



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPEAL NO.61 OF 2015
IN
COMPANY PETITION NO.7 OF 2002**

1. Sunil Kumar Agarwal,
R/o 45, Motilal Nehru Nagar,
Bhilai, Dist. Durg,
Chhattisgarh – 400 020
 2. Rekha Agarwal,
R/o 45, Motilal Nehru Nagar,
Bhilai, Dist. Durg,
Chhattisgarh – 400 020
 3. Nimish Agarwal,
R/o 45, Motilal Nehru Nagar,
Bhilai, Dist. Durg,
Chhattisgarh – 400 020
- ... Appellants

versus

1. Laxmi Ventures (India) Ltd.
Having its registered office at,
36/40, Mahalaxmi Bridge, Arcade,
Post Box No.7979,
Mahalaxmi, Mumbai – 400 034.
2. Anil Kumar Agarwal,
601, Sangeet Sarita Apartments,
Bhula Bhai Desai Road, Breach
Candy, Mumbai – 400 026.
3. Chitra Agarwal,
601, Sangeet Sarita Apartments,
Bhula Bhai Desai Road, Breach
Candy, Mumbai – 400 026.
4. Akash Agarwal,

601, Sangeet Sarita Apartments,
Bhula Bhai Desai Road, Breach
Candy, Mumbai – 400 026.

... Respondents

WITH
INTERIM APPLICATION (L) NO.19161 OF 2021
WITH
COMPANY APPLICATION NO.22 OF 2018
WITH
COMPANY APPLICATION NO.45 OF 2016
WITH
COMPANY APPLICATION NO.23 OF 2018
WITH
COMPANY APPLICATION (L) NO.8 OF 2018
WITH
COMPANY APPLICATION NO.67 OF 2015
WITH
INTERIM APPLICATION (L) NO.1347 OF 2021
WITH
INTERIM APPLICATION NO.2065 OF 2020
WITH
COMPANY APPLICATION NO.51 OF 2016
WITH
COMPANY APPLICATION NO.64 OF 2015

Ms. Armin Wandrewala with Mr. Manan Jaiswal, Ms. Tanvi Parmar i/by MLS Vani and Associates, for Appellants.

Mr. Rohan Sawant with Mr. Chakrapani Misra, Mr. Jigar Parmar, ms. Dixita Gohil i/by Khaitan and Co., for Respondents.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 27 APRIL 2023

PRONOUNCED ON : 27 OCTOBER 2023

JUDGMENT :

1. This appeal under Section 10F of the Companies Act, 1956 ('the Act') is directed against the order passed by the learned Member, Company Law Board (CLB)

Principal Bench, New Delhi, in Company Petition No.7 of 2002 preferred by the Appellants – original Petitioners under Sections 397 and 398 of the Act, 1956 in respect of M/s. Laxmi Ventures (India) Limited – Respondent No.1.

2. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they were arrayed before the CLB. The Petitioners are collectively referred as ‘Sunil Group’ and Respondent Nos.2 to 4 are collectively referred as “Anil Group”.

3. The background facts leading to this appeal can be stated, in brief, as under :

3.1 Late Shri L.N.Agarwal was the father of Petitioner No.1 – Sunil and Respondent No.2 – Anil. Rekha Agarwal – Petitioner No.2 and Nimish Agarwal – Petitioner No.3, are the wife and son of Petitioner No.1 – Sunil. Chitra Agarwal – Respondent No.3 and Akash Agarwal – Respondent No.4 are the wife and son of Anil – Respondent No.2.

3.2 Late L.N.Agarwal had formed a partnership firm under the name and style of Agarwal Traders, which engaged, inter alia, in the business of cigarettes etc. After the demise of L.N.Agarwal, Agarwal Traders came to be reconstituted with Smt. Angoori Devi Agarwal, the mother of Petitioner No.1 and Respondent No.2, joining the firm. Over a period of time, the enterprises expanded with diversification into business of Motion Pictures Distributors.

3.3 On 15 January 1980, the company – Laxmi Distributors Pvt. Ltd., came to be incorporated. The Petitioners assert, the Petitioner No.1 and the Respondent No.2 were named the first directors of the said company. Whole of the business of the partnership was transferred to the said company. The Petitioners, therefore, assert the company since its inception was in the nature of quasi partnership. In the year 1994, the name of the said company was changed to Laxmi Ventures (India) Limited – Respondent No.1.

3.4 The Petitioner Nos.1 to 3 are the members of Respondent No.1 Company, holding fully paid up equity shares representing 20.70% of the total paid up share capital. Respondent Nos.2 to 4 are also members of Respondent No.1 company and together hold total fully paid up equity shares representing 52.76% of the total paid up share capital of Respondent No.1 company and the balance fully paid shares are held by other members.

3.5 The Petitioners assert, all members belong to the family of two brothers, Sunil and Anil. The Petitioner No.1 Sunil, Respondent No.2 Anil and Respondent No.4 Akash, are the family directors of Respondent No.1 company. It is the claim of the Petitioners that the Respondent No.1 company has in substance been nothing more than a partnership with equal participation in the conduct of affairs of the said company by Petitioner No.1 and Respondent No.2.

3.6 The Petitioners further asserted, Sunil – Petitioner No.1 continued to

manage the affairs of Respondent No.1 Company's at Unit at Bhilai and received funds from the customers directly. The balance sheets were prepared separately for those units and later on incorporated with the main balance sheets. Financial, taxation and public relation affairs of the company were controlled and managed by Respondent No.2. The Petitioners averred, being in-charge of the financial matters, Anil -Respondent No.2 had always occupied a position of custodian and trustee in so far as the Sunil Group.

3.7 The Petitioners alleged, with the induction of Akash – Respondent No.4 into the business in 1997 and the entrustment of affairs of Laxmi Solvex, a unit of Respondent No.1, at Indore, to the Respondent No.4, the company suffered huge losses. The Petitioner No.1 protested and that led to actions on the part of the Respondents to oust the Petitioner No.1 from the board of Respondent No.1 company. Thus, the Respondent Nos.2 to 4 started creating hurdles in the smooth functioning and management of Respondent No.1 company. Adverting to the disputes and differences between Sunil and Anil groups and the efforts at amicable resolution of the disputes, and even at the partition of the joint family business/properties, the Petitioners assert that the Respondent Nos.2 to 4 conducted the affairs of the company oppressive of the rights of the Petitioners. It was also asserted that Respondent Nos.2 to 4 were also guilty of mis-management or conduct of the affairs of the company in a manner pre-judicial to the interest of the company and public

interest.

3.8 Under the oppression of minority share holders, the Petitioners alleged, Respondent Nos.2 to 4 indulged in the following acts : (1) unlawful removal of Petitioner No.1 from board of directors of Respondent No.1; (2) illegal and wrongful withdrawal of the authority of Petitioner No.1 to operate the bank accounts of the Respondent No.1 Company; (3) non-furnishing of copies of documents and information to the Petitioners; (4) conduct of affairs of the company by Respondent No.2 in a dictatorial fashion; (5) unlawful transfer of shares of Respondent No.1; (6) unlawful transfer of shares of Respondent No.1 company by Respondent No.2 Anil in favour of his family group, disguised as gift.

3.9 Under the head of mis-management / financial mis-management, mis-appropriation of funds and misuse of assets and properties of Respondent No.1 company, the Petitioners have alleged, inter alia, the following : (1) involvement of higher income tax while Respondent No.1 company paying at lesser rate; (2) establishment of Laxmi Solvex; (3) violation of norms of corporate Governance and professional management; (4) retention of dummy directors on board of directors; (5) rendering Bhilai unit in a state of financial liquidity crisis and diverting the funds from the said unit; (6) misuse of the properties/assets of Respondent No.1 company, especially three BMW cars for the personal benefits of Respondent No.2; (7) losses on account of the imprudent business practices and lack of supervision and control in oil

packaging business and MTC business and export business.

3.10 On the aspect of alleged unlawful removal of Petitioner No.1 from the board of directors, the Petitioners asserted on 5 January 2000, Respondent Nos.2 to 4 initiated proceedings under Section 284 of the Act, 1956 to convene a meeting of the Board of directors. Thereupon, the Petitioner No.1 submitted resignation dated 6 January 2000 with a condition of settlement of the dispute with regard to which the discussion was allegedly in progress.

3.11 The Petitioners assert, the Respondent Company being in the nature of a quasi partnership with equal participation by both the groups, the removal of Petitioner No.1 from the board of directors was not possible until the partition of family properties took place. Yet Respondent No.2 without the Board approving the resignation sent by Petitioner No.1, instantaneously issued a letter dated 6 January 2000 of acceptance of the resignation of Petitioner No.1. Thus, the Respondent No.2 acted illegally in removal of Petitioner No.1 from the post of director. When the Petitioner No.1 protested, Respondent No.2 issued a letter confirming reappointment of Petitioner No.1 as a director of Respondent No.1 company with effect from 15 January 2000. Form No.32 incorporating the said change was also submitted under the signature of Respondent No.2.

3.13 Unsatiated with the aforesaid oppressive acts, Respondent Nos.2 to 4 mala fide informed the bankers, friends and relatives as well as the valuable customers

of Respondent No.1 company that the Petitioner No.1 had ceased to be the director of the Respondent No.1 Company. The said mala fide act, hampered smooth functioning of the Respondent No.1 Company. The consequential withdrawal of the authority of the Petitioner No.1 to operate the bank account of the Respondent No.1 was also with an ulterior motive to gain absolute control over the affairs of the Respondent No.1 Company.

3.14 The Petitioners further asserted, the Respondent Nos.2 to 4 did not furnish copies of the documents and relevant information despite repeated request and that constituted unjustified deprivation of the ordinary rights of Sunil group. It was actuated by a design to keep minority shareholders in dark about the financial management of Respondent No.1. Gift of the shares of Respondent No.1 Company held by Angoori Devi Agarwal, mother of Sunil, to the sons of Respondent No.2, were alleged to be sham and with a view to increase the voting power of Sunil Group.

3.15 Attributing the aforesaid acts of oppression and mismanagement, the Petitioners affirmed, the Respondent Nos.2 to 4 had dis-entitled themselves of the right to further manage the affairs of Respondent No.1 company. Resultantly, a situation of lack of probity and burdensome use of corporate power against the Petitioner Nos.1 to 3 was brought about.

3.16 Hence, the Petition seeking reliefs, inter alia, of declaration that the removal of Petitioner No.1 as a director from Respondent No.1 company is null and

void, to reconstitute the board of directors of Respondent No.1 company by appointing an independent chairman, to appoint independent auditors, to appoint independent administrator and prevent Respondent Nos.2 to 4 from continuing to act pre-judicially to the interest of the company and to pass orders under Section 402 of the Act, 1956 to prevent oppression and mis-management of Respondent No.1 Company, including punitive damages.

4. The Respondents resisted the Petition by filing an affidavit in Reply. At the outset, the tenability of the Petition was assailed on the ground that it was instituted with an oblique motive to harass the respondents and bring them to terms. It was contended that, in fact, the Petitioner No.1 was guilty of fraud, misfeasance, breach of trust and mis-appropriation of funds, and, therefore, the Petitioners were not entitled to any relief under Sections 397, 398 and 402 of the Act, which were equitable in nature.

5. Attributing acts of mis-conduct and malfeasance, the Respondents contended that, while managing the affairs of Bhilai Unit, the Petitioner No.1 started to run the said unit as if it was his sole proprietary concern, Petitioner No.1 projected himself as Managing Director, though he was only a director of Respondent No.1 Company till 14 January 2000, the Petitioner No.1 took over possession of the land of Respondent No.1 Company at Bhilai and constructed a building at the cost of Rs.1.26 Crores for and on behalf of Laxmi Narayan Trust, without any approval of the trustees

and Board of directors of Respondent No.1 Company, the Petitioner No.1 had taken an advance of Rs.10 Lakhs against the sale of Respondent Company's flat at Nagpur without approval of the Board, the Petitioner No.1 removed twelve cigarette making machines out of the Bhilai Unit on the pretext of getting them overhauled and transferred / sold those machines worth more than Rs.1 Crore to Laxmi Tobacco and Industries Pvt. Ltd. and Assam Tobacco Co. Pvt. Ltd., and the Petitioners allegedly siphoned of about 1.50 Crores out of the funds of Respondent No.1 Company and diverted those funds to the aforesaid Gauhati based company in which the Petitioners were majority shareholders.

6. The Respondents assert, on account of the aforesaid alleged acts of misconduct and mis-management on the part of the Petitioner No.1, action as envisaged by Section 284 of the Act, 1956 was initiated. A special notice convening a meeting of the Board was issued on 5 January 2000. On the following day, the Petitioner No.1, on his own volition, submitted resignation. Thus, no further action for his removal as a director of Respondent No.1 was pursued by the Respondent No.1 company as the resignation of the Petitioner No.1 was accepted by the Board of directors, on 14 January 2000.

7. The Respondents contended that at the request of the Petitioner No.1 to show him as a director on paper, as the marriage of the Petitioner No.1's daughter was yet to be settled and the prospects of marriage of the Petitioner No.1's daughter were

not affected, the Respondent No.2 had issued a letter to appoint the Petitioner No.1 as the director of the company. However, the Petitioner No.1 was never appointed as a director with effect from 15 January 2000 either by the Board of directors or in the general meeting of the company. Thus, the Petitioner No.1 automatically ceased to be in office on 30 September 2000 when the Annual General Meeting of Respondent No.1 was held and Petitioner No.1 was not appointed as director in the general meeting in conformity with the provisions of Section 260 of the Act. The Petitioner No.1 was, thereafter, never invited or given notice to attend any Board meeting. Nor Petitioner No.1 attended any Board meeting after 14 January 2000.

8. The Respondents contended that the Petitioners never raised any grievance about Petitioner No.1 not being considered as a director till the institution of the Petition. The Respondents have also contended that the Petitioner No.1 also incurred disqualification under Section 283(1)(i) read with Section 295 of the Act, 1956 by failing to disclose his interest in Laxmi Tobacco Industries Pvt. Ltd. and Assam Tobacco Company Pvt. Ltd.

9. Controverting the claim of the Petitioners that Respondent No.1 is a quasi partnership, the Respondents claimed that the company was promoted by Respondent No.2 Anil and his wife Chitra. Moreover, there was no pre-existing partnership which was converted into a limited company. Neither there was any agreement that all share holders shall participate in the conduct of business of

Respondent No.1 company, nor any restriction on the transfer of the members' interest in the company.

10. An affidavit in rejoinder, followed by an affidavit in sur-rejoinder, were also filed.

11. In the backdrop of the aforesaid pleadings, the proceedings before the CLB took various twists and turns interspersed with efforts at settlement, evidenced by consent terms and, later on, revocation of the order accepting the consent terms. It would be superfluous to delve into those aspects, except an order passed by the CLB which was carried in appeal before this Court as regards the disclosure and furnishing of documents/information. On 6 June 2005 on an application, being Company Application No.21 of 2002, the learned Member, CLB passed an order, inter alia, directing the Petitioners to write as a litigant director and share holders to the Respondents for inspection of documents and, thereupon, the inspection of documents was to be given within 15 days from the receipt of such request. In the event of inability to give inspection of documents, the Respondents were to file appropriate affidavit indicating reasons thereof.

12. In an appeal against the said order, being Company Appeal No.22 of 2005 in Company Petition No.7 of 2002, by an order dated 4 May 2007, this Court, by consent, quashed and set aside the said order with a view to facilitate the conclusion of the Petition under Sections 397 and 398 on an expeditious basis, without expressing

any opinion on the correctness of the observations contained in the said order and the rights and contentions of the parties. Since considerable submissions were canvassed on the aspect of the failure of the CLB to draw an adverse inference of not furnishing inspection of documents, it may be necessary to extract paragraph No.3 of the order passed by this Court on 4 May 2007. It reads as under :

“3.In so far as the issue of inspection is concerned, it is clarified by consent that all the rights and contentions of the parties are kept open, to be urged before the CLB, including the submission urged on behalf of the Seventh Respondent that an adverse inference should be drawn in case the Board comes to the conclusion that inspection of relevant documents was unreasonably withheld by the company. Parties have agreed before this Court that no further interlocutory application shall be filed with regard to the issue of deposit for a period of four months since the parties have agreed to ensure an early disposal of the proceedings.

13. Pursuant to the aforesaid order, the Petition was finally heard and decided by the learned Member, CLB, by the impugned order.

14. The learned Member, CLB was persuaded to return a finding that no case was made out to invoke the provisions contained in Sections 397 and 398 of the Act, 1956. Nor was it a case wherein there was a deadlock and division of assets of the company was warranted to put an end to the dispute and for regulating the conduct of the affairs of the company in future. Nonetheless, to do substantial justice between the parties, the learned Member, CLB considered it proper to invoke the powers

under Section 402 of the Act and gave the Petitioners an option to go out of the company on a fair valuation of their shares, to be done by a valuer to be appointed by the Petitioners and Respondents after the Petitioners were allowed access to the account books and statutory record of the Respondent No.1 company.

15. The learned Member, CLB, inter alia, observed that the principal contention of the Petitioners that the Petitioner No.1 was removed from the office of the director, was not tenable in view of the Petitioner No.1's resignation. In fact, the Petitioners took ambivalent stand regarding the alleged ouster of Petitioner No.1 from the Board. Secondly, the report of M/s. D.R.Dinodia and Company, Auditors appointed by the CLB, bears upon the acts of misfeasance, mal-practices and breach of trust on the part of the Petitioner No.1. Thirdly, the Petitioner No.1 had engaged in related party transaction in breach of Section 283 read with Section 295 of the Act, 1956. Fourthly, the directorial disputes were not within the ambit of Sections 397 and 398 of the Act, 1956 unless a case of quasi partnership was made out and, in the facts of the case, there was no material to sustain such an inference. Lastly, the learned Member found no case had been made out for winding up of the Respondent No.1 company on just and equitable grounds.

16. The learned Member, CLB was also of the view that the order passed by the CLB dated 6 June 2005 directing the Respondents to furnish inspection of documents merged with the order passed by this Court dated 4th May 2007 in

Appeal No.22 of 2005 and no case for drawing an adverse inference against the Respondents for non-disclosure and/or non-furnishing inspection of documents was made out. The learned Member, CLB, thus, found no merit in the Petition.

17. Being aggrieved by and dissatisfied with the impugned order, the Petitioners have preferred this Appeal.

18. I have heard Ms. Armin Wandrewala, learned Counsel for the Appellants, and Mr. Rohan Sawant, learned Counsel for the Respondents at considerable length. The learned Counsel took the Court through the pleadings and voluminous material on record.

19. At the outset, the learned Counsel were at issue over the scope of interference in an appeal under Section 10F of the Act, 1956. Considerable submissions were canvassed on the aspect as to whether the instant appeal involves the question of law arising out of the impugned order passed by the CLB. The next point of debate was the nature of the Respondent No.1. Could it be clothed with the character of quasi partnership. Thirdly, whether the Petition, in essence, represented a directorial dispute not amenable for determination under Sections 395 and 398 of the Act. Fourthly, submissions were canvassed on the aspect of the alleged acts of misfeasance and malfeasance attributed to the Petitioner No.1 reflecting upon the entitlement to equitable relief. Lastly, the learned Counsel urged submissions in support of and opposition to the ground of alleged oppressive practices and mis-

management.

Scope of Appeal under Section 10F

20. To begin with, the scope of interference in an appeal under Section 10F of the Act, 1956. Under the said Section, a party aggrieved by any decision or order of CLB may file an appeal on any question of law arising out of such order. Appeal, it is trite, is a creature of statute. An appeal, if not circumscribed by the statute conferring such right, is, ordinarily, both on facts and law. However, statutes often circumscribe the scope of appeal. In some cases, the appeal is only on question of law. Under Section 10F, the right of appeal is conditioned upon the existence of any question of law arising out of the impugned order. The question of law need not necessarily be a pure question of law. It may arise out of the facts of the case on account of consideration or non-consideration of evidence/material, the manner of appreciation of evidence, drawing of inferences based on the evidence or correct appraisal of the facts for the purpose of the application of law.

21. Ms. Wandrewala was at pains to urge that, in the case at hand, the determination by the learned Member, CLB, gives rise to multiple questions of law arising out of the said order. First and foremost, the learned Member, CLB, did not delve into the evidence adduced by the parties, especially the Petitioners. Secondly, the learned Member drew inferences by one line reasoning despite the existence of material to the contrary. Thirdly, the learned Member erred in recording patently

erroneous findings which no prudent person could have, in the given situation, arrived at. Fourthly, a singular legal infirmity in the impugned order is failure to draw an adverse inference despite the order passed by this Court in Appeal No.22 of 2005 dated 4th May 2007 keeping the said issue open. Instead, the learned Member, CLB, diluted the import of the said order passed by this Court by holding that the earlier order passed by the CLB merged in the said consent order. Lastly, Ms. Wandrewala would urge, a feature of the reasoning of the learned Member, CLB, which stares in the face, is noting the case of the Petitioners and not dealing with the same. Such an approach vitiated the entire decision making process, submitted Ms. Wandrewala. This surely constitutes a question of law meriting interference by this Court, submitted Ms. Wandrewala.

22. To buttress these submissions, Ms. Wandrewala placed strong reliance on the decisions in the cases of **Sree Meenakshi Mills Ltd. V/s. Commissioner of Income Tax, Madras**¹, **Sheikh Rahmat Illhahi V/s. Mohammad Hayat Khan and Ors.**² **Starlinger and Co. GES. M.B.H. V/s. Lohia Starlinger Ltd. and Ors.**³, **Dale and Carrington Investment (P) Ltd. and Anr. V/s. P.K.Prathapan and Ors.**⁴, **Dilbagraj Punjabi V/s. Sharad Chandra**⁵ and **Shri Ramdas Motor Transport V/s. Karedla Suryanarayana**⁶.

1 AIR 1957 SC 49,

2 AIR (30) 1943 Privy Council 208

3 (2007) 80 CLA 255 (All).

4 (2005) 1 SCC 212

5 AIR 1988 SC 1858

6 (2002) 36 SCL 361 (AP)

23. Mr. Sawant, learned Counsel for the Respondents, joined the issue by submitting that the appeal does not present any question of law arising from the impugned order. Mr. Sawant would urge that the appeal under Section 10F is conditioned by two imperatives. First, the existence of question of law. Second, the appeal is against an order passed in exercise of discretionary jurisdiction under Sections 397 and 398 of the Act.

24. Taking the Court through the impugned order and the contentions raised in the memo of appeal, in the context of the pleadings in the petition, Mr. Sawant would urge that, at best, the appellants can be said to have challenged the impugned order on the factual score and raised question of facts. Mr. Sawant submitted that the legal position is no longer *res integra* and the decision of the Supreme Court in the case of **Purnima Manthena and Anr. v/s. Renuka Datla and Ors.**⁷ delineates the approach in the matter of an appeal under Section 10F of the Act, 1956. Reliance was also placed on the decisions of the Supreme Court in the cases of **V.S.Krishnan and Ors. V/s. Westfort Hi-Tech Hospital Ltd. and Ors.**⁸ and **Abdul Wahid Abdul Gaffor Khatri and Ors. V/s. Safe Heights Developers Pvt. Ltd. and Ors.**⁹.

25. In the case of **Sree Meenakshi Mills (supra)**, in the context of a question of law arising out of an appeal under Section 66 of the Income Tax Act, the

7 (2016) 1 SCC 237

8 (2008) 3 SCC 363

9 (2018) SCC Online Bom 693

Supreme Court enunciation that it has been held that 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 and perverse. It was further enunciated that the ultimate finding on the issue must, therefore, be an inference to be drawn from the facts found, on the application of the proper principles of law, and it will be correct to say in such cases that an inference from facts is a question of law.

26. In **Dale and Carrington Investment (P) Ltd. (supra)**, on which reliance was placed by both Ms. Wandrewala and Mr. Sawant, after adverting to the previous pronouncements, the Supreme Court succinctly culled out the scope of power of the High Court in Appeal under Section 10F as under :

“36. Section 10F refers to an appeal being filed on the question of law. The learned counsel for the appellant argued that the High Court could not disturb the findings of facts arrived at by the Company Law Board. It was further argued that the High Court has recorded its own finding on certain issues which the High Court could not go into and therefore the judgment of the High Court is liable to be set aside. We do not agree with the submission made by the learned counsel for appellants. It is settled law that if a finding of fact is perverse and is based on no evidence, it can be set aside in appeal even though the appeal is permissible only on the question of law. The perversity of the finding itself becomes a question of law. In the present case we have demonstrated that the judgment of the Company Law Board was given in a very cursory and cavalier manner.....” (emphasis supplied)

27. In the case of **V.S.Krishnan and Ors. (supra)**, the contours of the appellate jurisdiction under Section 10F were expounded as under :

“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 as placed before it, an inference could reasonably be arrived at that such conduct was against probity and good conduct or was mala fide or for a collateral purpose or was burdensome, harsh or wrongful. The only other basis on which the appellate Court would interfere under Section 10F was if such conclusion was (a) against law or (b) arose from consideration of irrelevant material or (c) omission to construe relevant materials.”

(emphasis supplied)

28. In the case of **Purnima Manthena and Anr. (supra)**, the Supreme Court after referring to aforesaid pronouncements, including the decision in the case of **V.S.Krishnan and Ors. (supra)**, enunciated that the question of law as is comprehended in Section 10-F of the Act, would arise indubitably, if a decision which is the foundation thereof, suffers from perversity, following a patent error on a fundamental principle of law or disregard to relevant materials or cognizance of irrelevant or non-germane determinants. Section 10-F engrafts the requirement of the existence of a question of law arising from the decision of CLB as an essential precondition for the maintainability of an appeal thereunder.

29. The position in law which, thus, emerges is that the remit of an appeal under Section 10F of the Act, is bound by the jurisdictional condition of there being a question of law arising out of the order passed by the CLB. There could be no duality

of opinion on the point that the appellate jurisdiction is not as wide as that of the first appellate court, where the entire matter on facts and law is open for re-appreciation. Undoubtedly, the High Court in an appeal under Section 10F of the Act would be required to delve into the legality and correctness of the impugned order, but through the prism of question of law raised therein. If the CLB's order proceeds on an erroneous legal premise or can be termed to be perverse, that gives rise to a question of law even if the determination is based on facts. Perversity, in turn, may arise on account of the order being passed on no evidence. Non-consideration of the evidence / material may also give rise to perversity. Taking a view which is so unreasonable that no prudent person could have recorded such a view in the given facts and circumstances, also renders the order perverse. The High Court in exercise of appellate jurisdiction under Section 10F of the Act would, therefore, be required to appraise the impugned judgment in the context of the evidence adduced on a broad perspective and in a holistic manner to arrive at a finding as to whether the judgment is based on no evidence, there is an error in not considering the relevant facts/material or being swayed by irrelevant consideration or the finding is otherwise perverse. Certainly, the findings of fact, even if erroneous, may not furnish a justifiable ground for interference on the premise that the appellate court in the given state of facts would have been persuaded to take a different view of the matter. The impugned order is required to be tested on this touchstone.

True Character of the Respondent No.1 Company :

30. The nature of the enterprise in the facts of the case has a significant bearing on the allegations of oppression of minority share holders and mismanagement to the prejudice of interest of the company. The nature of the corporate entity would bear upon the question as to whether the principles governing the partnership in the matter of dissolution of firm on just and equitable grounds can be invoked. Second, the admissibility of the directorial dispute as a facet of oppression of minority share holders under Section 397 of the Act, would also hinge upon the nature of the company. It is trite, if corporate character is a mere facade, and, in essence, the company is a partnership between two groups or families, the principles governing the dissolution of partnership may be imported. Likewise, a directorial dispute can also form a legitimate basis for measures under Sections 397 read with 402 of the Act, if the corporate entity is, in substance, a partnership.

31. Ms. Wandrewala invited attention of the court to a decision of the CLB in the case of **Atmaram Modi V/s. ECL Agrotech Ltd. and Ors.**¹⁰ wherein it was enunciated that in a Section 397 Petition, acts of oppression should be in the matter of one's proprietary rights as a shareholder. This right does not extend to one's claim to the office of a director. However, there is an exception to this general rule in the case of a family company or a company in the guise of a partnership. In these cases, where

¹⁰ (1999) CLB 463

there is an agreement, express or implied (as may be established), or the articles so provide that the shareholders would participate in the management of the company, then exclusion/ouster of one of the shareholders from the management could be considered to be an act of oppression. In a section 397 petition the question would be whether the removal of the petitioner is an act of oppression since illegal removal, per se, even if established, cannot be a ground for invoking the provisions of Section 397.

32. As against this, Mr. Sawant would urge that an inference of a corporate entity being a partnership, in substance, cannot be readily drawn. He placed reliance on the decision of the Supreme Court in the case of **Hind Overseas Private Limited V/s. Raghunath Prasad Jhunjhunwala and Anr.**¹¹

33. In the case of **Hind Overseas (supra)**, a three Judge Bench of the Supreme Court enunciated that when more than one family or several friends and relations together form a company and there is no right as such agreed upon for active participation of members who are sought to be excluded from management, the principles of dissolution of partnership cannot be liberally invoked. Besides, it is only when shareholding is more or less equal and there is a case of complete deadlock in the company on account of lack of probity in the management of the company and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, there may arise a case for winding up on just and equitable

¹¹ (1976) 3 SCC 259

ground. In a given case the principles of dissolution of partnership may apply squarely if the apparent structure of the company is not the real structure and on piercing the veil it is found that in reality it is a partnership.

34. In the facts of the said case, the Supreme Court, inter alia, adverted to certain principles which may guide the determination of the character of a company. The cases of small companies stand on a different footing from a company like the one in the said case, with nineteen shareholders, although apparently arrayed in two groups. Merely because the shareholding is in two family groups, it cannot be said that the company thereby takes an image of partnership. The magnitude of the interest of the competing groups may also bear upon the determination. The question as to whether the shareholding pattern is such that the exit of one group may lead to deadlock in the management of the affairs of the company is also a matter which is germane for the determination of the character of the company.

35. Mr. Sawant also placed a strong reliance on the decision of the Supreme Court in the case of **Kilpest Pvt. Ltd. and Ors. V/s. Shekhar Mehra**¹² wherein the Supreme Court observed that :

“11. The promoters of a company, whether or not they were hitherto partners, elect to avail of the advantages of forming a limited company. They voluntarily and knowingly bind themselves by the provisions of the Companies Act. The submission that a limited company should be treated as a quasi-partnership should, therefore, not be easily accepted. Having regard

12 (1996) 10 SCC 696

to the wide powers under Section 402, very rarely would it be necessary to wind up any company in a petition filed under Sections 397 and 398.”

(emphasis supplied)

36. A profitable reference in this context can be made to the decision of the Supreme Court in the case of **Sangramsinh P. Gaekwad and Ors. V/s. Shantadevi P. Gaekwad (dead) through LRs and Ors.**¹³ wherein the Supreme Court after referring to the aforesaid judgments and, particularly, the ratio of decision in the case of **Kilpest Pvt. Ltd. and Ors. (supra)**, illuminatingly postulated the legal position under the caption ‘quasi partnership – family company – corporate veil’, as under :

“225. A company incorporated under Companies Act is a body corporate. However, in certain situations, its corporate veil can be lifted. (see *Kapila Hingorani v.s State of Bihar*¹⁴).

226. The Court, however, has made a clear distinction between a family company, a private company and a public limited company. The true character of the company, the business realities of the situation should not be confined to a narrow legalistic view. [See *Needle Industries (India) Ltd. V/s. Needle Industries Newey (India) Holding Ltd.*¹⁵]

227. It is now well-known that principles of quasi-partnership is not foreign to the concept of the Companies Act. For the purpose of grant of relief the principles of partnership had been applied even in a public limited company. (see *Loch V/s. John Blackwood Ltd.*¹⁶ and *Ebrahimi V/s. Westbourne Galleries Ltd.*¹⁷)

228. The principles applicable to the winding up of a company contained in Section 44(g) of the Indian Partnership Act was applied in a winding up petition under Section 433(f) of the Companies Act by a 3-Judge

13 (2005) 11 scc 314

14 (2003) 6 SCC 1

15 (1981) 3 SCC 333

16 1924 AC 783

17 (1972) 2 all ER 492

Bench of this Court in Hind Overseas Private Ltd. (supra) following Ebrahimi (supra). However, it was observed that when more than one family or several friends and relatives together form a company and there is no right as such agreed upon for active participation of members were sought to be excluded from management, the principles of dissolution of partnership cannot be liberally invoked.

229. In Kilpest Pvt. Ltd. and Others Vs. Shekhar Mehra (supra), it was stated:.....

230. Kilpest Pvt. Ltd. and Others Vs. Shekhar Mehra (supra), whereupon Mr. Desai placed strong reliance, thus, cannot be said to be an authority for the proposition that for no purpose whatsoever the principles of quasi-partnership can be applied to an incorporated company. The real character of the company, as noticed hereinbefore, for the purpose of judging the dealings between the parties and the transactions which are impugned may assume significance and in such an event, the principles of quasi-partnership in a given case may be invoked.

231. The ratio of the said decision, with respect, cannot be held to be correct as a bare proposition of law, as was urged by Mr. Desai, being contrary to a larger Bench judgments of this Court and in particular Needle Industries (supra). It is, however, one thing to say that for the purpose of dealing with an application under Section 397 of the Companies Act, the court would not easily accept the plea of quasi-partnership but as has been held in Needle Industries (supra), the true character of the company and other relevant factors shall be considered for the purpose of grant of relief having regard to the concept of quasi partnership.” (emphasis supplied)

37. The aforesaid enunciation would indicate that normally a company incorporated under the Companies Act, ought to be considered as a body corporate with all the trappings of a corporate entity and the consequences that emanate therefrom. However, in a given case, the Court would be justified in piercing through

the corporate veil, and where there is material to show that the real character of the company is different from its apparent corporate tenor, the principles which govern the partnership may be applied, if it is in the nature of quasi partnership or a glorified partnership. Certain broad indices which may be considered are : incorporation of the corporate entity by dissolving erstwhile partnership, more or less equal share holding or interest of the groups, families or groups joining together to form a corporate entity with equal participation in the management of the affairs of the company, and the instruments executed at the time of incorporation may also throw light on the nature of the enterprise, the parties intended to incorporate.

38. Reverting to the facts of the case, it is pertinent to note that the thrust of the submission of Ms. Wandrewala was on the historical backdrop in which businesses grew. The circumstances of two brothers, Sunil and Anil, joining hands after the demise of their father to set up the businesses and the right of management of the businesses with cross holdings by the family entities, were pressed into service to bolster up a case of quasi partnership.

39. Taking the court through paragraph 9 of the Petition, Ms. Wandrewala would urge that it is with the joint efforts of the Petitioner No.1 – Sunil and Respondent No.2 – Anil, the family businesses grew into reputed group of companies, firms, HUF and sole proprietorship. Attention of the Court was invited to the Chart – Annexure A-29 (page 379), proposing the division of the family properties and the

businesses; proposed distribution – Annexure A-30 (page 380); the Memorandum of family arrangement – cum – compromise – Annexure A-31 (page 381) proposing division of the businesses and assets, the draft Memorandum of Agreement, Annexure A-32 (page 393), purportedly signed by Sunil – Petitioner No.1 and Anil – Respondent No.2, setting out draft agreement which was to act as the basis for the final settlement and, lastly, the communication – Annexure A-33 (page 396) addressed to Sunil and Anil by their mother expressing her pain and anguish over the disputes between the brothers and suggesting the distribution of assets and businesses in the ratio of 60:40.

40. An endeavour was made by Ms. Wandrewala to draw home the point that had the parties been not conscious of the nature of the Respondent No.1 as a family entity with equal share holding and right of management, there would not have been efforts at settlement of the disputes between two groups proposing diversion of the assets and businesses in almost equal proportion. It was submitted that if the evolution of the businesses is considered in conjunction with the proposals for division of businesses, then an inference becomes inescapable that the Respondent No.1 was nothing but a glorified partnership.

41. It is true, there is material to indicate that the business founded by the late father of Sunil and Anil grew over a period of time. Various entities were formed with different juridical character. However, the mere fact that two families represented by Sunil and Anil were involved in the operation and management of

those entities, individually or jointly, by itself, may not be of decisive significance. Incontrovertibly, apart from Respondent No.1, there were other incorporated companies representing the group and partnership firms/proprietary concern as well.

42. The situation associated with the incorporation of Respondent No.1, its share holding pattern, right of management and restrictions on the transfer of shares, are the factors which deserve to be taken into account. Articles of Association indicate that Anil – Respondent No.2 and Chitra – Respondent No.3 were the promoters of Respondent No.1 company. Anil – Respondent No.2, Sunil – Petitioner No.1 and Chitra – Respondent No.3 and Vinit Payal were the directors of the company at the time of its incorporation. Under Article 120, the company was entitled to agree with any person, firm or corporation that he or it shall have the right to appoint his or its nominee or nominees on the Board of Directors of the Company upon such terms and conditions as the Company may deem fit. Conversely, it does not appear that the share holders had a right to be appointed as director of the company. Article 125, in no uncertain terms provided that a director shall not be required to hold any share qualification.

43. Under the Articles of Association, evidently, there was no restriction on the Board to issue shares and transfer of the shares (Articles 15 and 16). The share holding pattern, as pleaded by the Petitioners, may also assume significance. The Petitioners claimed, Anil group held 42.90% shares, Sunil Group held 21.88% shares

and the common entities of the Petitioner No.1 and Respondent No.2 groups held 26% shares and other individuals held 9.22% shares.

44. Ms. Wandrewala urged with a degree of vehemence that though on the basis of Annual Returns of 31st March 2021 and the records available prior to 2002, the total share of Sunil Group (directly or indirectly) as of the year 2022 was 32.55%, the Petitioners do not admit the aforesaid share holding pattern and, instead, claimed that they have 50% share holding. The Petitioners assert that the diminished share holding of the Petitioners was brought about by manipulation of record by the contesting Respondents and transfer of the share holding by others without following due process.

45. Evidently, the share holding pattern, as is pleaded in the petition, indicates that the magnitude of the interest of two groups cannot be said to be more or less equal by any standard. The share holding of Anil Group almost triples to that of the Sunil Group. To add to this, the number of share holders is also a factor in the determination of the character of the enterprise. On the own showing of the Petitioners, apart from the members of the Sunil and Anil Groups, there were 13 other entities / persons who were the share holders of the Respondent No.1 company. Few of the common entities had distinct legal character, like corporate entities, partnership firms, proprietary concern and trust. In contrast to this, there is no material to indicate that the Respondent No.1 company was formed by dissolving and converting

an erstwhile partnership into a corporate entity. The existence of the entities with different legal characters in the group of enterprises also militates against the intent of the parties that all the entities, including the Respondent No.1, were to be treated as partnerships between two groups.

46. All these incidents and factors, if considered cumulatively, do not justify an inference that the Respondent No.1 Company was, in effect, a quasi partnership. This finding, as noted above, bears upon the acceptability of the directorial disputes as an instance of an oppressive action, to which I shall advert a little later.

Oppression and Mis-Management :

47. This propels me to the consideration of allegations of oppression of minority share holders and mismanagement. In the case of **S.P.Jain V/s. Kalinga Tubes Ltd.**¹⁸ a three Judge Bench of the Supreme Court after referring to the previous pronouncements, expounded the import of oppressive acts by the majority in the following words :

“18. These observations from the four cases referred to above apply to Section 397 also which is almost in the same words as Section 210 of the English Act, and the question in each case is whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of Section 397. It must

18 (1965) 2 SCR 720

further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to Section 397."

(emphasis supplied)

48. In the case of **Sangramsinh P. Gaekwad and Ors. (supra)**, the Supreme Court postulated the principles which govern the determination of application under Sections 397 and 398, as under :

“196. The court in an application under Sections 397 and 398 may also look to the conduct of the parties. While enunciating the doctrine of prejudice and unfairness borne in Section 459 of the English Companies Act, the Court stressed the existence of prejudice to the minority which is unfair and not just prejudice per se.

197. The court may also refuse to grant relief where the petitioner does not come to court with clean hands which may lead to a conclusion that the harm inflicted upon him was not unfair and that the relief granted should be restricted. (see London School of Electronics, Re¹⁹).

198. Furthermore, when the Petitioners have consented to and even

19 1986 CH 211

benefited from the company being run in a way which would normally be regarded as unfairly prejudicial to their interests or they might have shown no interest in pursuing their legitimate interest in being involved in the company. (see RA Noble and Sons (Clothing) Ltd., Re²⁰

199. In a given case the court despite holding that no case of oppression has been made out may grant such relief so as to do substantial justice between the parties.

200. It is now well settled that a case for grant of relief under Sections 397 and 398 of the Companies Act, must be made out in the petition itself and the defects contained therein cannot be cured nor the lacuna filled up by other evidence oral or documentary. (see Bengal Luxmi Cotton Mills Ltd. In re²¹. (emphasis supplied)

49. In the case of **V.S.Krishnan and Ors. (supra)**, the Supreme Court referred to the principles enunciated in the governing precedents and enunciated what oppression connotes, as under :

“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-a-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

20 1983 BCLC 273

21 (1965) 35 Comp Cas 187 (Cal)

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.”

50. Since the Court exercises equitable jurisdiction under Section 397 of the Act, the Court is required to take a broad view of the matter untrammelled by the consideration of a formal legality of an action. In a given case, the oppressive act complained of may have the formal appearance of legality. But it is the intent of the majority and intended effect on the minority, which the court is required to probe into. The legality and permissibility of an action can, therefore, is not the test. It is the propensity to operate in a harsh or burdensome manner and affect the rights of the minority share holders reflecting on the bona fide of the action, that is of relevance. By its very nature, the question of oppressiveness of an action is rooted in facts.

51. The principle ground urged on behalf of the Petitioners was that of unlawful ouster of Sunil from the board of Respondent No.1. The learned Member, CLB, was of the view that even if it was assumed that the removal of Petitioner No.1 from the Board of Respondent No.1 was unlawful, that could not have been an act of oppression under Section 397, as it would be in the nature of a directorial dispute, for

which the Petitioner No.1 had remedies. Since the learned Member also found that the Respondent No.1's character was not that of a quasi-partnership, the exception to the general rule that a directorial dispute does not fall within the ambit of Section 397 of the Act had no application.

52. Mr. Sawant would urge that the aforesaid approach of the learned Member, CLB, cannot be faulted at. Per contra, Ms. Wandrewala would urge that the said endeavour to remove Sunil reflected the malafide intent on the part of the majority to usurp the control of Respondent No.1 Company, to the exclusion of Sunil. The learned Member, CLB, lost sight of the substance of the matter and proceeded on an erroneous premise that it was in the nature of a directorial dispute, urged Ms. Wandrewala.

53. To lend support to this submission, Ms. Wandrewala placed a very strong reliance on the judgment of the Supreme Court in the case of **Tata Consultancy Services Ltd. V/s. Cyrus Investments Pvt. Ltd. and Ors.**²² wherein in the context of a petition under Section 241 of the Companies Act, 2013, providing for reliefs in case of oppression, the Supreme Court enunciated that the Tribunal cannot ask the question whether the removal of a director was legally valid and/or justified or not. The question to be asked is whether such a removal tantamounts to a conduct oppressive or prejudicial to some members. It is only in such cases that the tribunal

22 (2021) 9 SCC 449

can grant a relief under Section 242 of the Act, 2013.

54. Whether the endeavour to remove or oust Sunil from the Board of the Respondent No.1 Company was tainted with malafide or associated with a design to cause prejudice to the minority share holders ? To explore an answer, it is necessary to note the initial case of the Petitioners. In para 10.1(b) of the Petition, the Petitioners asserted, upon Respondent Nos.2 to 4 initiating proceedings under Section 284 of the Act, 1956 and service of a notice of the meeting of the Board of directors dated 5 January 2000, the Petitioner No.1 submitted his letter of resignation dated 6 January 2000. Respondent No.2 issued a letter of acceptance of the resignation of Petitioner No.1, and, thus, acted illegally in removing Sunil from the post of Director. As the Petitioner No.1 remonstrated, the Respondent No.2 again issued a letter confirming reappointment of Petitioner No.1 with effect from 15 January 2000.

55. The Respondents have a different take on the reappointment. According to the Respondents, it was to maintain an aura of prestige of Petitioner No.1, especially with a view not to mar marital prospects of the daughter of Petitioner No.1. The learned Member, CLB, has ascribed reasons to hold that there was no unlawful ouster. It was, inter alia, held that the stand of the Petitioners as regards the removal from the board of directors was ambivalent.

56. Mr.Sawant would urge that this finding is impeccable as the record would indicate that the Petitioner No.1 changed his stance to suit the situation.

Attention of the Court was invited to the assertion in the Petition, especially ground (a) – Page 218 that the Respondent No.2 had acted mala fide in compelling the resignation of Petitioner No.1 which was not placed before the Board of directors for its acceptance. In the affidavit in Rejoinder, the Petitioner No.1 endeavoured to deviate from the theory of both voluntary and involuntary resignation by asserting that only a draft letter (not original) was faxed to Anil – Respondent No.2, for his knowledge and to enable him to appreciate the fact that subject to equal division, Sunil was ready and willing to resign from the company. It was sent only for the personal consumption of Anil (Respondent No.2) and not to the company.

57. The aforesaid stands of the Petitioners as regards the circumstance in which Sunil tendered resignation are mutually inconsistent and work out retribution of the divergent stands. At one stage, the Petitioners asserted that the Petitioner No.1 had tendered resignation upon being served with the notice under Section 284 of the Act, 1956. At another stage, the Petitioners made a grievance that the Respondent No.2 compelled the Petitioner No.1 to tender resignation. At a later point of time, an endeavour was made to contend that no resignation was, in fact, tendered and the communication was sent only for the consumption of the Respondent No.2.

58. The provisions contained in Section 284 of the Act, 1956, prescribed the procedure for removal of the directors of the company. Special notice is required under sub-Section (2). The director concerned is entitled to make a representation

and be heard on the resolution at the meeting, under sub-Section (3) and (4) of Section 284.

59. The situation which obtains is that upon being served with the special notice under Section 284 (annexure A-4) of the Act, 1956, the Petitioner No.1 tendered resignation. Evidently, the Petitioner No.1 did not face the proceedings for his removal in the Board meeting. Nor any contemporaneous material was placed on record to show that the special notice and action under Section 284 of the Act, 1956 were driven by the objective of oppressing the minority share holders. In the circumstances, it would be difficult to accede to the submission that the resignation was brought about by oppressive acts or the acceptance of the resignation by the Board was in itself an act of oppression. On the contrary, the claim of unlawful removal itself becomes suspect if it was a case of voluntary resignation, unless material was brought on record to show the coercive circumstances.

60.. Ms. Wandrewala made an endeavour to assail the finding of the learned Member, CLB that the Minutes of the Board meeting dated 14 January 2000 were not false and fabricated as the Desk Officer of the CLB has duly authenticated the same, on the count that the originals were not produced. I am afraid, this submission cannot be entertained in this appeal and at this stage.

61. The case of the Petitioners that after reappointment with effect from 15 January 2000, Sunil continued to be a director of the Respondent No.1 company, is

equally fraught with infirmities. Indisputably, it is not a case of the Petitioners that a Board resolution was passed confirming the reappointment of the Petitioner No.1 as a director with effect from 15 January 2000. Reliance sought to be placed on Form No.32 (Annexure A6 – page 324) does not advance the cause of the Petitioners to the extent desired by the Petitioners. Even otherwise, the reappointment of the Petitioner No.1 as a director of the Respondent No.1 company with effect from 15 January 2000 would have lasted only upto the date of the next Annual General Meeting of the company, unless confirmed in the Annual General Meeting in view of the provisions contained in Section 260 of the Companies Act, 1956. Neither there is material to show that the Petitioner No.1 had filed consent to act as a director under Section 264 of the Act, 1956, nor to indicate that after 14 January 2000, the Petitioner No.1 was served with a notice of meeting of the Board of directors or attended such meeting. If removal from the Board of directors cannot be faulted at, the withdrawal of authority to operate the bank accounts of Respondent No.1 cannot be questioned as it was a consequential act.

Conduct of Petitioner No.1 and Equitable jurisdiction :

62. At this stage, the alleged acts of malfeasance and misfeasance attributed to the Petitioner No.1 becomes relevant. I have noted the acts attributed to the Petitioner No.1 rather elaborately, as a part of the resistance putforth on behalf of the Respondents, above. The learned Member, CLB, placed reliance on the report of

M/s.Dinodia and Company, appointed by the CLB to audit the accounts of Respondent No.1's two Bhilai Units. After noting the acts of commissions and omissions attributed to the Petitioner No.1 and the observations of the auditors, the learned Member, CLB observed that various acts of malfeasance and misfeasance, breach of trust and siphoning off the amount of Respondent No.1 Company were substantiated by the report of M/s.Dinodia and Company and those findings remained uncontroverted.

63. A severe criticism was advanced by Ms. Wandrewala against the aforesaid treatment of M/s. Dinodia's report by the learned Member, CLB. Attention of the court was invited to the affidavit in rejoinder wherein the allegations with reference to the report of M/s Dinodia were denied and the affidavit of Sunil – Petitioner No.1 in response to the report of M/s. Dinodia and Company.

64. Mr. Sawant controverted the submissions by urging that the affidavit of Sunil – Petitioner No.1 is in the nature of an explanation. However, the objective facts noted by M/s. Dinodia and Company remain intact.

65. In this proceedings, this Court may not be justified in delving into the correctness of the observations of M/s.Dinodia and Co., as a fact finding court would do. It may not be necessary to advert to all the incidents of the malfeasance and misfeasance attributed in the report of M/s. Dinodia and Co., referred to by the learned Member, CLB. However, the allegations that there were related party

transactions and Sunil – Petitioner No.1 transferred the assets of the Respondent No.1 Company from its Bhilai plant to Laxmi Tobacco Industries Pvt. Ltd. and Assam Tobacco Company Pvt. Ltd., in which the Petitioners were the majority share holders cannot be brushed aside lightly. The report of M/s.Dinodia and Co., also refers to some financial irregularities and diversions of funds outside the Respondent No.1. It, inter alia, refers to the writing off of bad debts of Assam Tobacco Co. Pvt. Ltd. of Rs.17,24,466/- without the approval of the Board of directors for writing off the bad debts. The Petitioners were the majority share holders in Assam Tobacco Co. Pvt. Ltd.

66. The aforesaid conduct would reflect upon the equities. It is well recognized, the reliefs under Sections 397 and 398 of the Act are discretionary in nature. A party who seeks equitable reliefs must approach the court with clean hands. The conduct of the party seeking equitable reliefs must not be blameworthy. A party seeking equitable relief should be in a position to demonstrate that he was not unfair and inequitable in his dealings with the party against whom he was seeking equitable relief.

67. In the case of **Needle Industries (India) Ltd. and Ors. V/s. Needle Industries Newly (India) Holding Ltd. and Ors.**²³ the Supreme Court enunciated that a party who is seeking relief under Section 397 of the Act, 1956 must come with clean hands; if he does not, he cannot ask for the relief on the ground that other man's

²³ (1981) 3 SCC 333

hands are uncleaned.

68. In the case of Sangramsinh P. Gaekwad and Ors. (supra), it was in terms ruled that the Court may refuse to grant relief where the Petitioner does not come to the Court with clean hands which may lead to a conclusion that the harm inflicted upon him was not unfair (extracted above).

69. Applying the aforesaid principles to the facts of the case, in my considered view, even if many acts of malfeasance and misfeasance, attributed to the Petitioner No.1, are discounted as being minor infractions or irregularities, yet the diversion of the assets of the Respondent No.1 company to the entities controlled by the Petitioners and related party transactions bordering on conversion, rendered the conduct of Petitioner No.1 a clear breach of the duty as a director of the Respondent No.1 company. Section 295 incorporates restrictions on advance of loan. Section 297 of the Act, 1956 proscribes related party transaction without the sanction of the Board of directors of the company. Section 299 casts a duty on a director to disclose interest. Breach of these statutory obligations entail the consequence of vacation of office by director under Section 283(1)(h) and (i).

70. In the aforesaid view of the matter, I do not find that the learned Member, CLB committed any error in holding that the conduct of Sunil – Petitioner No.1 was such that it disentitled him to seek equitable reliefs under Sections 397 and 398 of the Act.

71. In the case of Atmaram Modi (supra), on which reliance was placed on behalf of the Appellants, the CLB had observed that the settled principle of law is that when a person seeks equity he must come with clean hands. In the said case, the conduct of the petitioner showed that he had not come with clean hands, in the sense, he had acted in a manner prejudicial to the interests of the company as well as the shareholders and it was he who had acted in violation of mutual trust and confidence. When an action is taken against a wrongdoer, he cannot seek remedy in equity. His prejudicial acts forced the shareholders to remove him as a director and as such CLB did not find that there was any act of oppression against him or that there was any lack of probity on the part of the majority shareholders. The aforesaid pronouncement appears to be on all four with the facts of the case at hand.

72. Ms. Wandrewala would urge that the learned Member, CLB committed grave error in law in not drawing an adverse inference for not furnishing the inspection of documents. The learned Member, CLB recorded an incorrect finding that the Petitioners failed to specify as to what were the issues with respect to which the Respondents had withheld the inspection which required an adverse inference to be drawn. Inviting the attention of the Court to the letter dated 1 December 2000 (Annexure A to the Affidavit in Rejoinder) wherein the Petitioner No.1 had sought copies of documents, including copies of annual returns for the past three years, it was submitted that the learned Member, could not have refused to draw an adverse

inference, especially in the face of the order passed by this Court on 4 May 2007 in Appeal No.22 of 2005, wherein the question was kept open.

73. The treatment of the aspect of drawing of adverse inference by the learned Member, CLB may be inarticulate. However, the substance of the matter cannot be lost sight of. As noted above, the Petitioners failed to substantiate the substratum of their case of oppression premised on the Respondent No.1 Company being quasi-partnership and unlawful removal of the Petitioner No.1 from the board of directors of Respondent No.1 and also on the parameter of the conduct of the Petitioner No.1. In this backdrop, the refusal to draw an adverse inference would not make the impugned order vulnerable for interference on the ground that it raises a question of law.

74. Lastly, the consideration on the aspect of the exercise of the power by the learned Member, CLB under Section 402(g) of the Act, 1956. Ms. Wandrewala strenuously submitted that in view of the material brought on record wherein the Petitioners have been completely excluded from the management of the affairs of the Respondent No.1 Company, it would be just and equitable to grant reliefs to prevent oppression and mismanagement of the Respondent No.1 company.

75. I have noted that there is a vast difference in the share holding pattern of two groups. The removal of Sunil Group from the management of the affairs of the Respondent No.1 Company, even if assumed to be unjustifiable (which inference, as noted above, is not sustainable) would not result in a deadlock. It could not be shown

that the affairs of the Respondent No.1 Company are being managed in a manner prejudicial to the interest of the Respondent No.1 Company or the share holders. The allegations of mismanagement could not be substantiated before the CLB. Therefore, I am not inclined to hold that a case for invoking the power under Section 402(g) of the Act, 1956 is made out.

76. In any event, the learned Member, CLB was alive to the necessity of providing a measure in the interest of proper regulation of the conduct of the affairs of the company in future and had invoked the provisions contained in Section 402 giving the Petitioners an option to go out of the company on a fair valuation of their shares.

77. Ms. Wandrewala would urge that the said course is not equitable as the quantum of the share holding itself was in dispute and a Chartered Accountant can be appointed to determine the share holding of the Petitioners afresh.

78. In the backdrop of the view which this court is persuaded to take, this prayer cannot be acceded to. Valuation of shares, which the Petitioners held, would be within the domain of an expert. However, determination of quantum of share holding is an adjudicatory exercise. Whether the shares of other members were unlawfully transferred in favour of Anil Group is a matter which cannot be legitimately determined by the Chartered Accountant.

79. The conspectus of aforesaid discussion is that neither the impugned order can be said to be based on an erroneous view of law, nor can it be said to be perverse.

It does not appear that the impugned order is vulnerable for non-consideration of relevant material or for having taken into account irrelevant material. The learned Member, CLB has exercised equitable jurisdiction, keeping in view the governing principles. Thus, no interference is warranted in exercise of limited appellate jurisdiction under Section 10F of the Act, 1956. Resultantly, I am impelled to dismiss the appeal.

80. Hence, the following order :

ORDER

The Appeal stands dismissed.

Interim / Company Applications also stand dismissed.

In the circumstances of the case, and having regard to the relationship between the parties, there shall no order as to costs.

(N.J.JAMADAR, J.)

81. Ms. Wandrewala, the learned Counsel for the appellants, seeks continuation of the order dated 26th April, 2012 for a period of eight weeks.

82. By the said order dated 26th April, 2012, by consent and without prejudice to the rights and contentions of the parties, a workable arrangement as regard

Appellants – Petitioners continuing to work at Bhilai Unit without interference by the Respondents, was made.

83. Mr. Sawant, the learned Counsel for the Respondents, submits that the said order dated 26th April, 2012 was further clarified by an order dated 4th January, 2013.

84. I have perused the order dated 4th January, 2013, it records a statement made on behalf of the respondents as to what Bhilai Unit constitutes.

85. Since the workable order, made by the Court on 26th April, 2012, is in operation till today, I deem it appropriate to continue the said order for a period of eight weeks.

Ordered accordingly.

(N.J.JAMADAR, J.)