It cannot also be held, as contended by respondents that appellant No.1, acting as a Director of the Company, had permitted respondent No.5 to withdraw his resignation and act as a Director. No such permission in writing *prior to* the Board meetings of 9-4-2013,10-4-2013 and 11-4-2013 was produced by respondents 1-7.

185. The further contention of respondents that even if his resignation became effective immediately, his action in inducting

¹⁶ (1921) 36 ILR Bom 564

fresh Directors ensuring the continuity in management is an action taken bonafide in the interest of the Company and is valid in law on the basis of the passage in **Needle Industries Limited Vs. Needle Industries Newey (India) Holdings Limited**¹⁷ that ‘*anything illegal but done in good faith and in the interest of the Company may not be oppressive while something perfectly legitimate may still be oppressive*’, cannot also be accepted.

186. This is because after making the above statement in para 49, the court in **Needle Industries Limited (17 supra)** held thereafter in the same para as under:

“49. ... The true position is that an isolated act, which is contrary to law, may not necessarily and by itself support the inference that the law was violated with a *mala fide* intention or that such violation was burdensome, harsh and wrongful. But a series of illegal acts upon one another can, in the context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom those acts are directed. This may usefully be illustrated by reference to a familiar jurisdiction in which a litigant asks for the transfer of his case from one Judge to another. An isolated order passed by a Judge which is contrary to law will not normally support the inference that he is biased; but a series of wrong or illegal orders to the prejudice of a party are generally accepted as supporting the inference of a reasonable apprehension that the Judge is biased and that the party complaining of the orders will not get justice at his hands.”

52. ... It is clear from these various decisions that on a true construction of Section 397, an unwise, inefficient or careless conduct of a Director in the performance of his duties cannot give

¹⁷ (1981) 3 S.C.C. 333

rise to a claim for relief under that section. The person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as a shareholder.”

187. Thus the passage relied upon by the respondents would not apply if there are a series of illegal acts following upon one another which lead to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom those acts are directed.

188. In this case, respondent No.5 resigned as a Director on 06-04-2013; he ceased to be a Director from that date; yet, he acted as a Director illegally stating that he gave a letter dt.09-04-2013 withdrawing his resignation; he convened a meeting of the Board on the same day without giving any notice of the meeting to the appellant No.1, who was the sole Director on the Board of the Company; without any quorum, he held the meeting and inducted respondent No.4 as a Director of the Company; on 10-04-2013, he convened another meeting of the Board without serving any notice of the said meeting on appellant No.1 and inducted respondent Nos.2 and 3 as Additional Directors of the Company and also transferred 81% shares standing in the name of Dr.Vijay Kumar Datla to respondent No.2 on the basis of the Will dt.14-2-2005 produced by her in violation of Article 66 of the Articles of Association even though she did not produce any Succession Certificate or probate; he did not take any indemnity from her; and then convened another Board meeting on

11-04-2013 wherein respondent No.2 was appointed as Managing Director of the Company.

189. Thus there is a series of illegal acts by respondent No.5 (as will be explained more in detail later) , which are part of the same transaction to cause oppression on appellant No.1 and show his malafide intention. These violations by him are burdensome, harsh and wrongful to appellant No.1. So I am of the view that the statement in the above decision has been quoted out of context by respondents and it will not apply to the present case.

190. So I hold on question (xiv) that there is no valid withdrawal of resignation of respondent no.5 in law and consequently the Board meeting held on 9.4.2013 is non-est in the eye of law.

191. The view of the CLB in its order that since appellant No.1 received the letter dt.09-04-2013 and initialed it, and the same was also received by the Company Secretary who also initialed it on that day, and so respondent No.5 continued as Director of the Company. This view is erroneous. When there is no material filed by the respondents to show that the appellant No.1, who was the only other Director of the company on 09-04-2013, had agreed and permitted withdrawal of the resignation expressly prior to that date, the CLB erred in perversely giving a finding that appellant No.1 did not dispute the withdrawal of the resignation by respondent No.5.

192. The CLB's further view that appellant No.1 did not accept the resignation is incorrect in law since there is no necessity in law for such acceptance of resignation of respondent No.5 as explained above. Its view that appellant No.1 asked respondent No.5 to continue as Director of the Company is based on no evidence and cannot be sustained.

193. The contention of the respondents that the appellant No.1, acting as a Director of the Company, had permitted respondent No.5 to withdraw his resignation and act as a Director, thus cannot be accepted.

194. There is also no merit in the contention of the respondents that since appellant No.1 did not question or challenge his continuance as Director she is deemed to have reaffirmed his continuance as Director. In my opinion such a challenge to his continuance as Director by the appellant No.1 is unnecessary since in law, there could not have been any such continuance.

195. The respondents also relied on "Duomatic" principle. According to them, if all corporators of a Company are required to consent to a course of action first, it would be impermissible for any such person to subsequently turn around and question the non-adherence to Articles or even the Companies Act. They relied on the decisions in **Cane v. Jones**¹⁸, **Re Home Treat Ltd.**¹⁹, **Euro Brokers**

¹⁸ (1981) 1 ALL E.R. (Ch. D)

¹⁹ (1991) BCLC 705

Holdings Ltd. v. Monecor (London) Ltd.²⁰ and **Brilliant Bio Pharma Ltd v. Brilliant Industries Ltd.**²¹.

196. In **Euro Brokers Holdings Ltd.** (20 supra), the Court of Appeal in England approved Oliver J's statement in **Re New Cedos Engineering Co. Ltd**²² where he summed up the Duomatic principle as under :

"... the ratio of Buckley J's decision is that where that which has been done informally could, but for an oversight, have been done formally and was assented to by 100% of those who could have participated in the formal act, if one had been carried out, then it would be idle to insist upon formality as a pre-condition to the validity of the act which all those competent to effect it had agreed should be effected."

197. A reading of the above decision indicates that existence of consensus-ad-idem among all the shareholders of a company for a particular course of action is a condition precedent for application of the said principle. Only then they would be precluded from later turning around and questioning the non-adherence to the Articles or to provisions of the Act. In the instant case, there is no such consent of appellant No.1 to the acts of the respondents in the Board meetings of 09.04.2013, 10.04.2013 and 11.04.2013, established by respondents. In fact such an argument was never advanced before the CLB by the respondents.

198. I therefore hold that respondent No.5 ceased to be a Director of the Company as soon as he delivered his letter of

²⁰ (2003) EWCA Civ 105

²¹ (2013) 180 Comp Cas 168

²² (1994) 1 BCLC 797 at Pg.814

resignation dt.06-04-2013, that he cannot continue as Director thereafter and his letter dt.09-04-2013 withdrawing his resignation, is invalid in law.

The validity of the Board meetings dt.09-04-2013, 10-04-2013 and 11-04-2013

199. Under this head, I will consider the following questions :

- (xv) *Whether the CLB erred in not taking into consideration the fact that it is not even the case of the respondents that the mandatory requirements of notice under the Act was served on appellant?*
- (xvi) *Would the board meeting held on 09-04-2013, 10-04-2013 and 11-04-2013 be non-est in law if they were held by strangers and without quorum? And consequently would the decisions taken therein be binding on the Company?*
- (xvii) *Whether the finding of the CLB that the Board Meeting of 10-04-2013 was validly held is perverse?*

200. It is not in dispute that it was respondent No.5 who convened the Board meetings on 09-04-2013, 10-04-2013 and 11-04-2013.

201. Admittedly, as on 06-04-2013, the Company had only one (1) Director i.e. appellant No.1.

202. Under Section 252(2) of the Act, every company other than a public company mentioned in sub-Section (1) thereof, shall have at least 2 Directors.

203. Article 117 of the Articles of Association of the Company states :

“Until otherwise determined by a General meeting of the Company and subject to the provisions of Section 252 of the Act, the number of Directors (excluding Debenture and Alternate Directors) shall not be less than two or more than twelve.”

204. Under sub-Section (2) Section 287 of the Act, the quorum for a meeting of the Board of Directors of a Company shall be $1/3^{\text{rd}}$ of its total strength or 2 Directors, whichever is higher.

205. As per Article 128 of the Articles of Association, minimum 2 Directors are required even for the purpose of increasing the number of Directors and to summon a general meeting.

206. Under Article 151 of the Articles of Association, the quorum for meeting of a Board shall be $1/3^{\text{rd}}$ of its total strength (excluding Directors, if any, whose places may be vacant at the time and any fraction contained in that $1/3^{\text{rd}}$ being rounded off as 1), or 2 Directors, whichever is higher.

207. When the resignation of respondent No.5 came into force on 06-05-2013, and it could not be withdrawn as per Law, he had no authority in law to convene the above meetings or hold them.

208. Assuming for the sake of argument without conceding that he continued as Director and that his resignation was validly withdrawn, still being the only Director present at the meeting of 09-04-2013, and in the absence of minimum quorum of 2 as mandated in the Articles of Association, he still could not have held the meeting.

209. Once there is no quorum, Article 152 of the Articles mandates that the Board meeting shall automatically stand adjourned to a future date to be fixed by the Chairman. This was not done by respondent No.5 and he thus violated this Article also.

210. In **Amrit Kaur Puri Vs. Kapurthala Flour Mill**²³, the Punjab and Haryana High Court held that even the Articles cannot provide for a quorum lower than what is prescribed in Section 287. This being the legal position, the question of there being any waiver by appellant No.1 of the requirement of having minimum statutory quorum of 2 Directors for a Board Meeting, does not arise.

211. In **Re Sly, Pink and Co**²⁴ and **Re. Alma Spinning Co**²⁵, it was held that provisions as to minimum number of Directors are mandatory and consequently any business transacted after the number fell below the minimum, was invalid.

212. In my opinion, Section 252 of the Act which prescribed a minimum of at least two Directors for a Company and Section 289 which prescribed for quorum for Board meetings are both conceived in public interest by Parliament, and they cannot be waived.

213. In **Waman Shrinivas Kini v. Ratilal Bhagwandas & Co.**²⁶, the Supreme Court held:

²³ (1984) 56 Comp. Case 194 (Punjab and Haryana)

²⁴ (1911) 2 Ch 430

²⁵ (1880)16 Ch D 681

²⁶ AIR 1959 SC 689

“ waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied. Chitty on Contract 21st Ed. p. 381: *Stackhouse v. Barnston*. But an agreement to waive an illegality is void on grounds of public policy and would be unenforceable.”

214. In **All India Power Engineer Federation v. Sasan Power Ltd.**²⁷, the Supreme Court reiterated:

“ 21. ... But it is important to note that waiver is an intentional relinquishment of a known right, and that, therefore, unless there is a clear intention to relinquish a right that is fully known to a party, a party cannot be said to waive it. But the matter does not end here. It is also clear that if any element of public interest is involved and a waiver takes place by one of the parties to an agreement, such waiver will not be given effect to if it is contrary to such public interest.”

215. I therefore do not agree with the contention of respondents that the appellant no.1 could have waived rights conferred on her under the Act since such rights were conferred only for her benefit. Even **Krishna Bahadur v. Purna Theatre**²⁸, cited by respondents, held that a right can be waived by a party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that *no public interest is involved therein*.

216. Even if the casual vacancy caused by the death of late Dr.Vijay Kumar Datla was required to be filled pursuant to Article 123 of the Articles of Association, the same could only have been

²⁷ (2017) 1 SCC 487

²⁸ (2004) 8 SCC 229

done by a validly called Board meeting. Without there being quorum as prescribed under the Articles or under the Act, there could not have been any valid Board meeting of 09-04-2013 and no valid appointment of respondent No.4 as Director could have been made therein.

217. Consequently, the finding of the CLB that the Board has the power at any time to appoint any other qualified person to be a Director to fill up a casual vacancy, that respondents stated that the said Board meeting of 09-04-2013 was convened and so it is validly held, is clearly contrary to law and unsustainable.

218. As per Section 286 of the Act, notice of every meeting of the Board of Directors of a Company shall be given in writing to every Director for the time being in India, and at his usual address in India to every other Director. This provision is also, in my opinion, introduced in public interest to avoid meetings being held without proper notice to the Directors.

219. As per Article 150 of the Articles of Association, 10 days notice in writing should be given to each of the Directors of the Company unless there is prior consent accorded in writing which permits a meeting to be held at shorter notice.

220. It is not the case of the respondents that ten days clear notice was given prior to holding the meetings of 09-04-2013, 10-04-2013 and 11-04-2013 by respondent No.5.

221. The stand of the respondent No.5 is that with the consent of appellant No.1, he conducted the said Board meetings. There is no evidence of any prior consent of appellant No.1 adduced by the respondents of waiver of ten days notice for any of the above Board meetings. In fact it is the case of appellant No.1 that she had no knowledge of these Board meetings.

222. No evidence is placed on record by respondents to show that the mandatory requirement of service of notice of the Board meetings mentioned in Section 286 and Article 150. It is pertinent to note that no finding had been recorded by the CLB that appellant No.1 had been served notice of the Board Meetings dt.09-04-2013, 10-04-2013 and 11-04-2013.

223. Therefore the meeting held on 09-04-2013 is in violation of Section 286/287 (2) of the Act and Article 128/150 of the Articles of Association.

224. I therefore hold on question (xv) that the CLB ignored that mandatory requirements of issuance of notice and service on the Directors such as appellant were not complied with.

225. The manner in which respondent No.5 had acted unilaterally behind the back of appellant No.1 who was admittedly Executive Director as on 09-04-2013 shows that he colluded with respondent Nos.2 to 4 to enable the latter to usurp the offices of

Director and wrest management of the Company to the prejudice and detriment of appellant No.1.

226. Once it is held that respondent No.5 ceased to be a Director on 06-04-2013, and his withdrawal of resignation on 09-04-2013 is invalid, and he had no authority to convene the Board meeting on 09-04-2013 and the said Board meeting is invalid in law, (i) the induction of respondent no.4 as Director in the said meeting is invalid; (ii) the decisions taken by respondent no.5 along with respondent No.4 in the meeting held on 10-04-2013 appointing respondent no.2 and respondent No.3 as Additional Directors of the Company, and transmitting 81% shares of late Dr. Vijay Kumar Datla in favour of respondent No.2 is invalid; and (iii) the decision taken in the Board meeting of 11-04-2013 to appoint respondent No.2 as the Managing Director of the Company, allotting 11 shares of the Company each to respondent no.6 and 7, permitting respondent no.2 to be an authorized signatory for the Company's bank accounts in the Bank of Baroda, ICICI Bank, State Bank of India, and (iv) all other decisions taken therein are also invalid in law and illegal. Such decisions will not bind the Company.

227. I therefore hold on question (xvi) and (xvii) that all the three Board meetings held on 09-04-2013, 10-04-2013 and 11-04-2013 were not validly held, that respondent Nos.2 to 4 were not validly appointed as Directors, and the transfer of 81% of the shares held by late Dr. Vijay Kumar Datla in favour of respondent No.2 is not

valid in law and cannot be recognized, and all decision taken therein are not valid and will not bind the Company. The finding view of the CLB that all the three above Board meetings and decisions taken therein are valid, is therefore set aside.

228. Once respondent nos. 6 and 7 allotment of shares is declared illegal, their consequent appointment as Whole time Directors of the Company in the meeting of the Board held on 22.8.2013 is also not valid and is accordingly set aside.

Non- Compliance of Art.70

229. Under this head I will consider the question;

“(xviii) Whether it was incumbent on the respondents to produce the original share certificates as required by Article 70 of Articles of Association and was the transmission of shares ultra vires of the Articles of the Company (specifically Article 66)?”

230. It is alleged by the appellants that the Company Secretary did not ensure that original share Certificates were produced by respondent No.2 as envisaged in Article 70 of the Articles of Association before registering a transfer of shares.

231. The said Article states:

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

232. No evidence that original share Certificates were produced by respondent No.2 before the share transfer was done in her favor on 11-4-2013 was produced before the CLB by the respondents. In fact, unnumbered application was filed on 03.02.2015 before the CLB by the appellants to direct the respondents to disclose on oath the original copies of share certificates allegedly issued by the Company to respondent no.2 transmitting the shareholding of Late Dr. Vijaykumar Datla to her, but they did not disclose on oath and as stated above, the CLB did not pass any order on that application in its final order stating simply that the said application and others “*stood disposed of*”.

233. Therefore the transfer of share certificates relating to the 81% shareholding of late Dr. Vijay Kumar Datla in favour of respondent No.2 is also in violation of Article 70.

Re: Appellant no.1's letter dt.15.4.2013 and whether one can infer waiver/acquiescence by applying principle of estoppel

234. It is the contention of the respondents that appellant No.1 addressed a letter on 15-04-2013 to all the employees stating that she is proud to share with them the news of appointment of her three daughters to the Board of Directors of the Company and the appointment of respondent No.2 as the Managing Director.

235. It is the contention of the respondents that appellant No.1 not only suppressed the letter dt.15-04-2013 in C.P.No.1 of 2013 and in C.P.No.36 of 2014, but took different stands in different

pleadings/documents about this letter. It is pointed out that in the rejoinder to the counter affidavit of the Company filed by the appellants, it is stated that this letter was *manufactured* at one place and at another place that it is obtained by *coercion* to over come the quorum issue; plea of coercion is raised in the rejoinder filed by the appellant to the counter of respondent No.2 at one place and at another place it is stated that this letter was *supposedly written* by appellant No.1; and in the rejoinder in the counter of respondent Nos.3 and 4, she stated that she was in deep mental agony and took several months to come to normalcy and *did not send any such letter voluntarily* to the office of the respondents. It is stated that in this appeal at para 3.2.15, appellant No.1 stated that the letter dt.15-04-2013 is fabricated/manufactured and in para-35 of the rejoinder filed by appellant No.1 to the counter filed by respondent Nos.1 and 2 in C.P.No.1 of 2013, she stated that the letter dt.15-04-2013 was a *great errata (suicidal) of her life*, which she would wish to correct, if she were to live it over again.

236. No doubt it is also brought to the notice of the Court that in the criminal complaint lodged by appellant against respondent Nos.2 to 4, alleging coercion, the police had filed a final report that the allegation is false and that the complaint was dismissed. However the counsel for the appellants stated that appellants intend to take steps to challenge the said order.

237. Reference is also made by respondents to letters dt.22-08-2013, 07-10-2013, 19-10-2013 and 20-10-2013 of appellant No.1 and her conduct in applying along with respondent NOs.2 to 4 to Canara Bank, Bank of Baroda, HDFC Bank and PF authorities for obtaining the monies of late Dr. Vijay Kumar Datla on 16-04-2013 and 31-7-2013. It is also stated that by attending Board meetings on 22-08-2013 and 25-09-2013, she acquiesced in the actions taken by the Board on 09-04-2013, 10-04-2013 and 11-04-2013.

238. In the impugned order, the CLB agreed with the contentions of the respondents.

239. However, I am of the view that such finding of the CLB is perverse and contrary to law.

240. It is settled law that there is no estoppel against a statute and that a person cannot waive any right or benefit conferred by a statute unless it is of a personal and private nature; that there is a clear distinction between a contractual or a statutory right which is created in favour of a person for his own benefit and a right which is created on the ground of public interest and public policy.

241. The rule of waiver will not apply to a prohibition based on public policy. I have already referred to decisions in **Waman Shriniwas Kini (26 supra)** and **All India Power Engineer Federation (27 supra)**. It was held therein that if any element of public interest is involved and a waiver takes place by one of the

parties to an agreement, such waiver will not be given effect to if it is contrary to such public interest.

242. I have already held that Section 252 of the Act which prescribed a minimum of at least two Directors for a Company and Section 287 of the Act which prescribed quorum of there being two Directors for Board meetings are, in my opinion, conceived in public interest by the Parliament, and they cannot be waived. In such a situation, even if she did write the said letter, the principle of waiver cannot apply and on the same basis estoppel would not operate since the violations pointed out above are in public interest.

243. Non-mention of writing of the letter in the pleadings in the C.P., in view of the above legal position, cannot therefore be put against the appellant no.1 because it would have made no difference in law. When contrasted with the conduct of the respondents which has been set out above and the fact that they want to take advantage of their own wrong, which is impermissible in law (as will be explained below) , this is not fatal to the appellant no.1.

244. Admittedly Dr. Vijay Kumar Datla died on 20-03-2013 after a prolonged illness. The appellant No.1 had been married to him since 1967, almost for half a century. Naturally his death would have been quite traumatic for her. On top of that, without issuing any notice of the Board meetings of 09-04-2013, 10-04-2013 and 11-04-2013 to her, respondent Nos.2 to 4 wrested control of the Company taking advantage of the distressed mind of the appellant No.1. By that

date in fact not even one month had elapsed from the death of Dr.Vijay Kumar Datla. These facts can't be ignored by the Court.

245. The CLB overlooked the distressed state of mind of a widow who lost her husband of 50 years and came to a perverse conclusion that she acquiesced in the said Board meetings or the decisions taken therein.

246. In her letter 22-08-2013, the appellant No.1 clearly stated that the meetings of 09-04-2013 and 10-04-2013 have no legal sanctity. In her subsequent letter dt.07-10-2013 also, she pointed out that decisions taken in the above Board meetings were illegal and unauthorized as notices of such Board meetings were not served on her and accused respondent Nos.2 to 7 of conniving among themselves and taking decisions in haste to achieve their selfish ends.

247. In the Board meeting on 25-09-2013, the appellant No.1 participated and gave a detailed letter making various allegations pertaining to the functioning of the Board.

248. It is also not in dispute that appellant No.1 seriously disputed the Will propounded by respondent No.2 in her letters dt.19-10-2013 and 20-10-2013 and she accused respondent Nos.2 to 4 of "usurping" the Directorship of the Company.

249. On 13-11-2013, admittedly she filed C.P.No.1 of 2013 invoking Section 409 of the Act challenging appointments of respondent Nos.2 to 4 to the Board of the Company and sought a

declaration that respondent No.5 had resigned from the Board of Directors.

250. This conduct of appellant no.1 shows that there was no acquiescence by her to the decisions taken in the Board meetings of 09-04-2013,10-04-2013 and 11-04-2013 or to the appointment of respondent Nos.2 to 4 to the Board of Directors.

251. I am also of the opinion that in the facts and circumstances of the case, the conclusion of the CLB that the appellant No.1 suppressed the said letter and came to the CLB with unclean hands cannot be accepted, and is set aside since it turned a blind eye to the conduct of respondents 1-5, as is explained below.

252. I will now consider the following question :

“(xx) Whether the learned CLB was correct in entirely ignoring the conduct of the respondents inter alia the cloak the secrecy, deceit, deception surrounding the transmission of shares?”

253. Having violated several provisions of the Act and also Articles of Association referred to above and by a *fait accompli*, having obtained control of the Company,, the plea raised by respondents of acquiescence/estoppel by appellant no.1 is, in my opinion, nothing but a pretext to take advantage of the wrongs committed by them, which is impermissible in law.

254. It is settled law that one cannot be allowed to take advantage of his own wrong.

255. In **Kusheshwar Prasad Singh v. State of Bihar**²⁹ the

Supreme Court held:

“13. The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.

*14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in **Mrutunjay Pani v. Narmada Bala Sasmal**³⁰ wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim **commodum ex injuria sua nemo habere debet** (no party can take undue advantage of his own wrong).*

*15. In **Union of India v. Major General Madan Lal Yadav**³¹ the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to Broom’s Legal Maxims (10th Edn.), p. 191 wherein it was stated:*

“It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim,

²⁹ (2007) 11 SCC 447

³⁰ AIR 1961 SC 1353

³¹ (1996) 4 S.C.C. 127

which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong”.

256. Similar view was taken in several cases including **Union of India Vs. Ashok Kumar Mitra**³².

257. I therefore hold on question (xx) that the CLB erred in Law in ignoring the conduct of the respondents surrounding the transmission of shares.

258. Therefore the view taken by the CLB that the issuance of the said letter by appellant No.1, notwithstanding the filing of CP No.1 of 2013 by her questioning the decisions taken therein, amounts to acquiescence on her part and that she recognized the Board by addressing letters dt.22-08-2013, 25-09-2013, 07-10-2013, 08-10-2013 and 20-10-2013, is perverse and unsustainable.

The validity of the A.G.M. dt.18-12-2013

259. Under this head, I will consider the following questions :

(xviii) Will the decision of the AGM on 18-12-2013 called without following the process of law, be non-est in law ?

³² (1995) 2 SCC 768

(xix) Can an AGM be called and held by strangers to a company ?

260. It is the case of the respondents that the AGM. held on 18.12.2013 had ratified all decisions taken in the Board meeting of 09.04.2013, 10.04.2013 and 11.04.2013.

261. I have already held that after his resignation, respondent no.5 could not have conducted the meeting on 09.04.2013 or the subsequent meetings on 10.04.2013 and 11.04.2013 wherein 4th respondent was inducted as Director, respondent Nos. 2 and 3 were inducted as Additional Directors and respondent No.2 was appointed as Managing Director. Consequently, there could not have been a validly convened AGM on 18.12.2013 at all by the same persons who are therefore strangers to the Company.

262. Therefore, I hold on question (xix) that the said AGM could not have been called by strangers to the Company such as respondent nos.2 to 5 and on question (xviii) that the decisions taken in the AGM on 18.12.2013 are non-est in law.

263. It is not in dispute that the appellant No.1 had filed C.P.No.1 of 2013 in this Court and sought stay of the Annual General Body Meeting to be held on 18-12-2013. The CLB on 17-12-2013 declined to grant stay but directed that resolutions passed therein will be subject to the outcome of the CP. The AGM was held on 18-12-2013 and in the minutes thereof, it is recorded that shareholders passed resolutions for declaration of dividend, reappointment of

respondent No.5 as Director, reappointment of auditors and election of respondent Nos.2 to 4 as Directors pursuant to Section 257 of the Act by shareholders.

264. In that meeting respondent No.2 was appointed as Managing Director and respondent No.4 was appointed as Whole Time Director and resolutions were passed for fixing their remuneration and for increasing remuneration of appellant No.1. The appointment of Directors in the Board meetings held on 09-04-2013, 10-04-2013 and 11-04-2013 were ratified by the General Body. Also respondent No.7 was appointed as President of the Real Estate Division of the Company. On 21-7-2014, CP No.1 of 2013 was withdrawn by appellant No.1 by filing a memo to that effect.

265. According to the appellant No.1, she attended the said meeting and opposed the resolutions, but her dissent was not recorded in the minutes of the said AGM. According to her, this is also an act of oppression by respondents.

266. Respondents have pressed into service Section 290 of the Act to contend that the resolutions passed in the meeting of 18-12-2013 validated all decisions taken in the Board meetings of 09-04-2013, 10-04-2013 and 11-04-2013.

267. The said provision states:

“Section 290. Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification

or had terminated by virtue of any provision contained in this Act or in the articles:

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

268. The said provision, on a plain construction, applies only in a case where invalidity of appointment of a Director was *discovered after he has done the acts*. It could not apply where there was usurpation of office of Director or Managing Director by a person.

269. In **M.Moorthy Vs. Drivers and Conductors Bus Service (P) Limited**³³, out of three Directors, only one Director called a Board meeting on 20-05-1978 and inducted a third party as Director and also as a Managing Director later. The Board thereafter sold two buses of the company which were its only assets. The Madras High Court held that since the meeting of 20-05-1978 was not attended by the other two Directors, there was no quorum, that it is not a valid meeting, any decision taken therein cannot be treated as valid. It refused to accept the contention that Section 290 would save the decisions taken in the said Board meeting stating that it would not apply when there is total absence of appointment or a *fraudulent usurpation of authority*. Similar view was taken by the Delhi High Court in **Eastern Linkers (P) Limited Vs. Dina Nath Sodhi**³⁴.

³³ (1991) 71 COMP CAS 136 (Madras)

³⁴ (1984) 55 COMP CAS 462 (Delhi)

270. In the present case, there is clearly an usurpation of authority by respondent nos.2 to 4 with the collusion of respondent no.5. Therefore, Section 290 cannot come to the aid of the respondents.

271. Therefore I hold that the AGM held on 18-12-2013 cannot in any way remove the defects in the meetings held on 09-04-2013, 10-04-2013 and 11-04-2013 and there was no acquiescence by the appellant No.1 either to the said meetings or the decisions taken therein.

272. Another contention raised by the respondents is that under Section 260, tenure of any additional Director co-opted is only till the conduct of the next Annual General Meeting, which happened on 18-12-2013; that respondent Nos.2 to 4 and 5 were appointed as Directors at the said Annual General Meeting; that these appointments had been re-affirmed in the later Annual General Meeting held in 2014 and 2015; and invalidity, if any, attachable to the said Meeting with regard to continuance of additional Directors was only upto 18-12-2013.

273. I do not agree with the said contention because if the AGM held on 18-12-2013 cannot in any way remove the defects in the meetings held on 09-04-2013, 10-04-2013 and 11-04-2013, neither can such defects be removed by the later AGMs held in 2014 and 2015, which will also be vitiated for the same reasons which apply to the AGM held on 18-12-2013.

Whether the appellants have made out a case for exercise of jurisdiction by the CLB/this court under section 397 of the Act :

274. The learned counsel for the respondents contended that unless the CLB is satisfied that conditions which are necessary for winding up of a company exists, it has no jurisdiction to pass any order against the company under Section 397 (1) of the Act. According to him, to succeed in allegations of oppression and mismanagement, persons invoking Section 397 must make out a case where the Court feels that it is just and equitable to wind up a company, but doing so would be injurious to the stakeholders and therefore appropriate orders are required to be made. He contended that questions relating to entitlement to shares on succession cannot be gone into and these issues have to be resolved in O.S.No.184 of 2014 and the appellants had not made out any case for relief in the C.P.

275. Reliance was strongly placed on the decisions of the Supreme Court in **Needle Industries Limited (17 Supra)** and **Sangram Singh P Gaekwad (1 supra)**.

276. There is no quarrel with the legal proposition laid down in the above decisions to the effect that before granting relief under Section 397, the Court has to satisfy itself that the company's affairs are being conducted in a manner prejudicial to public interest *or* in a manner oppressive to any member or members *and* that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on

the ground that it was just and equitable by the company should be wound up. If these conditions exist, the CLB may pass appropriate orders.

277. In **Needle Industries** (17 supra) it was held that the word “*oppression*” means “burdensome, harsh and wrongful”; and that the fact that a company is prosperous and making substantial profits is no obstacle to its being wound up, if it is just and equitable to do so;. It however cautioned that the just and equitable clause ought not to be confined to proved cases of *mala fides*. It was held that the person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as a shareholder.

278. In **Sangram Singh** (1 supra), the Supreme Court held that oppression complained of must relate to the manner in which the affairs of the company are being conducted and the conduct complained of must be such as to oppress the minority members. By reason of such acts of oppression, it must be shown that the majority members obtained a predominant voting power in the conduct of the company’s affairs. The Supreme Court held that the remedy under Section 397 is not an ordinary one, that an isolated incident may not be enough for grant of relief and continuous course of oppressive conduct on the part of the majority shareholders is necessary to be proved, that the acts complained of may either be designed to secure

pecuniary advantage to the detriment of the oppressed or be a wrongful usurpation of authority and that the jurisdiction of the Court to grant appropriate relief under Section 397 is of wide amplitude and the Court is not bound by terms contained in Section 402 if in a particular fact situation, a further relief or reliefs, as the Court may deem fit and proper, are warranted.

279. In **V.S.Krishnan** (4 supra), the Supreme Court held that the following amounts to oppression:

“a) Where the conduct is harsh, burdensome and wrong.

b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-avis the others.

c) The action is against probity and good conduct.”

280. The appellant no.1's case is that respondent No.5, who resigned as Director on 06-04-2013, without notice to her and without there being any quorum held successive Board meetings on 09-04-2013, 10-04-2013 and 11-04-2013 claiming that he withdrew his resignation on 09-04-2013, which in law, as was held above, he could not have been done. In those Board meetings, she alleged that respondent No.5 manipulated the transfer of 81% of shares in favour of respondent No.2 and unlawfully allowed her to wrest the management of the company and thus suppressed her rights. In my opinion, the allegations leveled by the appellant No.1 before the CLB in C.P.No.36 of 2014 would fulfill all the ingredients of Section 397.

281. In view of my above findings, all these allegations are proved and the defence of the respondents is liable for rejection.

282. The conduct of the respondent Nos.2 to 5 as against appellant No.1 is thus found to be harsh, wrongful, lacking in probity and is unfair to her. It also prejudices her in the exercise of her legal and proprietary rights as shareholder. It is thus oppressive towards her and by reason of such oppression the respondent Nos.2 to 4 obtained a predominant voting power in the conduct of the Company affairs.

283. So I hold that the appellants have made out a case for exercise of jurisdiction by the CLB/this court under section 397 of the Act.

Whether the appellants have made out a case for exercise of jurisdiction by the CLB/this court under section 398 of the Act :

284. According to the appellants, respondent Nos.2 to 4 initially sought to sell off their stake in the company with Private Equity Investors, but the same failed; that thereafter, there was an attempt to sell immovable properties to M/s. I.T.C. Ltd. by respondents, but appellant no.1 wrote to the said company and cautioned them about illegal shareholding and directorship of the Company, and so the said sale did not go through; thereafter, respondents tried to hive off undertakings of the Company to Companies incorporated and managed by respondent Nos.2 to 4 so that it would be convenient for them to dispose of assets through those

Companies and siphon off the money as per their whims and fancies to the detriment of the Company and actual shareholders.

285. According to her, a Scheme of Arrangement was also filed before this Court and C.A.No.722 of 2014 was filed before this Court and on 07.08.2014 this Court directed holding of meetings of shareholders and unsecured creditors; that the livestock undertaking of the Company was proposed to be demerged and transferred to 8th respondent Company and vaccine business undertaking of the Company was proposed to be transferred to 9th respondent Company; that paid-up capital of both Companies was only Rs.1 lakh and there was no reason why a Company with a track record of more than fifty years and doing business profitably with a networth of Rs.167 crores should demerge its undertakings to a newly incorporated Company and kill itself. It is contended that if demerger is sanctioned by the Court and the undertakings are transferred to new Companies, nothing will remain with the Company and it would virtually become a shell Company without assets. It is contended that the said demerger is a mala fide one and is evidence of mismanagement of the affairs of the Company.

286. It is further contended that respondent nos.2 to 4 bought three high-end cars of Rs.1.5 crores each using the funds of the Company for their personal use and this also indicates that they are desperate in utilizing its funds to the extent possible before it becomes

a shell Company. It is stated that these acts of mismanagement also warrant intervention by the CLB and by this Court.

287. These allegations are disputed by respondents.

288. According to the Company, land belonging to the Company located at Gaganpahad, Rajendranagar Mandal was earlier sold in 2008 and 2009. It is contended that the scheme of demerger proposed for the Company is aligned with broad business objectives which have anchored the business of the Company and is in the best interests of the Company and its shareholders. It is stated that the Company earned substantial profits before Tax of Rs.331.08 crores in 2013-14 and is performing extremely well. It is also contended that such scheme was proposed and approved by members of the Company including the appellant no.1 and the High Court in 2011, but it was not pursued further for business reasons and prevailing sentiments at that point of time.

289. It is stated by respondent no.2 that the scheme of demerger is still pending before the High Court at Hyderabad and appellant no.1 ought to pursue her remedies before the said Court in the petition pending before it. It is stated that two cars were purchased in 2011-12 and only one car was procured by the Company in 2014.

290. The CLB did not deal in detail with these allegations in the impugned order. It observed that the Company is a profit making

Company and one of the most successful vaccine companies in the country; that its profit before tax for the financial year 2014-15 is Rs.497.18 crores, which is more than the cumulative profit earned in the entire sixty years of its existence; that for fiscal year ending 2016 (unaudited), its profit before tax was Rs.384.32 crores and that appellant no.1 miserably failed to place on record any iota of evidence regarding mismanagement of the affairs of the Company, detrimental to the interest of shareholders.

291. In this Appeal, the appellants did not seriously contest these findings. Therefore, I do not propose to interfere with the said findings.

What relief can be granted to appellants in this Appeal

292. For the aforesaid reasons, I therefore declare that:

- (i) acts of respondent Nos. 2 to 7 are oppressive;
- (ii) the meetings of the Board of Directors held on 09-04-2013, 10-04-2013 and 11-04-2013 are null and void and all resolutions passed therein as well as forms/returns filed therein are set aside;
- (iii) resolutions passed at the Annual General Meeting of the Company held on 18-12-2013 are null and void and forms filed by respondents with regard to resolutions passed at the said AGM are set aside;

- (iv) the Board of Directors of the Company as existing as on today shall stand superseded and respondent Nos.2 to 7 are removed from the Directorship of the Company, and all forms-32 filed for their appointment as Managing Director/Director/Whole Time Director of the Company are declared as null and void *ab initio*;
- (v) the transmission of 4,00,691 equity shares held by late Dr.Vijaykumar Datla to respondent No.2 is illegal, null and void;
- (vi) consequently, that the register of members shall stand rectified by transmission of 1/4th of the 4,00,691 equity shares to appellant No.1, pending decision on the validity of the Will dt.04-12-1987 propounded by appellant No.1 and Will dt.14-2-2005 propounded by respondent No.2 by the competent Civil Court and subject to its decision;
- (vii) respondent Nos.2 to 4 and 6 and 7 have no authority to deal with the movable or immovable assets of the Company including the various Bank accounts of the Company in Bank of Baroda, ICICI Bank, State Bank of India or in any other Bank hereafter;
- (viii) the Board Meetings held on or after 20-3-2013 as null and void and all resolutions passed therein are set aside; and

- (ix) All Forms, documents, returns filed by respondent no.s 2-7 on behalf of the Company with/before any Government authorities on or after 20-3-2013 are declared as null and void.

293. I am of the opinion that as on 06-04-2013, since there was only one director of the Company i.e. the appellant No.1 and respondent No.5 had resigned, there was a deadlock in the affairs of the Company, since for any meeting of the Board, minimum two Directors should attend as per the Articles of Association, and it was not possible therefore to hold a Board meeting in these circumstances.

294. I have already held that the Board meetings held on 09.04.2013, 10.04.2013 and 11.04.2013 as well as the AGM held on 18.12.2013 are invalid and all decisions taken therein are also invalid and do not bind the Company. Consequently, respondent nos.2 to 4 and 6 to 7 cannot act as Directors; respondent no.2 cannot act as Managing Director; respondent nos.6 and 7 cannot act as Whole-time Directors of the Company.

295. Therefore, appellant no.1 alone who was Director as on 06.04.2013 can continue as a Director. Admittedly, her father founded the Company. She is a qualified medical professional in Clinical Pharmacology and had been appointed as a Medical Director of the Company in 1988 and was continuously involved in all the affairs of the Company till the death of her husband. She was the Executive Director of the Company even by 6.4.2015, the date of order of the Supreme Court, and thereafter also for some time. Therefore it cannot

be said that she is a total novice and is incapable of managing the affairs of the Company. In contrast respondents 2-7 were never even Directors prior to 9.4.2013.

296. As per Section 149 of the Companies Act, 2013, there should be minimum of three Directors for a public company and two Directors for a private company subject to maximum of fifteen. Admittedly, the 1st respondent-Company is a public limited company. Therefore, it requires three Directors. Under Section 174 of the 2013 Act, minimum quorum for meeting of Board of Directors is also three.

297. In view of the fact that appellant no.1 is the only Director on the Board of the Company, and there are no other validly elected Directors (since respondent nos.2 to 4, 6 and 7 cannot be treated as Directors), there cannot be any Board meetings. This will result in a deadlock in the affairs of the Company. On this ground also it would have been just and equitable to wind up the company.

298. In **M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raja and another**³⁵, the Supreme Court upheld a decision of the Madras High Court exercising jurisdiction under Section 397 of the Act when there existed a dead-lock situation between a father and a son, who were both Directors and who were at loggerheads, and there was serious incompatibility between them. It upheld the decision of the High Court which directed one of them to purchase the shares of the other to resolve the dead lock invoking

³⁵ AIR 2008 SC 1738

Section 397 holding that otherwise it was just and equitable to wind up the company.

299. So one solution could be to direct the appellant no.1 to sell her shares to respondent no.2 / 3 or 4. But in the light of the conduct of respondent nos.2 to 4 as considered by me earlier, it would be a travesty of justice to compel the appellant no.1 to sell her shares to any or all of them and would amount to practically rewarding them for their oppressive conduct of appellant no.1. So, I do not think that, in the facts and circumstances of the instant case, it is an appropriate relief.

300. Admittedly all attempts to settle the matter amicably between the parties failed and, facts of this case disclose that the parties have lost mutual trust which is necessary for the harmonious working of the Company and it is impossible for them to work together.

301. However, , winding up the Company which is running profitably, is not desirable.

302. In these circumstances an order under Section 397 needs to be passed to put an end to the acts of oppression so that interest of appellant no.1 can be protected.

303. So, the question arises how this Court should mould relief under Section 402(a) of the Companies Act, 1956 r/w Section 242(2)(a) of the Companies Act, 2013 which empowers the Court to

pass orders to provide for regulation of the conduct of the Company's affairs in future.

304. Regulation 69 of Table F of Schedule-I of the Companies Act, 2013 is similar to Regulation 75 in Table A, Schedule-I of the Companies Act, 1956. It states:

“69. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.”

305. The learned counsel for respondent No.2 had in fact relied in his written submissions on Regulation 75 in Table-A, Schedule-I by raising a plea that appellant No.1 by her letter dt.15-04-2013 announcing respondent Nos.2 to 4 as Directors, exercised power under the said Regulation and increased the strength of the Board to gain quorum. Though that contention cannot be accepted for reasons already mentioned, the said Regulation shows the way as to how this Court ought to mould relief. Therefore, another possible solution could be to permit appellant no.1 to increase the number of Directors to 3.

306. However, Article 128 of the Articles of Association of the Company states:

“128. The continuing Directors may act notwithstanding any vacancy in their body, but, if, and so long as their number is

reduced below the mini-number fixed by Article 117 hereof the continuing Directors not being less than two may act for the purpose of increasing the number of Directors to that number or of summoning a General Meeting, but for no other purpose.”

307. Thus, this Article will not permit the appellant No.1 alone to take steps to increase the number of Directors to 3.

308. Therefore, in exercise of the powers conferred on this Court under Section 397 and 402 of the Companies Act, 1956 (corresponding to Section 241 and 242 of the Companies Act, 2013), I deem it appropriate to substitute Article 128 with the following:

“The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.”

309. This is in tune with Regulation 69 of Table F of Schedule-I of the Companies Act, 2013. Such a power of the Court under pre-amended Section 397 r/w 402 of the Companies Act, 1956 even to frame an Article inconsistent with the provisions of Section 255 of the said Act was upheld in **Bennet Coleman and Co. Vs. Union of India and others**³⁶.

310. In **Bennet Coleman and Co** (36 supra), a Single Judge of the Bombay High Court had in a Company Petition filed under

³⁶ (1977) 47 Comp Cas 92(Bom)

Section 397 directed reconstitution of Board of Directors for the Company for a period of 7 years in a manner indicated in his order. It was contended before a Division Bench of the Bombay High Court in an appeal preferred against the said order that it is violative of Sections 255 and 408 of the Companies Act, 1956; that out of the 11 Directors of the reconstituted Board, only 3 Directors who are to represent the shareholders have been directed to retire in accordance with the Articles of the Company at each ordinary General Meeting and that they should be eligible for reelection, but so far as the remaining Directors are concerned, viz., 3 Directors, who are to be nominees of the Central Government, and 5 to be appointed by the Court, they were not subjected to retirement by rotation; that the learned Single Judge directed that a vacancy among these Directors should be filled up by the Central Government or the Courts, as the case may be; and this violated Section 255 which stipulated that at every Annual General Meeting, not less than 2/3rds of total number of Directors of a public Company, be persons whose period of office is liable to determination by retirement of Directors by rotation. It was further contended that the period during which the reconstituted Board was to operate has been fixed at 7 years thereby depriving shareholders of their right to have full corporate management over its affairs and dealing for such long period of 7 years through elected Directors to the extent of 2/3rds of the total number, has been drastically curtailed. It was pointed out that in order to give effect to his order the learned Single Judge had amended the original Article 95

of the Articles of Association of the respondent No.1 Company and according to the modified Article 95, it has been provided that at each ordinary General Meeting, the Directors elected by the shareholders shall retire from office, and there is no provision made for retirement by rotation in regard to the remaining Directors. It was further contended that Section 408 permitted the Central Government to appoint not more than 2 persons to hold office as Directors of a public Company, but the Single Judge permitted it to nominate 3 nominees of their own to hold office as Directors on the reconstituted Board and that thus Section 408 is also violated.

311. The Division Bench rejected the said contentions and held that Section 255 deals with Corporate Management of a Company through Directors in normal circumstances, while Chapter VI containing Sections 397 to 409 deals with emergent situations or extraordinary circumstances where normal corporate management has failed and has run into oppression or mismanagement and steps are required to be taken to prevent oppression and/or mismanagement in the conduct of the affairs of a Company; that powers of the Court under Section 397 or 398 r/w Section 402 cannot be read as being subject to the other provisions contained in Sections dealing with usual corporate management of a Company in normal circumstances; that there are no limitations or restrictions on the Court's powers to pass orders that may be required for bringing to an end the oppression or mismanagement complained of, and to prevent further oppression

or mismanagement in future, or to see that the affairs of the Company are not being conducted in a manner prejudicial to public interest. It also held that clauses (a) to (g) of Section 402 are only illustrative and not exhaustive of the type of orders which a Court can pass “*with a view to bringing to an end the matters complained of.*” It held that the only limitation that could be impliedly read on the exercise of the power would be that nexus must exist between the order that may be passed thereunder and the object sought to be achieved by these Sections. It observed that Section 397, 398 and 402 empower the Court to, instead of destroying the corporate existence of a Company, to continue its corporate existence by passing such orders as it thinks fit in order to achieve the objective of removing the oppression to any member or members of a Company, or to prevent the company’s affairs from being conducted in a manner prejudicial to public interest; and if that be the objective, the Court must have the power to interfere with the normal corporate management of the Company. It observed that *if under Section 398 read with section 402 the court is required by its order to provide for the regulation of the conduct of the company’s affairs in future because of oppression or mismanagement that has been occurred during the course of normal corporate management, the court must have the power to supplant the entire corporate management, or rather corporate mismanagement by resorting to non-corporate management which may take the form of appointing an administrator or a special officer or a committee of advisers etc., who could be in charge of the affairs of the company. If*

the court were to have no such power, the very object of the section would be defeated. The Bench upheld the order of the learned Single Judge including the amendment made to the original Article 95 of the Articles of Association of the Company, while passing orders under Section 398 r/w Section 402 of the Act. It rejected the contention that reframing or insertion of a new Article like Article 95 as was done by the Single Judge will be hit by Section 9(b) holding that the Court's powers under Section 397, 398 and 402 are wide and are not subject to other provisions of the Act.

312. This judgment in the **Bennet Coleman and Co** (36 supra) was approved by the Supreme Court in para-181 of **Sangramsingh P. Gaekwad** (1 supra).

313. In **Sangramsingh P. Gaekwad** (1 supra), the Supreme Court considered the power of the High Court under Section 397 of the Act to grant relief and held :

“181. The jurisdiction of the court to grant appropriate relief under Section 397 of the Companies Act indisputably is of wide amplitude. It is also beyond any controversy that the court while exercising its discretion is not bound by the terms contained in Section 402 of the Companies Act if in a particular fact situation a further relief or reliefs, as the court may deem fit and proper, are warranted. (Bennet Coleman and Co) “

314. The above decision was approved in **Kamal Kumar Dutta v. Ruby General Hospital Ltd.**³⁷

³⁷ (2006) 7 SCC 613

315. In **V.S. Krishnan** (4 supra), the Supreme Court reiterated:

“14 (e). Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide.”

316. Accordingly I direct firstly, that Article 128 of the Articles of Association of the Company be substituted as under:

“The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.”

317. Consequently, in exercise of the powers conferred under Section 241 and 242(2)(a) of the Companies Act, 2013, to regulate the conduct of the affairs of the respondent No.1 Company in future, I authorize the appellant No.1 is empowered to increase the number of Directors in the Board of the said Company to 3.

318. It is no doubt true that the appellant No.1 has crossed the age of 70 years and under part-I of Schedule-V of the Companies Act, 2013, she is not eligible for appointment as a Managing or Wholetime Director or a Manager unless there is a special resolution passed by the Company in General Meeting.

319. I am of the view that the said provision which deals with normal corporate management in normal circumstances will not come

in the way of this Court's powers under Section 10-F r/w Section 397 and 402 of the Companies Act, 1956 r/w Section 241 and 242 of the Companies Act, 2013 to pass orders for bringing to an end the oppression complained of by appellant No.1 and to prevent further oppression in future. Therefore notwithstanding the same, I hold that the appellant No.1 shall act as a Director of the respondent No.1 Company and be entitled to increase the number of Directors in the Board of the Company to 3.

320. The appellant No.1 and the Directors nominated by her shall hold office for a period of 3 years from the date of their assuming charge notwithstanding anything contained in Section 152(6) of the Companies Act, 2013. It is open to appellant No.1 to appoint a committee of advisers to advise the Board for the future management of the Company.

321. After the expiry of 3 years period referred to above, fresh Board of Directors may be constituted as provided in the Act and the Articles of Association of the Company.

THE CONCLUSION/RELIEF

322. In the result, the Company Appeal is allowed; the order dt.30.5.2016 in C.P.No.36/2014 of the CLB is set aside; and it is declared that :

- a. acts of respondent Nos. 2 to 7 are oppressive;

- b. the meetings of the Board of Directors held on 09-04-2013, 10-04-2013 and 11-04-2013 are null and void and all resolutions passed therein as well as forms/returns filed therein are set aside;
- c. resolutions passed at the Annual General Meeting of the Company held on 18-12-2013 are null and void and forms filed by respondents with regard to resolutions passed at the said AGM are set aside;
- d. the Board of Directors of the Company as existing as on today shall stand superseded and respondent Nos.2 to 7 are removed from the Directorship of the Company, and all forms-32 filed for their appointment as Managing Director/Director/Whole Time Director of the Company are declared as null and void *ab initio*;
- e. the transmission of 4,00,691 equity shares held by late Dr.Vijaykumar Datla to respondent No.2 is illegal, null and void;
- f. the register of members shall stand rectified by transmission of 1/4th of the 4,00,691 equity shares to appellant No.1, pending decision on the validity of the Will dt.04-12-1987 propounded by appellant No.1 and Will dt.14-2-2005 propounded by respondent No.2 by the competent Civil Court and subject to its decision;

g. respondent Nos.2 to 4 and 6 and 7 have no authority to deal with the movable or immovable assets of the Company including the various Bank accounts of the Company in Bank of Baroda, ICICI Bank, State Bank of India or in any other Bank hereafter;

h. the Board Meetings held on or after 20-3-2013 are null and void and all resolutions passed therein are set aside; and

i. All Forms, documents, returns filed by respondent nos. 2-7 on behalf of the Company with/before any Government authorities on or after 20-3-2013 are declared as null and void.

323. I direct as under:

(a) Article 128 of the Articles of Association of the Company be substituted as under:

“The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.”

(b) in exercise of the powers conferred under Section 241 and 242(2)(a) of the Companies Act, 2013, to regulate the conduct of the affairs of the respondent No.1 Company in future, the appellant No.1

is authorised to increase the number of Directors in the Board of the said Company to 3;

(c) part-I of Schedule-V of the Companies Act, 2013 which prescribes maximum age of 70 years to be a Director, shall not apply to appellant No.1;

(d) the appellant No.1 and the Directors nominated by her to the Board shall hold office for a period of 3 years from the date of their assuming charge notwithstanding anything contained in Section 152(6) of the Companies Act, 2013;

(e) it is open to appellant No.1 to appoint a committee of advisers to advise the Board for the future management of the Company;

(f) after the expiry of 3 years period referred to above, fresh Board of Directors may be constituted as provided in the Act and the Articles of Association of the Company.

324. The appeal is accordingly allowed with costs of Rs.25,000/- to be paid by respondent Nos.2 to 4 to the appellant No.1 within 4 weeks.

325. However, this judgment shall not come into effect for a period of 4 weeks from today and during this period also, there shall be no dealing with shares, moneys belonging to the Company or the moveable or immoveable properties of the Company.

326. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-11-2017

Note:-

Mark the L.R. Copy.

B/o.

kvr/vsv/ndr

Note:-

Issue C.C. tomorrow.

B/o.

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