

THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

Company Appeal No.20 of 2015
and C.M.P.Nos.15207 of 2017 & 13385 of 2019

- 1.Mr.Suresh Kumar Jalan,
- 2.Sisir Kumar Jain,
- 3.Bishnu Kumar Jalan
- 4.Perna Jalan

All are residing at
CF 142, Sector-2
Salt Lake,
Kolkata 700064.

... Appellants/Petitioners

Vs

- 1.M/s. Eastcoast Steel Limited,
Cuddalore Road,
Pillaiyarkuppam Post,
Bahour Commune
Pondicherry 607402.

- 2.Mr.Prithviraj S.Parikh,
Chairman & Executive Director,
M/s. Eastcoast Steel Limited,

- 3.Mr.Nalin S.Parikh
Director
M/s. Eastcoast Steel Limited,

4.Mr.Rajendra Chaturvedi
Director,
M/s. Eastcoast Steel Limited,

5.Mr.Vilas K. Shah
Director,
M/s. Eastcoast Steel Limited.

6.Mr.Premratan Damani
Director,
M/s. Eastcoast Steel Limited.

7.Mr.Ojas K Parikh
Director,
M/s. Eastcoast Steel Limited.

8.Mr.P.K.R.K.Menon
Director,
M/s. Eastcoast Steel Limited

9.Mr.Pradeep B.Chinai
Director,
M/s. Eastcoast Steel Limited

10.Mr.Ashok Kumar Dalmia,
Chairman & Managing Director,
M/s.Trans Freight Containers Ltd.,
No.72/73, 7th Floor, Nariman Bhavan
Nariman Point, Mumbai 400021.

11.Ms.Veena Dalmia,
No.72/73, 7th Floor, Nariman Bhavan
Nariman Point, Mumbai 400021. ... Respondents /Respondents

Prayer: The Company Appeal filed under Section 10-F of the Companies Act I of 1956, to set aside the order dated 11.05.2015 passed in C.P.No.56 of 2013 by the Company Law Board, Chennai Bench and allow the petition as prayed for before the Company Law Board.

For Appellants : Mr. AR.L. Sundaresan
Senior Counsel
for M/s. K.Gowtham Kumar

For Respondents : Mr. R.Sankaranarayanan
Senior Counsel for
M/s.J. Harshini [for R1 to R3, R7 & R8]

J U D G M E N T

Aggrieved over the Order passed by the Company Law Board in C.P.No.56 of 2013 dated 11.05.2015 the present appeal has been filed.

2. Brief facts leading to file this Company Appeal is as follows:

2(a). The First Respondent company was incorporated on 20.08.1982. The Appellants/Petitioners collectively hold 12.72% of shares in the First Respondent company. First Respondent company owns 58 acres of land which is located on East Coast Road, opp. Mahatma Gandhi Medical College in Pondicherry. The Production plant of the First Respondent company was located in the aforesaid land. Since the production was stopped in 1995, the machineries were sold and the shed was also dismantled. The guideline value of the land is

approximately Rs.50 lakhs and the market value is more than Rs.100 crores. Though the First Respondent did not carry on any business activity for the past 17 years, they claimed that it posted a loss of Rs.57,41,703/- due to the operations in 2010-2011 and loss of Rs.51,42,089/- for the year 2009-2010. It is not explained how the First Respondent incurred a loss when there was no production activity and there was no factory or shed for the First Respondent to maintain. Similarly, in the Annual Report for the year 2010-2011 under the head remuneration committee they have tried to manipulate the accounts. The First Respondent also proposed a scheme of amalgamation between the First Respondent and M/s. Mind Factory Entertainment Private Limited at Rs.7.83 per share as against the market price of Rs.32.30 per share of the First Respondent. The Petition filed for amalgamation in C.A.No.194 of 2012 and this Court directed the first Respondent to convene a meeting of the equity shareholders of the First Respondent for considering the scheme of amalgamation and on 18.4.2012 resolution was passed approving the scheme of amalgamation and arrangement. Subsequently the First Respondent in June 2012 filed C.P.No.155 of 2012 for sanction of scheme of Amalgamation and Arrangement between the Transferor and

Transferee company, which was objected by the appellants/petitioners and thereafter the above Petition was withdrawn.

2(b) The first Respondent thereafter on 08.08.2013 issued the statement of standalone financial results for the quarter ended 30.06.2013 and also stated that the Board of First Respondent proposed on 08.08.2013 to issue shares on preferential basis to improve the net-worth of the First Respondent. The First Respondent on 08.08.2013 issued the Annual Report for the year 2012-2013. In the Annual Report for the year 2012-13, the notice was given for conducting the 30th Annual General Meeting of the First Respondent on 12.09.2013. Under the head "Special Business", a special resolution was to be passed in the Annual General Meeting scheduled on 12.09.2013 with or without modification for the following subjects:

"The consent, authority and approval of the Company be and is hereby accorded to the board to offer, issue and allot up to an aggregate of 5,00,000 (five lakh only) equity shares of Rs.10 each (each an equity share and collectively as issue shares) at such price including a premium, if any at a higher price of the following:

- a. The average of the weekly high and low of the closing prices of the related equity shares quoted on the recognized stock exchange during the 26 weeks preceding the relevant date or

b. The average of the weekly high and low of the closing prices of related equity shares quoted on the recognized stock exchange during the 2 weeks preceding the relevant date,

To Ashok Kumar Dalmia ("the investor"), on preferential allotment basis, at such time or times and on such terms and conditions and in such manner as may be decided by the board in this connection.

As Annexure to the notice was issued stating as follows:

"Item No.7

The company has suspended the production at its Pondicherry plant owing to uneconomical operations and the activities continue to remain standstill. Further the Company's net worth has become negative as a result of the accumulated losses exceeding the paid-up capital and reserves. The erosion of capital has not only to be arrested but financial health restored, so as to facilitate restructuring of the company and its operations in future. The Directors had resolved at the Board Meeting held on 20.05.2013 and again on 08.08.2013 that raising the capital by preferential issue could be restored being the only viable proposition to overcome the current situation and recuperate the set back suffered with otherwise would pose a major hindrance and jeopardize the revival prospects.

In this regard the Board has considered the proposal for issueing new equity shares on preferential basis in accordance with the under Chapter VII of the SEBI (issue of Capital and Disclosure Requirements) Regulations, 2009. The Proposal investment is subject

to customary conditions including receipt of shareholders approval and other necessary statutory approval as applicable on the terms and conditions as may be mutually agreed to between the company and the investor. The shares allotted to the Investor shall rank pari passu with all other existing equity shares of the company in all respects including dividend.

1. Objects of the preferential issue:

The funds raised through this preferential issue shall improve the net worth of the company and shall be used for general corporate purposes for meeting the day-to-day administrative expenses. Meanwhile the Board and management shall also decide on reviving the company or restructuring the business.

2. Proposal of the Promoters, Directors or Key managerial personnel of the issue to subscribe to the offer:

None of the Promoters, Directors or Key managerial personnel shall be subscribing to the proposed offer.

3. Shareholding pattern before and after the preferential issue:

Particulars	<i>Pre-issue</i>		<i>Post-Issue</i>	
	No.of shares	%	No.of shares to be allotted	%
(A) Promoters & Promoter Group	7,22,705	14.76	7,22,705	13.39

	<i>Pre-issue</i>		<i>Post-Issue</i>	
Shareholdings				
(B)Public shareholdings				
(i)Mr.Ashok Kumar Dalmia	35600	0.73	5,35,600	9.93
(ii) Others	41,38,163	84.51	41,38,163	76.68
Total Public holding (B)	41,73,763	85.24	46,73,763	86.61
Total (A)+(B)	48,96,468	100	53,96,468	100

4. Time within which the preferential issue shall be completed:

The allotment of issue shares shall be completed within the time prescribed under the SEBI ICDR Regulations.

5. Subscribers to the issue and identity of the allottees:

A letter of intent from Mr.Ashok Kumar Dalmia, agreeing to subscribe to the issue and offer has been received.

Percentage of post preferential issue capital that may be held by the Subscribers:

<i>Name proposed Allottees</i>	<i>Belonging to Promoter/Promoter Group</i>	<i>Number and percentge of shares held before the preferential issue</i>	<i>Number and percentage of shares held alter the preferential issue</i>
Mr.Ashok Kumar Dalmia	No	35,600 - 0.73%	5,35,600 - 9.93%

There will not be any change in control of management of the company consequent to the proposed issue.

6. Price of Securities to be offered:

The issue shares shall be issued and allotted at a price higher (including the premium) of the price determined as prescribed under the aforesaid SEBI ICDR Regulations, being the following:

a. The average of the weekly high and low of the closing prices of the Company's equity shares quoted on the recognized stock exchange during the six months preceding the 'relevant date' or

b. The average of the weekly high and low of the closing prices of the Company's equity shares quoted on the recognized stock exchange during the two weeks preceding the 'relevant date'.

whichever is higher

The relevant date for determining the issue price of resultant equity shares which will be allotted shall be 13th August, 2013, being the date, which is 30 days prior the date of this meeting.

7. Terms and Conditions of the issue:

The entire issue price shall be payable upon the subscription and before allotment of the aforesaid equity shares. The equity shares issued and allotted under the pursuant to this resolution shall rank pari passu with the existing equity shares of the company in all respects and shall be listed on the stock exchanges where the equity shares of the company are currently listed.

The allotment of issue shares are subject to the investor not having sold any equity shares during the six months preceding the Relevant Date (as defined herein above and the Investor not acquiring or selling any equity shares until completion of the allotment of the issue shares under the proposed preferential issue."

2(c). Thereby they have passed a special resolution to offer a issue and allot them upto an aggregate of 5 lakh equity shares of Rs.10/- each to Kumar Dalmia on preferential allotment basis.

2(d). It is the contention of the Petitioners the resolution passed by the 1st Respondent at the Board Meeting held on 20.5.2013 and again on 8.8.2013 for raising the Capital of the First Respondent for issuance of preferential shares are illegal, arbitrary and liable to be set aside.

2(e) The Respondents 2 to 9 are clandestine running a Benami Brick Factory in the lands belonging to the First Respondent. The income derived from the brick factory is not shown as income in the books of accounts of the First respondent.

2(f) The Respondents 2 to 9 are providing parking space for the buses of the Mahatma Gandhi Medical college which is located to the plant cum registered office of the First Respondent and are collecting monthly rentals. However, the rental income is not shown as income in the books of account of the 1st respondent.

2(g) It is further contended by the Appellants/Petitioners that the Respondents 2 to 9 have committed the following irregularities in the meeting conducted on 18.04.2012 for approval of the scheme of amalgamation:

(I) The meeting was held at very small place and only about 30 chairs were arranged. There were 8000 shareholders of the First Respondent but with a mala fide motive, the Respondents 2 to 9 made arrangements only for accommodating the promoter group in order to ensure smooth passage of the amalgamation scheme.

(II) The copy of the land and building valuation report was not provided.

(III) The company had contingent liabilities towards electricity charges amounting to Rs.17.79 Crores and disputed claim of Rs.1.34 Crores of import duty on import of scrap. However, in the balance sheet of the

First Respondent Company as on 31.3.2010 and as on 31.3.2011, the contingent liability and disputed claim are not mentioned.

(IV)As per the scheme of amalgamation, the First Respondent was contemplating to issue 61% new shares of the total paid up share capital of the First Respondent to M/s.Mind Factory Entertainment Private Limited for just Rs.6,00,00,000/-(Rupees six crores only) I.e.,at Rs.7.83 per share against the market price of Rs.14.50. It is relevant to state that the actual book value is Rs.100/- per share.

(V)The First Respondent would have got 4 times more value for the same number of shares if it is offered to the Petitioners and the First Petitioner in his letter of objection offered to pay the Rs.12 Crores as against Rs.6 crores offered by M/s.Mind Factory Entertainment Private Limited for the same number of shares thus reducing the networth of the First Respondent company.

(VI)The First Respondent has accrued loss of Rs.12.54 Crores which was only due to the management and siphoning of funds by the Respondents 2 to 9.

2(h) It is also contended by the Petitioners that the following are the act of oppression of minority shareholders by the majority

shareholders:

Mr.Ashok Kumar Dalmia, the Tenth Respondent was holding, 7,04,400 shares of the First Respondent in June 2008. The Tenth Respondent sold 3 lakhs shares each to Mr.Sudhir Vora and his wife Mrs. Sobana Vora at less than fact Merchandising (P) Ltd. Shares the same corporate address with the First Respondent in Mumbai in the following address namely 16th Floor, Mittal Towers, A Wing, Nariman Point, Mumbai 400021. Further, in the list of promoter group of the First Respondent, a company by name M/s.Wist Trade Pvt. Limited it can be seen that M/s.Wist Trade Pvt. Ltd., is mentioned. As per the ROC extract of M/s.Wist Trade Pvt. Ltd., it can be seen that M/s.Wist Trade Pvt. Ltd., also shares its corporate address with the First Respondent in Mumbai in the following addresses namely 16th Floor, Mittal Towers, A Wing, Nariman Point, Mumbai 400021. Hence, M/s.Wist MRG Merchandising (P) Ltd., is Shell Company of the First Respondent at less than the face value. Hence, the present attempt to issue 500000 preferential shares to the 10th

Respondent at less than the market value is only to enable the 10th Respondent to offload the shares after the lock period to the promotor group of the First Respondent at less than the face value. The Respondents 2 to 9 in view of the increased shareholding in the First Respondent would commit acts of oppression suppressing the rights of the minority shareholders.

3(a). In the reply statement the Second Respondent stated that the petitioners who are corporate raiders, have approached the Company Law Board with an oblique intention and the Petitioners are not entitled to any remedy in law or in equity. The Petitioners are seeking to invoke the equitable jurisdiction of the company Law Board for their personal benefit and not in the interest of the respondent Company. For this purpose it is necessary to place on record certain facts with reference to the Petitioners and their malafide acts based on which the present petition has been filed by the Petitioners. The answering Respondent would also place on record the nature of the business and other financial details of the Respondent Company justifying the need for issue of shares on preferential basis. The

malafides of the Petitioners is writ large on the fact of it as on the one hand they allege that nothing is well in the Respondent Company and that other Respondents as mis managing the Company and that there is redemption of the Respondent Company and yet pushes up the price of the shares by indulging in frequent purchases manipulating the Stock Market. Such a person is disentitled to any interim relief and conduct of the Petitioners are such that no interim relief of the nature sought in the petition. The puzzling act of purchasing shares in an alleged dead company by a person who makes such allegations is a pointer of his malafide intentions. It is illogical to even consider that such a person could work in tandem with the promoters of the Respondent Company.

3(b). It is the further contention of the Second Respondent that the First Petitioner by himself does not fulfil the threshold limit of 10% share holding in the Respondent Company and the Petition is liable to be dismissed for invalid presentation of petition. The Petitioners are served with notices of the Annual General Meeting as early as on 16.08.2013 and yet the Petitioner failed to approach the Company Law Board immediately. In fact the Petitioners have been actively

acquiring shares of the Respondent Company in the Open Market and would have seen the notice on the Stock Exchange on 08.08.2013 when the Board of Directors of the Respondent company resolved to convene and hold the Annual General Meeting on 12.09.2013. The delay was not even explained in the Company Petition and an interim order was sought by suppressing all material facts. The Petitioners are obviously cornering shares in the open market and are attempting to hostile takeover of the Respondent Company and it would be a travesty of justice to claim that the persons in management and the General Body of Shareholders who are supporting the persons in management should have trust, faith and confidence in a corporate raider.

3(c). It is also contended by the Second Respondent that the Petitioners are also having business operations in Pondicherry and the answering Respondent reliably understands that the Petitioners carry on business in Pondicherry under the name and style of Servo Packaging Limited. The said Servo Packaging Limited has its factory at No.88/1, Cuddalore Pondy Main Road, Kattukuppam, Puducherry 607402 which is close to the registered office of the First Respondent

Company. The Petitioners have been for a while eyeing the landed property of the First Respondent Company and to achieve the said objective the Petitioners have hatched an evil design. The Petitioners with their objective firmly set on the landed property of the Company started acquiring shares of the company since January 2011. The said acquisition of shares was made by the petitioner in complete knowledge of the fact that the company has not been carrying on business since 1995 and that the Company has incurred losses over the year and the present landed property is the only asset of the Company. Over the last 2 years, the Petitioners have been tacitly acquiring the shares of the First Respondent company from the Stock Market and made a corporate raid on the Respondent Company. The Petitioners purchased shares at prices ranging from Rs.3/- per share to Rs.30/- and above per share. In this regard it is pertinent to mention that that the said Servo Packaging Limited has also acquired 43100 equity shares of the First Respondent Company. By 01.03.2013, the Petitioners acquired about 10% of the paid-up capital of the Company.

3(d) The First Respondent Company's shares are listed on the Bombay Stock Exchange and the Madras Stock Exchange. There are

about 7500 shareholders in the Company. The Company Law Board's order calling upon the Respondents to maintain status quo on shareholding of the company affects the remaining shareholders of the company, the marketability of the shares of the company and would be against the principles of free trading of shares of the publicly listed company. The Petitioners on the other hand have been actively taking steps to increase their shareholding in the company taking advantage of the Company Law Board's order. The answering Respondent humbly submits that the Board ought to forthwith vacate the order requiring the Respondent company to maintain status quo in its shareholding. The said order granted by the Board prevents free trading of shares in the stock market by shareholders of the company. Further the Promoters would have to take steps to protect the company from corporate raiders like the Petitioners who having suppressed these details has sought for interim orders to the Board with reference to the shareholding of the company. Free trade in the shares of the company by the shareholders would not affect the shareholding of the Petitioners in any manner whatsoever. The answering Respondent accordingly prayed the Board to vacate the order of 'status quo' on the shareholding of the company forthwith.

3(e) The Second Respondent further submitted that the proposal to make preferential issue of shares to the Tenth Respondent along with Mrs. Veena Dalmya was taken at the meeting of Board of Directors of the First Respondent Company held on 08.08.2013. The First Respondent company issued notice for convening the Annual General meeting on 12.09.2013 of the First Respondent company on 08.08.2013 and the Petitioner being market operators were well aware about the affairs of the Respondent Company and were closely watching the affairs of the company. The proposal to allot shares to the Tenth Respondent was also informed the Bombay Stock Exchange and the Madras Stock Exchanges. The Petitioners were therefore very well aware about the Respondent Company's proposal to issue shares to the Tenth Respondent and Mrs. Veena Dalmya. The Petitioners chose to remain silent till the last minute. No explanation was sought for by the Petitioners from the Respondent Company on the reasons for the proposed allotment of shares to the Tenth Respondent. The Petitioner with a malafide intention created a false urgency and rushed to the Board and sought for interim orders without serving the company Petition in time to the answering respondents. The answering

respondents have valid reasons for the issue of shares and had the Petitioners sought for such information to the company or exercised his right at the General Meeting, the said details would have been provided by the answering Respondents. The present company Petition is premature. By seeking the present interim reliefs, the Petitioners who are corporate raiders are now seeking to stall the exercise of commercial wisdom of larger group of shareholders who represent almost 85% of the paid up capital to the company. The Petitioners who are 4 in number have been obstructing the exercise of commercial decision making by about 7500 shareholders.

3(f) It is further contended by the Second Respondent that the issue of shares is made on professional basis by the Respondent Company to the Tenth Respondent. The issue of shares to the Tenth Respondent is in accordance with the SEBI(Issue of Capital and Disclosure Requirements) Regulations, 2009. The proposed issue of shares to the Tenth Respondent is in accordance with the provisions of law. The issue of shares is as per the pricing guidelines provided in the aforementioned SEBI Regulations. The Petitioners have failed to point out any non-compliance of irregularity in the proposed issue of

shares to the Tenth Respondent. Further, the answering Respondent Company has also got in-principle approval from the Bombay Stock Exchange and the Madras Stock Exchange for such allotment of shares.

4. After analysing the pleadings, documents the learned Company Law Board has framed the following issues:

1. Whether the issue of preferential shares are legal and valid?
2. Whether the Petitioners are entitled to seek a permanent injunction restraining the respondents 1 to 9 from alienating or encumbering and disposing of the assets and properties belonging to the R1 Company without giving the petitioners the first right of refusal to purchase the assets and the properties of the R1 Company?
3. Whether the Proceedings of the AGM dated 12.09.2013 is legal and valid?
4. Whether the Petitioners have made out any case either oppression or on mismanagement?

5. The learned Company Law Board considered all materials, come to the conclusion that no circumstances suggest winding up the company on just and equitable ground and dismissed the Company Petition, against which the present appeal is filed.

6(a). Learned Senior Counsel appearing for the Appellant submitted the Company Law Board has not considered the entire aspect and simply dismissed the Petition. In fact, the conduct of the Respondents from the inception clearly indicate that their act is nothing but mismanagement and oppression of the minority shareholders. The Appellant on the date of petition holding 12% of shares. Subsequently, it was increased upto 14.6%. It is his contention that the First Respondent has filed a Petition for amalgamation of company with M/s.Mine Factory and Entertainment Private Limited. Since the Appellant objected the scheme of amalgamation, the Petition filed for Amalgamation was withdrawn in order to avoid series of orders by this Court. Now the Respondent have passed a special resolution to allot the preferential shares to the Tenth Respondent at the rate of Rs.60/- per share. The Appellant in

fact expressed his desire to purchase at Rs.85/- per share which has been ignored. On the other hand preferential shares have been allotted to the Tenth Respondent.

6(b). The learned Senior Counsel also vehemently contended that the special resolution has passed with the presence of the proxies who are highly having connection to the promoter group. It is his contention that for special resolution and AGM, 21 days clear notice was not followed. Further it is his contention that the minutes book of the company indicate that only 15 members were physically present and members present by proxy is 90%. It is his further contention that on 12.9.2013 itself the Appellant gave offer to buy 5 lakhs equity shares on preferential basis at the rate of Rs.85% per share. Therefore, despite the offer given by one of the minority share holders, allotting preferential shares at less than the market value to the Tenth Respondent cannot be sustained. The above resolution is the result of oppression and mismanagement. Special Resolution coupled with the scheme filed for amalgamation which was subsequently withdrawn clearly indicate that the action of the respondents is clear case of mismanagement and oppression.

6(c) It is the further contention of the learned Senior Counsel that the entire shareholders were not present. 90% of the shareholders were present through proxies and further contended that most of the proxies are the promoters group and the sale has not done through OLA. Amalgamation petitions has been withdrawn and preferential shares proposed to one person at the lesser cost. All these facts have not been taken into consideration by the Company Law Board. Further, it is his contention that the shareholding pattern of the first Respondent company clearly indicate that Sl.No.7,11,18 and 21 all are part of the promoter groups. It is also contended that Freight Holding and Trading Private Limited, represented by its authorised signatory. Similarly Wist MRG Merchandising Pvt. Ltd., was also represented by its authorised signatory and one proxy namely Syed Kasim who has also represented other members. Hence it is the contention that the resolution itself was passed by the members who are interested to protect the interest of the promoters. Hence it is his contention that the entire act is nothing but oppression and mismanagement of the respondents.

6(d) It is further submitted that the petition filed for scheme for Amalgamation was withdrawn and the shares were sold at Rs.58/- per share. Whereas it was planned to sell the share at lesser value. Similarly, the Company Law Board also not considered that all other shareholders are promoters. In the meeting it has not even tested whether any other director is interested to purchase the property. Hence it is his contention that their first intention is only to sell the property. It can be seen from various activities and withdrawal of the amalgamation petition and there is no reason for raising the capital and there was also no reason for sale of the preferential shares. When there is no reason, certainly it is arbitrary, then it is oppression. Once the minority shareholders oppressed they will not go to the SEBI. Hence it is his contention that the Company Law Board has not decided the issue. Hence prayed for allowing the appeal.

7(a) Whereas it is the contention of the learned Senior Counsel appearing for the Respondent that this Appeal has been filed only in order to take over the administration of the entire company. The Appellant is only corporate raiders. He is having adjoining business and lands near the company property wanted to take over the entire

immovable property of the company. The Appellants started accruing shares of the company knowing fully well that the company has no operation or business. Further the company is in dispute with the Pondicherry Electricity Board. The company share was quoted at very low price on the stock exchange. Hence, the Appellants were never part of the company or not connected with the promoters in the inception. The Appellants aim is to take over the land of the company. Therefore, they have started acquiring majority control of the company. They felt acquiring of majority control of the company would give the Appellants right to the land of the company.

7(b) It is his further contention that the Appellants have acquired 10% of the shares of the company till March 2013. The Board of Directors of the company convened the meeting on 8.8.2013 and one of the resolutions was passed to conduct Annual General Meeting on 12.9.2013 wherein it was decided to make a preferential allotment of 50 lakhs equity shares at Rs.60/-per share to Mr.Ashok Kumar Dalmia and Ms. Veena Dalmia. The resolution was approved and informed to the Bombay Stock Exchange and Madras Stock Exchange. It is the further contention of the learned counsel that the Appellant started

purchasing shares in open market in 2011 knowing fully well about the financial status of the company, the disputes pending and risk involved. They have increased shares only from 13% to 16% which itself clearly indicate the malafides of the Appellants who are interested in making hostile take over of the company. The appellants company viz., Servo Packaging Limited had adjacent to the land of the company. The Appellants can always exit from the company by selling their shares in the stock exchanges. Instead the Appellants wants to own their shares and prevent majority from any decision. The Appellants conduct is unfair for collateral purpose. They are not interested in the affairs of the company. Their interest is personal interest for which remedy is not available under Sections 397, 398 of the Companies Act.

7(c) Further the learned counsel submitted that there is no evidence available for mismanagement and oppression. Issue related to the transfer of securities, shall be decided by Central Board viz., SEBI under Section 55-A of the Companies Act. Further, there is no evidence to show that the shares were given lesser amount than the market value. Hence, it is the contention of the learned counsel that the resolution has been passed legally. When the person is not

interested in protecting the company and only in order to take over the company, he cannot say that there is a mismanagement or oppression. Further, unless all the shareholders are made party, the resolution cannot be challenged now. Admittedly, there are dispute between the company and electricity department of Pondicherry, which is also known to the Appellants. The money has come to the company only for the benefit of the company. Hence, submitted that the company law board has clearly analysed the entire aspect and dismissed the Petition. Therefore the appeal is not maintainable. In support of his submissions he relied upon the following judgments:

1.Palanisamy and Another vs. Milka Nutrients P. Ltd., and others [**2008 SCC Online Mad 55**]

2.Re Bellador Silk Ltd., [(1965) 1 All E.R.667]

3.V.S.Krishnan and others vs. Westfort Hi-tech Hospital Ltd, and Others [(2008) 3 SCC 363]

4.Kothari Industrial Corporation Ltd., and Another vs. Maxwell Dyes and Chemicals (P.) Ltd [1995 SCC Online Mad 257]

5. R.Khemka and Another v. Deccan Enterprises

Pvt. Ltd., [1999 (1) ALD 558]

6. *N.K.Mohapatra v. State of Orissa and others*
[1994 SCC Online Ori 47]

7. *Mrs. Bacha F.Guzdar vs. Commissioner of*
Income Tax Bombay **[AIR 1955 SC 74]**

8. *Needle Industries (India) Ltd. and Others v.*
Needle Industries Newey (India) Holding Ltd. and
others **[(1981) 3 SCC 333]**

9. *Palghat Export Private Limited and another v.*
T.V.Chandran and others **[1993 SCC Online Ker 441]**

8. From the above submissions and grounds raised by the Appellants the following points are emerged:

1. When one of the shareholders offered to purchase the shares at more value than the value adopted in the resolution, whether such offer of any of the shareholder will affect the resolution?
2. Whether such event will amount to mismanagement or oppression of the minority shareholders?

3. Whether Special Resolution passed on
12.09.2013 not according to rules?

Points:

9. The Annual General Meeting was conducted on 12.09.2013 and in fact the Petitioner was also given notice. First Petitioner attended the meeting in person and others exercised their right of vote by proxy. This fact is not disputed. When the provisions provided for exercise vote by proxies and resolution is adopted after exercising the right of vote by the proxies as provided by the rules and regulations now it cannot be contended that the proxies are closely connected to the promoters. It is not in dispute that the company was incorporated originally in the year 1982. In the year 1989 company came up with initial public offer and listed its shares on the Bombay Stock Exchange and Madras Stock Exchange. Company came up with the right issue of Rs.1.46 crores to meet the increased need for capital in the year 1992. In the year 1995 the company stopped the entire operation of its steel factory and did not find it viable to carry on its operations as it was commercially not feasible in long run. From the materials available from the records it can be seen that the company

has stopped its production in the year 1995. The application filed by the Appellants shows that the company has stopped its production in the year 1995 and the machineries were sold and shed was also dismantled in the year 1995. It has been pleaded by the petitioner in para 9 of the petition and it is also admitted by the petitioner that from 1995 onwards the company did not carry on any business activity for more than 17 years. Despite knowing the fact that the company has not producing anything and its operation has been stopped, the petitioner started acquiring shares of the company in the year 2011. From the records we can also seen that there were disputes pending between the company and Pondicherry Electricity Board for payment of Rs.17.78 crores. This fact is also known to the Petitioners/Appellants however, they started acquiring shares. It is also come on record from the materials that the Petitioner owing the entity called Servo Packing Private Limited which is situated adjacent to the immovable property of the respondent company.

10. Admittedly the company law board has found that AGM has been conducted as per rules and all the shareholders exercised their right to vote either by person or by proxies. Now the allegation has

been made in the appeal that the promoters and third party shareholders are highly connected. Therefore without making the others as party to the proceedings making such allegations at this stage cannot be countenanced. It is also not in dispute that stock exchanges have granted in principle upload for allotment and listing of shares. The resolutions were passed under Section 81 of the old Act, as per the Rules it is adopted and shares have been listed and approved by the concerned authorities. Further no malafide pleaded or established against the Board which passed resolution. The petitioner to increase shareholdings knowing very well that company is not going well from the very inception, purchasing the shares in open market, such conduct clearly indicate that there is an agenda behind for increasing the shareholding pattern in the company. It is clearly established on record that they have also interested in the immovable property. Originally right of refusal also pleaded in the prayer, subsequently given up. It is also to be noted that the company law board has analysed the entire issues on factual basis. The appeal normally lies in High Court as against the order of the company law board on any question of law arising of such order. However, particular of question of law has not been raised in this appeal. However, the

learned senior counsel tried to convince this court that the entire materials have not been properly analysed and facts have not been taken into consideration and the finding is perverse which is also amounts to question of law. Such finding can be challenged.

11. In **Palanisamy's case** (supra) this Court has held as follows:

"7. Under Section 10F of the Companies Act, "an appeal lies to the High Court on any question of law arising from any decision or order of the Company Law Board". Finding of fact recorded by the Company Law Board is final and is therefore not appealable. The jurisdiction of the High Court in appeal is expressly confined to the determination of question of law. The mere fact that the High Court would have come to a different conclusion on the facts also does not make the matter appealable."

12. In **V.S.Krishnan's case** (supra) the Honourable Supreme Court held as follows:

14) In a number of judgments, this Court considered in extenso the scope of Sections 397 and 398. The following judgments could be usefully referred to:

(a) *Needle Industries (India) Ltd. and Others vs. Needle Industries Newey (India) Holding Ltd. and Others, (1981) 3 SCC 333.*

(b) *M.S. Madhusoodhanan & Anr. vs. Kerala Kaumudi (P) Ltd. & Ors., (2004) 9 SCC 204.*

(c) *Dale and Carrington Investment (P) Ltd. & Anr. vs. P.K. Prathapan & Ors., (2005) 1 SCC 212.*

(d) *Sangramsinh P. Gaekwad & Ors. Vs. Shantadevi P. Gaekwad (Dead) Through L.Rs. & Ors. (2005) 11 SCC 314*

(e) *Kamal Kumar Dutta & Anr. vs. Ruby General Hospital Ltd. & Ors. (2006) 7 SCC*

From the above decisions, it is clear that oppression would be made out:

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

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

(c) *The action is against probity and good conduct.*

(d) *The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sections 397 and 398.*

(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.*

(f) *As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact.*

16. *It is clear that Section 10F permits an appeal to the High Court from an order of the Company Law Board only on*

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

13. From the various judgments of the Honourable Supreme Court what are the facts give rise to constitute oppression is basically question of fact, the fact remains that the Company Law Board has analysed the entire facts factually. Further, on perusal of facts by this Court also reveals that the main intention of the appellants appears to acquire the entire control over the company. The motive behind acquiring the shares despite the company is in trouble and raising the shareholding makes it very clear that their intention is only to takeover the company. Therefore, once the person conduct indicate that his interest is only to take over the company and the motive is only to

takeover the valuable properties of the company rather than protecting the company or reviving the company, such shareholders cannot complain mismanagement or oppression. The entry into the company by the Appellants in the year 2011 itself much after incorporation of the company and that too the company has stopped the production. These facts cannot be ignored altogether. Therefore, merely one of the shareholders may be minority shareholder expressed his offer to purchase the shares higher than the value adopted in the special resolution that one incident cannot be construed to mean that special resolution adopted by the company is not correct.

14. It is to be noted that the letter dated 12.9.2013 referred by the learned Senior Counsel when carefully seen, the same makes it clear that after the resolution passed, to make it appear as if the appellant was interested in purchase 5,00,000 equity shares on preferential basis at the rate of Rs.85/- as against Rs.60/- approved by the association a letter has been dropped. The above letter has been received by the company only on 17.9.2013. If really their intention was clear to purchase the shares at Rs.85/-per share on 12.9.2013, the appellant having present during the AGM he could have made such

a request which has not done so, which has been further fortified by the fact that on 12.09.2013 he has given another letter on the same day and got an acknowledgment at 11.15 a.m. which is available on record, wherein he has aversion only the presence of the proxies and verification of attendance register. Except this, he has not shown his intension about the value of the shares. Therefore, sending subsequent communication as if he is interested to purchase the shares more than the value adopted by the special resolution in my view is made only to defeat the resolution alone. Therefore such letter will not affect the special resolution adopted in the AGM as per the rules. Further the contention that the proxies and third party purchasers are connected to the promoters cannot be raised at this stage without making them as parties. They also should be given opportunity. In their absence those pleas cannot be considered in this appeal stage.

15. Resolutions were properly passed on 12.9.2013. It is also brought to the notice of this Court that any resolution approved or passed by the company at the relevant applicable provision of the old Act during the period from 1.9.2013 to 31.3.2014 can be implemented in accordance with the provisions of the Old Act, notwithstanding the

repeal of the relevant provision subject to the conditions:

a) that the implementation of the resolution actually commenced before 1.4.2014.

b) that this transitional arrangement will be available up to the expiry of one year from the passing of the resolution or 6 months from the commencement of the corresponding provisions in the New Act whichever is later.

16. This clarification dated 23.7.2014 by the Government of India is not disputed by the other side. In view of the above the special resolution has passed and adopted is also intimated to the concerned department and parties have acted upon. The petition filed for mismanagement and oppression is not maintainable.

17. Therefore, in the absence of concrete evidence to establish the mismanagement and oppression the petition cannot be entertained. When the main aim of the minority shareholders is to acquire the company's properties some or other and make certain allegations to bring the application within the parameter of Act, merely

making of such allegation in my view, is not sufficient to hold that there is mismanagement and oppression. On a perusal of the entire materials clearly indicate that the main focus of the petitioner is only to gain the control over the company's property. Such is the actual intent of the parties, the petition filed for mismanagement and oppression cannot be entertained. Accordingly I do not find any material to interfere the order passed by the Company Law Board. Accordingly, the appeal is liable to be dismissed. The points are answered accordingly.

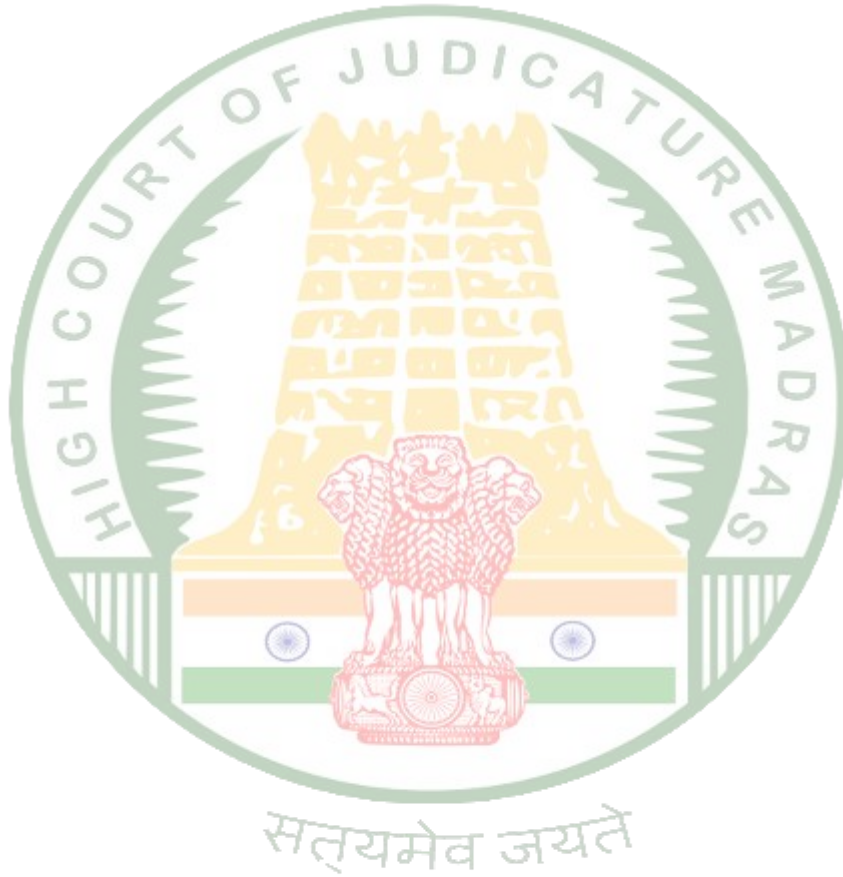
18. In the result, the Company Appeal is dismissed. Consequently, connected C.M.Ps. are closed. No costs.

26.08.2019

Index : Yes/ No
Internet : Yes
Speaking/Non-speaking Order
ggs

Copy to:
1.M/s. Eastcoast Steel Limited,
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Bahour Commune
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2.Mr.Prithviraj S.Parikh,
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N.SATHISH KUMAR, J.

ggs



**Pre-delivery Order in
Company Appeal No.20 of 2015
and C.M.P.Nos.15207 of 2017 & 13385 of 2019**

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26.08.2019