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C.M.A.Nos.4108, 4109 and 4110 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	19.12.2023
Pronounced On	25.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.4108, 4109 and 4110 of 2005

C.M.A.Nos.4108 and 4109 of 2005

1.Prasad Productions Private Limited

2.A.Ramesh

3.A.Sai Prasad

4.M.P.Rao

5.D.V.S.Raju

... Appellants in
C.M.A.Nos.4108 & 4109 of 2005

Vs.

1.A.Ravishankar Prasad (Deceased)

2.A.Sai Sivajothi

3.A.Manohar Prasad

4.A.Manorama

5.Prasad Media Corporation Limited,
No.58, Arunachalam Road,
Saligramam, Chennai – 600 097.



C.M.A.Nos.4108, 4109 and 4110 of 2005

6.Anadhi

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7.A.Anjali Krishnamani

(R6 and R7 brought on record as Legal
Representatives of the deceased R1 viz.,
A.Ravishankar Prasad vide order dated
14.12.2017 made in C.M.P.Nos.9316 to
9324 of 2017 in C.M.A.Nos.4108 to 4110 of 2005)

... Respondents in
C.M.A.Nos.4108 & 4109 of 2005

C.M.A.No.4110 of 2005

Prasad Media Corporation Limited

... Appellant

Vs.

1.A.Ravishankar Prasad (Deceased)

2.A.Sai Sivajothi

3.A.Manohar Prasad

4.A.Manorama

5.Prasad Productions Private Limited

6.A.Ramesh

7.A.Sai Prasad

8.M.P.Rao

9.D.V.S.Raju

10.Anandhi



C.M.A.Nos.4108, 4109 and 4110 of 2005

11.A.Anjali Krishnamani

(R10 and R11 brought on record as Legal Representatives of the deceased R1 viz., A.Ravishankar Prasad vide order dated 14.12.2017 made in C.M.P.Nos.9316 to 9324 of 2017 in C.M.A.Nos.4108 to 4110 of 2005) ... Respondents

Prayer in all C.M.As: Civil Miscellaneous Appeals filed under Section 10F of the Companies Act, 1956, against the order in C.A.No.20 of 2005 in C.P.No.23 of 2005 dated 01.09.2005 passed by the Company Law Board, Additional Principal Bench, Chennai.

In all C.M.As

For A1 in
C.M.A.Nos.4108 & 4109 of 2005
& For R5 in C.M.A.No.4110 of 2005 : Mr.Sathish Parasaran
Senior Counsel
for Mr.M.V.Swaroop

For A2 in
C.M.A.Nos.4108 & 4109 of 2005
& For R6 in C.M.A.No.4110 of 2005 : Mr.A.R.L.Sundaresan
Senior Counsel
for Mr.M.V.Swaroop

: R1 died

For R2 : Mr.Suhrith Parthasarathy
(In all C.M.As)



C.M.A.Nos.4108, 4109 and 4110 of 2005

For R3 & R4
(In all C.M.As)

: Mr.Aravindh Pandian
Senior Counsel
for Mr.Harishankar Mani,
Mr.Vikram Veerasamy &
Mr.Wasif Khan

For Appellant
in C.M.A.No.4110 of 2005 &
For R5 in C.M.A.Nos.4108 &
4109 of 2005

: Mr.T.K.Bhaskar

COMMON JUDGMENT

By this common order, all the Civil Miscellaneous Appeals are being disposed of.

2. C.M.A.Nos.4108 and 4109 of 2005 have been filed by the Respondents in C.P.No.23 of 2003 before the Company Law Board, Additional Principal Bench, Chennai (herein after referred to as Company Law Board) against the Impugned Order dated 01.09.2005 passed in C.P.No.23 of 2003.

3. C.P.No.23 of 2003 was filed before the Company Law Board by the 1st respondent to the 4th respondent in C.M.A.Nos.4108, 4109 and 4110 of 2005 under Sections 235, 397 and 398 of the Companies Act, 1956 read with



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Schedule XII to the Companies Act, 1956 read with Sections 402 and 403 of the Companies Act, 1956.

4. C.M.A.No.4110 of 2005 has been filed by M/s.Prasad Media Corporation Limited (6th respondent in C.A.No.20 of 2005 in C.P.No.23 of 2003) before the Company Law Board. In C.M.A.No.4110 of 2005, the appellant has challenged the order passed by the Company Law Board in C.A.No.20 of 2005 in C.P.No.23 of 2003 dated 01.09.2005.

5. By Impugned Order dated 01.09.2005 in C.A.No.20 of 2005 in C.P.No.23 of 2003, the appellant M/s.Prasad Media Corporation Limited has been impleaded in C.P.No.23 of 2003.

6. C.M.A.No.4110 of 2005 is also against impugned order dated 01.09.2005 passed by the Company Law Board in C.A.No. 20 of 2005 in C.P.No.23 of 2003 impleading the appellant in C.M.A.No.4110 of 2005 as a respondent in C.P.No.23 of 2003.



WEB COPY 7. Operative portion of the above said Impugned Order dated 01.09.2005

passed by the Company Law Tribunal in C.P.No.23 of 2003 reads as under:-

"9. In view of the foregoing conclusions and in exercise of the powers under Section 402, I order as under:-

- a) The second respondent would transfer; out of his shareholding in the Company, 22,921 shares in favour of the first petitioner; 313 shares in favour of the second petitioner; 23,216 shares in favour of the third petitioner and 5,956 shares to the fourth petitioner within 15 days of receipt of the consideration from the petitioners at the rate of Rs. 100/- per share, which shall be remitted by them by 14.10.2005 and thereafter, the second respondent shall deliver the original share certificates and the instruments of transfer to the petitioner in terms of this order.*
- b) The Company will register the transfer of shares in favour of the petitioners within 30 days of due lodgement of the share certificates and the instruments of transfer by the petitioners.*
- c) Prasad Media Corporation Ltd, (the appellant in C.M.A.No.4110 of 2005) shall be arrayed as the respondent no.6 in the company petition and shall answer the charges leveled in relation to it by 14.10.2005 and rejoinder be filed by 31.10.2005.*
- d) The Company shall file additional reply on its investments in Prasad Film Labs (Mumbai) Private Limited by 14.10.2005 and rejoinder if any, to be filed by 31.10.2005.*

With the above directions, both the company petition and the company application (CA No.20/2005) stand disposed of. however, reserving the right to



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issue appropriate directions on the charges made against the respondents in the matter of (a) Prasad Media Corporations Ltd. And (b) Prasad Film Labs (Mumbai) Private Limited. Towards this end, the matter will be called on 07.11.2005 at 2.30 p.m. No order as to costs."

8. Thus, both C.P.No.23 of 2003 and C.A.No.20 of 2005 were disposed, while reserving the right to issue appropriate directions on the charges made against the respondents in the matter of (a) M/s.Prasad Media Corporation Ltd, the Appellant in C.M.A.No.4110 of 2005 (b) M/s.Prasad Film Labs (Mumbai) Private Ltd and to issue appropriate directions against the said M/s.Prasad Film Labs (Mumbai) Private Limited.

9. After admitting these appeals, this Court had granted an Interim Stay on **21.12.2005**, which was made later absolute till the disposal of appeal vide order dated 08.02.2017. Thus, the directions in the Impugned Order has not been complied with by the appellants in C.M.A.Nos.4108 & 4109 of 2005.

10. During the pendency of these appeals, 1st respondent Mr.A.Ravishankar Prasad died. Therefore, the legal heirs have been impleaded as the 6th respondent and the 7th respondent in C.M.A.No.4108 of 2005 and



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C.M.A.No.4109 of 2005 and as the 10th respondent and the 11th respondent in

C.M.A.No.4110 of 2005.

11. The above said Company Petition in C.P.No.23 of 2003 was filed by the 1st to 4th respondents herein before the Company Law Board under Sections 235, 397 and 398 of the Companies Act, 1956 for the following relief:-

- i. To appoint an independent Chairman for the first respondent Company and convene Board meetings under his chairmanship;*
- ii. To reconstitute the Board of Directors of the first respondent Company;*
- iii. To direct the respondents 2 to 5 to make good the misappropriated funds as revealed in the investigation of the independent auditor and;*
- iv. To set aside the allotment of 1,32,594 shares to Ramesh Group on 20.09.2002 by the Board of Directors.*

12. In the said proceedings the 1st respondent to the 4th respondent herein had also prayed for the following interim reliefs:-

- a) That the 1st Respondent Company be directed to make available all the books of accounts maintained under Section 209 of the Companies Act, 1956, along with other statutory registers to the petitioners for inspection pending disposal of these proceedings;*
- b) That the second and third respondents be restrained from exercising any voting rights in*



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respect of 1,32,594 shares pending disposal of these proceedings.

- c) That the first respondent company be restrained from paying dividend or entertaining any claim in regard to the same in respect of 1,32,594 shares to the respondents 2 and 3 in compliance with the provisions of Section 206 and any amount if payable or already paid from the date of allotment of shares viz., 20.09.2002 may be deposited into a separate escrow account pending disposal of these proceedings;*
- d) That the first respondent be restrained from delivering or allotting any further bonus or rights shares in respect of 1,32,594 shares or issuing any duplicate shares in regard to the same to the respondents 2 and 3 or any other person claiming under them pending disposal of these proceedings;*
- e) That a separate independent investigation by a Chartered Accountant be directed to be conducted in regard to the accounts of the first respondent company pending disposal of these proceedings;*
- f) That appropriate directions be made against the Respondents for various offences committed in terms of Section 406 read with Schedule XI of the Companies Act, 1956;*
- g) That the first respondent company be directed to have a nominee of the petitioners on its Board, who shall be involved in the day to day affairs of the first respondent company pending disposal of these proceedings;*
- h) That the nominee of the petitioners group is to be consulted in regard to any financial decision taken by the respondent company involving more than Rs.25,000/- pending disposal of these proceedings; and*
- i) pass such or other interim orders as this Hon'ble Company Law Board may deem fit or proper in the circumstances of this case."*



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13. After the case was argued at length before the Company Law Board, the 1st respondent to the 4th respondent (petitioners in C.P.No.23 of 2003) filed C.A.No.20 of 2005 under Regulation 44 of the Company Law Board Regulations, 1991 to implead the appellant in C.M.A.No.4110 of 2005 namely M/s.Prasad Media Corporation Limited and another Company namely M/s.Prasad Film Labs (Mumbai) Private Limited as the 6th and the 7th respondents in C.P.No.23 of 2003.

14. M/s.Prasad Media Corporation Limited viz., the appellant in C.M.A.No.4110 of 2005 has been impleaded and has been asked to answer to charges leveled against it. The case was further adjourned to **07.11.2005** for hearing. 19 years have gone by since. Meanwhile, the Companies Act, 1956 has been replaced with the Companies Act, 2013 with effect from 12.09.2013.

15. The challenge to the Impugned Order directing the 2nd appellant (Mr.Ramesh) in C.M.A.Nos.4108 & 4109 of 2005 to transfer the shares in favour of the contesting respondent (the petitioners in C.P.No.23 of 2003) and order impleading M/s.Prasad Media Corporation Limited the appellant in



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C.M.A.No.4110 of 2005 as the 6th respondent in C.P.No.23 of 2003 is primarily

on the ground that the transfer of share is impossible and impermissible of being complied with.

16. That apart, it is submitted, the case before the Company Law Board in C.P.No.23 of 2003 was predicated primarily on the ground of alleged oppression and mis-managment by the appellants in C.M.A.No.4108 & 4109 of 2005 and that the Company Law Board has not found these appellants guilty of any oppression and mismanagement of the respondents (the petitioners in C.P.No.23 of 2003). Yet the Company Law Board has passed the Impugned Order by asking the appellant in C.M.A.No.4110 of 2005 viz., M/s.Prasad Media Corporation Limited to answer to the charges.

17. It is the case of the appellants in C.M.A.Nos.4108 and 4109 of 2005 that the contesting respondents herein (the petitioners in C.P.No.23 of 2003 before Company Law Board) have not remitted the amounts as was directed by the Company Law Board vide Impugned Order dated 01.09.2005. Therefore, the appeals have to be allowed.



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18. It is submitted that though C.P.No.23 of 2003 itself was disposed of, yet the Company Law Board has reserved the rights to issue appropriate directions on charges against M/s.Prasad Productions Private Limited, the 1st appellant in C.M.A.No.4108 of 2005 and C.M.A.No.4109 of 2005/the 5th respondent in C.M.A.No.4110 2005, M/s.Prasad Media Corporation Limited (appellant in C.M.A.No.4110 of 2005) and M/s.Prasad Film Labs (Mumbai) Private Limited, a subsidiary of M/s.Prasad Productions Private Limited.

19. Mr.Satish Parasaran, learned Senior Counsel for the appellants in C.M.A.No. 4108 of 2005 & C.M.A.No.4109 of 2005 submits that the order passed by the Company Law Board is unsustainable and is therefore, liable to be interfered with. Hence, it is submitted that the Impugned Order is liable to be set aside.

20. The learned Senior Counsel for the appellants in C.M.A.No.4108 of 2005 and C.M.A.No.4109 of 2005 submits that no case was made out for oppression and mismanagement on account of allotment of shares to



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Mr.A.Ramesh, the 2nd Appellant C.M.A.No. 4108 of 2005 and C.M.A.No.4109 of 2005 under the rights issues, yet the Company Law board has ordered as above.

21. Brief facts of the case are that on **06.06.2002**, a resolution was passed by the Directors of the 1st appellant Company in C.M.A.Nos.4108 and 4109 of 2005/1st Respondent in C.P.No.23 of 2003/5th Respondent in C.M.A.No.4110 of 2005 namely M/S.Prasad Productions Private Limited.

22. As per the Resolution passed on **06.06.2002**, the Board of the 1st appellant Company namely M/s.Prasad Productions Private Limited in C.M.A.Nos.4108 and 4109 of 2005 decided to increase the said existing capital of the said Company from **Rs.20,00,000/-** (Rupees Twenty Lakhs) to **Rs.2,00,00,000/-** (Rupees Two Crores). At that point of time, the total subscribed and issued share capital of the said Company was **Rs.15,00,000/-** (Rupees Fifteen Lakhs) and was divided into 15,000 equity shares of Rs.100/- each.



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23. Prior to the rights issue, the petitioners in C.P.No. 23 of 2003 (the respondents in the respective C.M.As) held about **4,250 shares** in the said M/s.Prasad Productions Private Limited, equivalent to 28.33% of the subscribed/issued share capital in the said Company. The other respondents in C.P.No.23 of 2003 (the appellants in C.M.A.Nos.4108 and 4109 of 2005) held jointly **10,750 shares** in the said Company equivalent to **71.67%** of the subscribed/issued share capital in the said Company.

24. Pursuant to the aforesaid Board meeting held on **06.06.2002**, Letter of offer dated **13.08.2002** was sent to the petitioners in C.P.No.23 of 2003. By the aforesaid Letter of offer dated **13.08.2002**, the petitioners in C.P.No.23 of 2003 the respondents herein were called upon to remit amounts in proportion with their entitlement in the increase share in the company under the rights issue as detailed below:-

Table

Ramesh Group #				Ravishankar Group *			
Sl. No.	Name	Pre-Issue Status		Sl. No.	Name	Pre-Issue Status	
		No.of	%			No.of	%



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Ramesh Group #				Ravishankar Group *			
		Shares				Shares	
1.	A.Ramesh #	2,320		1.	A.Ravishankar Prasad	1,859	
2.	A.Sai Prasad	2,735		2.	A.Manohar Prasad	1,883	
3.	A.Vijayalakshmi	1,200		3.	A.Manorama	483	
4.	Radha	760		4.	Sai Sivajothi	25	
5.	A.Ramesh	1,450					
6.	Mrs.Rama	760					
7.	Lakshmi Productions (P) Ltd	10					
8.	A.Ramesh (HUF II)	750					
9.	A.Renuka	760					
10.	Kavitha Saiprasad	5					
	Total of Ramesh Group	10,750	71.67%		Total of Ravishankar Group	4,250	28.33 %

* Petitioner in C.P.No.23 of 2003

Respondent in C.P.No.23 of 2003 along with Mr.M.P.Rao and Mr.DVS Raju.

After the rights issue, the shares of the contesting respondents was to increase to 56,656 [52,406 + 4,250].

Ravishankar Group #						
Sl. No.	Name	Pre-Issue Status		Right Issue	Pre-Issue Status	
		No.of Shares	%	No. of Shares	No.of Shares	%
1.	A.Ravishankar	1,859		22,921	1,859	



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Ravishankar Group #						
2.	Prasad					
	A.Manohar Prasad	1,883		23,216	1,883	
3.	A.Manorama	483		5,956	483	
4.	Sai Sivajothi	25		313	25	
	Total of Ravishankar Group	4,250	28.33%	52,406	4,250	2.88%

25. The specific case of the petitioners in C.P.No.23 of 2003 before the Company Law Board, was that they had sent consent letters dated **19.08.2002** for allotment of the shares by adjusting the amounts lying to the credit of 2nd and 4th Petitioner namely Mrs.A.Manorama and Mrs.Sai Sivajothi in the said Company [the appellants in C.M.A.Nos.4108 & 4109 of 2005].

26. It was also stated by these petitioners that they had also sent their Consent Letter by certificate of posting on **26.08.2002** to the Company for allotment of the shares in response to offer letter dated **13.08.2002** pursuant to the rights issue dated **06.06.2002**. This was however denied by the respondents in the aforesaid proceedings in their counter.



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27. Pursuant to a Board Meeting held on **20.09.2002**, 1,32,594 shares were allotted to the group represented by Mr.A.Ramesh [the second appellant in C.M.A.Nos.4108 & 4109 of 2005/the second respondent in C.P.No.23 of 2003]. As far as the group represented by the respondents (the petitioners in C.P.No.23 of 2003). Thus, their shares increased to 1,43,344.

Ramesh Group #						
Sl. No.	Name	Pre-Issue Status		Right Issue	Pre-Issue Status	
		No.of Shares	%	No. of Shares	No.of Shares	%
1.	A.Ramesh #	2,320		28,618	30,938	
2.	A.Sai Prasad	2,735		33,724	36,459	
3.	A.Vijayalakshmi	1,200		14,799	15,999	
4.	Radha	760		9,378	10,138	
5.	A.Ramesh	1,450		17,888	19,338	
6.	Mrs.Rama	760		9,378	10,138	
7.	Lakshmi Productions (P) Ltd	10		128	138	
8.	A.Ramesh (HUF II)	750		9,249	9,999	
9.	A.Renuka	760		9,378	10,138	
10.	Kavitha Saiprasad	5		54	59	
	Total of Ramesh Group	10,750	71.67%	1,32,594	1,43,344	97.12%

28. C.P.No.23 of 2003 was filed after M/s.Prasad productions Private Limited [the 1st appellant in CM.A Nos.4108 and 4109 of 2005/the 1st



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respondent company in C.P.No.23 of 2003] sent a letter dated **25.03.2003** to

Mrs A.Sai Sivajothi the 2nd Petitioner/2nd Appellant enclosing a cheque for **Rs.57,05,542/-** and a letter dated **20.03.2003** enclosing a cheque for **Rs.1,25,20,931/-** to Mrs.A.Manorama, the 4th respondent/4th petitioner.

29. By a common letter dated 11.07.2003, the Recovery Officer-I attached to Debts Recovery Tribunal-I, Chennai in the context of Recovery Certificate in DRC.No.187/2001 issued by the Presiding Officer, Debts Recovery Tribunal-I, Chennai, had ordered recovery of Rs.131,59,33,000/- wherein, the Cheque No.816218 dated 20.03.2003 issued by the Company to Mrs.A.Manorama Anand drawn at Andhra Bank, T.Nagar, Chennai restrained the Company to not to honour the aforesaid cheque as and when the same is transferred and further directed the Company to transfer the aforesaid sum to the Recovery Officer-I, Debts Recovery Tribunal-I, Chennai by means of a cheque drawn in favour of the Recovery Officer-I, Debts Recovery Tribunal-I, Chennai, payable within a period of 15 days from the date of receipt of the aforesaid notice.



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30. By the aforesaid letter, the Company was also informed that 483 shares standing in the name of Mrs.A.Manorama Anand were attached and therefore, neither the Company was to pay the aforesaid sum of Rs.1,25,20,931/- nor to allow any transfer of the shares standing in the name of Mrs.A.Manorama Anand. Pursuant to the aforesaid communication of Recovery Officer-I, Debts Recovery Tribunal-I, Chennai in DRC.No.187/2001, the Company can neither honour the cheque nor entertain any application for transfer of the shares in the name of Mrs.A.Manorama Anand. It however did not preclude the Company from allotting shares to the said Mrs.A.Manorama Anand if either she come forward to pay the money by herself or pursuant to adjustments of the amounts standing to the credit of her sister-in-law Mrs.A.Saisivajothi.

31. The appellants in C.M.A.Nos.4108 and 4109 of 2005 (the respondents in C.P.No.23 of 2003) thereafter allotted 52,406 shares to themselves on 29.03.2003 that was offered under the rights issue to these contesting respondents in these appeals as they allegedly failed to give the consent and pay the amounts in response to the rights issue.

32. Thus, the contesting respondents' shares holding remained at 4250



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while, the share of the group represented by the 2nd appellant in C.M.A.Nos.4108 and 4109 of 2005 [the 2nd respondent in C.P.No.23 of 2003] increased to 1,95,750 (1,43,344 + 52,406) thereby reducing the shares of the contesting respondents [the petitioners in C.P.No.23 of 2003] to mere 2.88% in the company. 52,406 shares meant for being allotted to the contesting respondents herein were allegedly allotted to the following persons:-

Allottee	Shares
Mr.A.Ramesh	51,406
Mrs.A.Vijay Lakshmi	1,000
	52,406

33. It is submitted that the respondents had pleaded before the Company Law Board in C.P.No.23 of 2003 that their application for the rights issued was sent by Certificate of Posting on **26.08.2002** which was refuted by the appellants herein in C.M.A.Nos.4108 & 4109 of 2005 in their Reply Statement wherein, it was categorically stated that no such application was received by the first appellant. However, in the course of the rejoinder before the Company Law Board, the contesting respondents [the petitioners in C.P.No.23 of 2003] for the first time pleaded that applications were also handed over in person to the second appellant namely Mr.A.Ramesh by Mrs.Sai Sivajothi.



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34. In the Rejoinder that was filed before the Company Law Board in C.P.No.23 of 2003, the contesting respondents (the petitioner in C.P.No 23 of 2003) categorically stated that the Consent Letter dated **19.08.2002** was handed over by Mrs.A.Sai Sivajothi, the 2nd respondent (the 2nd petitioner in C.P.No.23 of 2003) w/o the 1st petitioner late Mr.A.Ravishankar Prasad to the 2nd appellant namely, Mr.A.Ramesh, the Managing Director of the 1st appellant company namely M/s.Prasad Productions Private Limited.

35. It is submitted that the Company Law Board having arrived at a finding that the Consent Letters dated **19.08.2002**, enclosing their application to subscribe the shares in the rights issue dated **13.08.2002** would not have been either posted on **26.08.2002** “under Certificate of Posting” or handed over in person to the 2nd appellant/2nd petitioner Mr.A.Ramesh, the Managing Director of M/s.Prasad Productions Private Limited, the Company law Board ought not to have granted partial relief to the respondents herein/the petitioner in C.P.No.23 of 2003 for allotment of the shares.

36. It is submitted that the Company Law Board ought to have dismissed



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C.P.No.23 of 2003 having come to a conclusion that the respondents (the petitioners in C.P.No.23 of 2003) had failed to meet the threshold to participate in the rights issue and therefore were not entitled to the shares.

37. That apart, it is submitted that in the Offer Letter dated 13.08.2002 issued to the Respondents No 1-4 herein (the petitioners in C.P.No.23 of 2003), it was categorically stated, that in case they did not apply within fifteen (15) days or if they did not wish to apply for the entire shares, the entire shares or the remaining shares as the case may be, will be allotted at the discretion of the Board of Directors of the Company as per the provisions of Companies Act, 1956.

38. It is submitted that this was also consistent with Article 6 of the Articles of Association of the Company as per which if the respondents/petitioner failed to apply within 15 days, the entire shares could be allotted by the Board at its discretion.

39. It is further submitted that Section 81(3) of the Companies Act, 1956, does not apply to a private Company like the 1st appellant in C.M.A.No.4108 of



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2005 and C.M.A.No.4109 of 2005 (the 1st respondent in C.PNo.23 of 2003)

and therefore, question of directing the 2nd appellant (2nd respondent) to transfer shares did not arise to the contesting respondents does not arise.

40. It is further submitted that even otherwise under Section 81(1)(c) of the Companies Act, 1956, unless the articles of the Company otherwise provide, the offer shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person and the notice referred to in clause (b) shall contain a statement of this right.

41. The learned Senior Counsel for the appellant in C.M.A.Nos.4108 and 4109 of 2005 drew attention to the decision of the Hon'ble Supreme Court in **Sangramsinh P.Gakewad & Ors vs. Shantadevi P.Gaekwad (2005) 11 SCC 314**, wherein it was held as follows:-

“It is now well-settled that only one pre-emptive offer is to be made which is otherwise to be accepted or not at all. The existing shareholders are not entitled to be given further pre-emptive rights in respect of those unaccepted shares. Even such a right can be waived or modified.”

42. A specific reference was made to paragraph 81 to the decision in



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Sangramsinh P.Gakeward & Ors vs. Shantadevi P.Gaekwad (2005) 11 SCC

314, wherein, it was held that the Directors have no fiduciary duty to advice shareholders regarding their rights. In the present case, the Directors have been more than fair to the shareholders:-

a) They have sent a notice through registered post regarding the rights issue, which has been received by the Respondents;

b) They have granted one month's extension at the Board Meeting dated 20.09.2002; and

They have waited nearly 5 months before issuing shares to the 2nd Appellant even though they need to done so legally.

43. It is therefore submitted that since the contesting respondents (petitioners in O.P.No.23 of 2003) failed to subscribe the shares within the time they have no second pre-emptive rights over the shares offered to them.

44. It is submitted that by not filing subscribing to shares in response to the rights issue dated **13.08.2002**, the respondents 1 to 4 herein (the petitioners in C.P.No.23 of 2003) fortified their rights over the rights issue.



45. It is further submitted that in the Board meeting dated **20.09.2002**, the 1st respondent/1st petitioner had requested 30 days time to subscribe to the shares which was extended considering his request. Since no amount was paid by the Respondents 1 to 4 herein (Petitioners in C.P.No.23 of 2003), 52,406 shares that was offered were allotted on **29.03.2003**. Earlier, on 20.09.2002, 1,32,594 shares were allotted to the 2nd appellant and group.

46. It is submitted that the Company Law Board erred in concluding that the appellants in C.M.A.No.4108 of 2005 and C.M.A.No.4109 of 2005 ought to have given a fresh notice of allotment of the shares ignoring the fact that :-

- a) *the extension was only for one month, which had expired during October 2002, and fresh shares were allotted only on 29.03.2003;*
- b) *as per the law cited above, once the respondents have failed to apply within the extended time, there is no need to offer the shares to them one ore time;*
- c) *there is no legal or equitable requirement whatsoever to issue a fresh notice to issue unsubscribed shares.*

47. It is submitted that the 1st appellant Company was not required to inform the contesting respondents (the petitioner in C.P.No.23 of 2005) that they could adjust the money lying in the credit of Mrs.A.Sai Sivajothi the 2nd



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respondent/2nd petitioner in C.P.No.23 of 2003 for a sum of **Rs.57,05,542/-** or the amount of **Rs.1,28,20,931/-** lying in the credit of Mrs.A.Manorama, the 4th respondent/4th petitioner.

48. It is submitted that since the credit balance that was lying to the credit of the 4th respondent/4th petitioner Mrs.A.Manorama came to be attached by a distraint order dated **31.01.2002** of DRT against the 1st appellant from making any transfer of shares or from making any payments or there on to the 4th respondent and the persons name therein vide in order dated **31.01.2002** in O.A.No.357 of 1997.

49. It is therefore submitted that such allotment to the 4th respondent/4th petitioner was not possible in view of DRT's Order dated **19.07.1997** restraining alienation of shares. **Recovery Certificate dated 11.12.2001** and in view of Letter dated **31.01.2002** restraining the 1st appellant/1st respondent from either paying any amoujnts to the persons mentioned therein which included Mrs.A.Manorama, the 4th respondent/4th petitioner.



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50. It is therefore submitted that even on this count there was no question of making any allotment of shares based on the credit balance that stood in the name of the Mrs.A.Manorama, namely, the 4th respondent/4th petitioner in C.M.A.No.4108 of 2005 & C.M.A.No.4109 of 2005.

51. It is further submitted that when attempts were made by the 1st appellant to pay the amounts to the 4th respondent, DRT passed an order on 11.07.2003 and directed the 1st appellant company to issue a stop payment order on the cheque issued to Mrs.A.Manorama, the 4th respondent/4th petitioner and instead to pay the amount to the DRT. Therefore, even otherwise there was no amounts that was available even if it were to be construed that the amounts were earlier available to the credit of the 4th respondent in the account's of the appellant company.

52. It is however noticed that despite order of the DRT order dated **19.07.1997, 11.12.2001 and 31.01.2002**, the 1st appellant/1st respondent issued cheque on **20.03.2003** for **Rs.1,25,20,931/-** to Mrs.A.Manorama, the 4th respondent/4th petitioner and thereafter proceed to allot 52,405 shares to their



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group on **29.03.2003**. There are no records to show that the amount of **Rs.57,05,542/-** for which cheque was issued to Mrs.Sai Sivajothi, the 2nd respondent herein on **25.03.2003** was encashed.

53. The learned Senior Counsel for the appellants in C.M.A.No.4108 of 2005 and C.M.A.No.4109 of 2005 further stated that the 2nd respondent/2nd petitioner namely Mrs.A.Sai Sivajothi never gave a consent for adjusting the money lying to her credit in Books of Account of the 1st appellant/1st respondent for subscription of shares by herself or in favour of three other members of her family namely the 1st, 3rd and 4th respondents/1st, 3rd and 4th petitioners. It is submitted since the Company Law Board has concluded that the 2nd respondent/2nd petitioner has not sent Consent Letter dated **19.08.2002** by Certificate of Posting on **26.08.2002** or by hand delivery on **20.09.2002**, there is no question of allotting shares to the respondents/petitioners.

54. It is submitted that Company Law Board has relied on an informal meeting between A.Ramesh, namely the 2nd appellant/2nd petitioner namely and the 1st respondent/1st petitioner A.Ravishankar Prasad prior to the respondent



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meeting dated **20.09.2002** where the 1st respondent is said to have requested for utilizing the credit balances standing the name of Mrs.A.Sai Sivajothi.

55. It is submitted that CLB could not place reliance on this request since it came from the 1st respondent who did not hold a valid power of attorney from Mrs.A.Sai Sivajothi. It is submitted that the request could have been considered only if a request directly came from Mrs.A.Sai Sivajothi, the 2nd respondent/2nd petitioner.

56. It is submitted that even otherwise, the Company Law Board failed to note that the respondents strongly denied this meeting ever took place and making any request for additional time. Having denied the meeting, the respondents cannot now place reliance on the same nor should the CLB have placed reliance on it.

57. It is therefore submitted that the respondents cannot approbate and reprobate their stand as held by the Hon'ble Supreme Court in **Mumbai International Airport vs. M/s.Golden Chariot and Others**, (2010) 10 SCC 422.



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58. It is submitted that the Company Law Board has committed a grave error in concluding that Mrs.A.Sai Sivajothi, the 2nd respondent/2nd petitioner, money lying in the credit would have been used for paying the subscription of the whole group just like it was done by the appellant group.

59. Further, it is submitted that it is incorrect to say that the appellant group paid for the subscription for the rights issued entirely through adjustment of credits standing in their names.

60. It is submitted that the 2nd appellant/2nd respondent to whom the unsubscribed shares were allotted during March 2003 paid for the same through cheque since no request was received from the 2nd respondent/2nd petitioner Mrs.A.Sai Sivajothi for subscription out of the amounts lying in a credit that were allotted to the 2nd appellant.

61. It is submitted that the 1st appellant cannot make unilateral allotment without any request from the respondents particularly Mrs.A.Sai Sivajothi. That apart, it is submitted that the 1st respondent held no power from the 2nd



respondent or from in any of the other shareholders of the group.

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62. Reliance placed on the oral request of the 1st respondent by the CLB was incorrect. Even the falsified letters unequivocally establishes that the respondents are not a “group”, since they filed one consent letter for each of the respondents. If they were to be considered a group, then one letter would have been enough.

63. The learned counsel for the appellant in C.M.No.4110 of 2005 submitted that the 1st to 4th respondents/1st to 4th petitioners are not entitled to any of the relief in the C.A.No.20 of 2005 in C.P.No.23 of 2003 due to their acquiescence. The allegations in the said application against the 5th respondent company qua the appellant are summarized as follows:-

- i. *The 5th respondent* was involved in a huge business transaction with the appellant company wherein about Rs.15 Crores was originally shown as loan and guarantee of Rs.45 Crores. The amount raised is by means of 11% redeemable preference shares with a paid-up value of Rs.10 each issued by the appellant. The 5th respondent company has not given any proper explanation as to why only preference shares was issued by the appellant to the 5th respondent instead of equity shares, which would have been advantageous to the 5th respondent company;*



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- ii. *Vide G.O.Ms.No.194 dated October 19, 2000, the Government of Andhra Pradesh had awarded the project in respect of establishment of Imax Theatre. A misrepresentation was made before the Hon'ble CLB that this project was being executed by the appellant company. The project was not awarded to the appellant. This amounts to siphoning off the funds of the project from the 5th respondent.*

(* The appellant in C.M.A.Nos.4108 & 14109 of 2005)

64. The learned counsel for the appellant in C.M.A.No.4110 of 2005 submitted that 1st to 4th respondents/1st to 4th petitioners introduced these allegations by way of an application in C.P.No.23 of 2003 to mislead the Company Law Board to believe that the above information came to the knowledge of the 1st to 4th respondents/1st to 4th petitioners only during the course of oral submissions of the appellants in C.M.A.Nos.4108 and 4109 of 2005.

65. It is submitted that the 5th to 9th respondents, the appellants in C.M.A.Nos.4108 and 4109 of 2005 had vehemently denied this misrepresentation and produced the documents before the Company Law Board to prove that the 1st to 4th respondents/1st to 4th petitioners were aware of the acts



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that they were complaining of and had acquiesced to such acts much before the

filing of the said application:-

- i. *44th Annual Report of the 5th respondent for the Financial Year 2000-2001, filed as Annexure R1;*
- ii. *Minutes of the Annual General Meeting of the 5th respondent held on 17.07.2002, filed as Annexures R2;*
- iii. *Minutes of the Annual General Meeting of the 5th respondent held on 03.06.2003, filed as Annexure R4;*
- iv. *46th Annual Report of the 5th respondent for the Financial Year 2002-2003, filed as Annexure R5.*

66. Arguing on behalf of the appellant in C.M.A.No.4110 of 2005, learned Counsel Mr.T.K.Bhaskar argued that the order impleading the appellant is liable to be interfered in as much as there was no prayer in C.P.No.23 of 2003 for amending the averments.

67. It is submitted that in absence of any pleading in C.P.No.23 of 2003, question of impleading M/s.Prasad Media Corporation Limited, the appellant in C.M.A.No.4110 of 2005 vide Impugned Order dated 01.09.2005, the Company Law Board was unwarranted and therefore calls for an interference.

68. That apart, it is submitted that the Company Petition itself had been



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disposed of vide Impugned Order dated 01.09.2005, by the Company Law Board without notice to the appellant in C.M.A.No.4110 of 2005. That apart, it is submitted that the appellants was also not put to notice and therefore, without notice to the appellant, the appellant has been ordered to be impleaded as the 6th respondent in C.P.No.23 of 2003.

69. Question of asking the appellants in the other two Civil Miscellaneous Appeals as also the appellant herein to answer to the allegations made against the respective appellants cannot be countenanced.

70. It is submitted that the Company Law Board having come to a conclusion that there was no oppression by the respondents in C.P.No.23 of 2003 [the appellant in C.M.A.Nos.4108 and 4109 of 2005] before the Company Law Board, question of the appellants herein being called upon to answer to the charges cannot be countenanced.

71. The learned counsel for the appellant would submit that incorporation of the appellant in C.M.A.No.4110 of 2005 had nothing to do with the respondents, the petitioners in C.P.No.23 of 2003 before the Company Law



Board. Therefore, the Impugned Order is liable to be interfered with.

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72. That apart, it is submitted that the applications were filed after pleadings were completed in the main Company Petition and after the arguments had commenced and were concluded.

73. The learned counsel for the appellant would submit that the decision of the Orissa High Court in **Binod Kumar Agarwal vs. Ringtong Tea Co. (P) Ltd., Siliguri**, (1995) 1 Comp LJ 138 is not applicable to the facts of the case.

74. It is submitted that the application filed for impleading is nothing but a fishing expedition for information which cannot be allowed.

75. A reference was made to the decision of the Calcutta High Court in **Mohta Bors. (P.) Ltd. And others Vs. Calcutta Landing and Shipping Co. Ltd. and others**, (1970) 40 Comp Cas 119; 1969 SCC OnLine Cal 22 wherein, it was observed as under:-

4. In paragraph 26 of the petition there is also another charge that the company has hidden assets and the directors of the company and/or the managing agents are manipulating the profits and dividend to acquire outside



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shares at an under-value by concealing assets and showing decreased profits. All that I need say with regard to this charge is that it is easy for a person holding shares in a joint stock company to make charges of this nature, but vague, uncertain and indefinite charges of hidden assets and secret profits by themselves, and in the absence of proof, do not entitle the petitioner to relief under sections 397 and 398 of the Act. So far as this charge is concerned it must be held that there is a singular lack of particulars, much less of proof, and no heed should be paid to such sweeping charges. Before passing, I should mention that the appellants and their group became shareholders for the first time in 1961 and, therefore, the contentions by the learned counsel for the appellants with regard to declaration of dividend for the earlier years cannot be entertained, on that ground alone, quite apart from the fact that there are no allegations in the petition with regard to fluctuation or manipulation of dividend for the years 1957, 1958, 1959 and 1960.

76. The learned counsel for the appellant in C.M.A.No.4110 of 2005 has referred to the Judgment supra and submitted that the above observation squarely applies to the facts of the case.

77. The learned counsel for the appellant has drawn attention to the following documents which were filed before the Company Law Board by the respondents:-

Sl.No.	Date	Documents
1.	31.10.2001	44 th Annual Report of the 5 th Respondent* for



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		the FY 2000-2001 filed as Annexure R1 before the Company Law Board
2.	17.06.2002	Minutes of the Annual General Meeting of the 5 th respondent*, filed as Annexure R2 before the Company Law Board
3.	20.11.2002	45 th Annual Report of the 5 th Respondent* for the FY 2001-2002, filed as Annexure R3 before the Company Law Board
4.	03.06.2003	Minutes of the Annual General Meeting of the 5 th respondent*, filed as Annexure R4 before the Company Law Board
5.	27.11.2003	Annual Report of the 5 th respondent* for the FY 2002-2003 filed as Annexure R5 before the Company Law Board

**Appellant in C.M.A.Nos.4108 & 4109 of 2005*

78. It is submitted that the facts regarding incorporation of the appellant in C.M.A.No.4110 of 2005 was not relevant to the contesting respondents herein (petitioners in C.P.No.23 of 2003). Attention was drawn to 44th Annual Report of the 5th respondent in C.M.A.No.4110 of 2005 (1st respondent in C.M.A.Nos.4108 & 4109 of 2005).

79. It is submitted that in the report dated 31.10.2001, the Director's Report clearly states that during the year under review, the Company successfully participated in the competitive bid for establishing an IMAX large format film theatre floated by the Government of Andhra Pradesh as a "Tourism



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Development" initiative. The project envisages an 2D/3D IMAX Theatre and related entertainment facilities, comprising a multiplex of 4 screens, family entertainment center and shopping. The project was awarded to the Company in October 2000. The estimated project cost was Rs.6100 lakhs and the Industrial Development Bank of India and Andhra Bank had expressed their willingness to provide financial assistance of upto Rs.3000 Lakhs for financing the project. Thus, the Directors have floated a new company namely M/s.Prasad Media Corporation Ltd (the appellant in C.M.A.Nos.4108 & 4109 of 2005) for implementing the project.

80. It is submitted that in the Balance Sheet enclosed in the 44th Annual Report for the Financial Year 2000-2001, acquisition of 250 shares in the appellant Company acquired during the year has also been reflected.

81. That apart, it is submitted that the 44th Annual Report (1st appellant in C.M.A.No.4108 of 2005 and C.M.A.No.4109 of 2005/5th respondent in C.M.A.No.4110 of 2005) enclosing the Balance Sheet in Profit and Loss Account along with the Directors Report was also accepted in the Annual General Meeting held on 17.07.2002 of the said Company.



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82. That apart, in the Balance Sheet to the 44th Annual Report as 31.03.2002, it has been categorically stated that the appellants in C.M.A.No.4108 of 2005 and C.M.A.No.4109 of 2005/5th respondent in 4110 of 2005 had given corporate "Counter Guarantee" on behalf of the appellant in C.M.A.No.4110 of 2005 namely, M/s.Prasad Media Corporation Ltd., Hyderabad (A company under the same Management) for the Loans availed by the said Company from Andhra Bank, Hyderabad and M/s. Industrial Development Bank of India, Hyderabad to the extent of 2450 Lakhs and 1700 Lakhs respectively.

83. It is submitted that Mr.A.Ravishankar Prasad, the 1st respondent (1st petitioner in C.P.No.23 of 2003) had also seconded adoption of the Directors Report Annual Account and the Auditors Report.

84. Similarly, attention was drawn to the 45th Annual Report for the Financial Year 2001-2002 of the Company (1st appellant in C.M.A.No.4108 of 2005 and C.M.A.No.4109 of 2005 and the 5th respondent in C.M.A.No.4110 of 2005), wherein, the Directors have clearly stated that the Company has invested



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a sum of Rs.15.51 Crores in the appellant Company in C.M.A.No.4110 of 2005

namely Prasad Media Corporation Limited, Hyderabad to commence the IMAX Theatre. The work is in progress. Financial assistance from IDBI and Andhra Bank has been received during the year under review for this project.

85. It is submitted that the 45th Annual Report of the Company was also adopted the Directors Report, Annual Account and Auditors Report in its meeting held on 03.06.2003.

86. It is submitted that all the contesting respondents (petitioner in C.P.No.23 of 2003) before Company Law Board were either present in person or represented by their proxies.

87. Therefore, C.A.No.20 of 2005 filed after the commencement of argument in main C.P.No.23 of 2003 was unwarranted and unnecessary.

88. It is submitted that although objections were raised by the first respondent (since deceased) (1st petitioner in C.P.No.23 of 2003), the report was



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adopted and there was only recording the loans given to the appellant in

C.M.A.No.4110 of 2003 by the 5th respondent therein/the 1st appellant in

C.M.A.No.4108 of 2005 and C.M.A.No. 4109 of 2005.

89. With reference to the 46th Annual Reports dated 27.11.2003, it is submitted that once again the information regarding investment of Rs.20.61 Crores for the appellant in C.M.A.No.4110 of 2005 was in the report.

90. A reference is made to the following passage from the 46th Annual Report:-

"The investment of Rs.2,061 Lakhs with Prasad Media Corporation Limited, Hyderabad, (A Company under the same management) to commence the Imax Theatre as mentioned in our earlier year's report, has been appropriated towards 1,50,00,000-11% cumulative redeemable preference shares of Rs. 10/- each amounting to Rs. 15 crores and the balance of Rs.561 Lakhs has been shown under the head "Other Advances", in which the share application money of Rs.546 Lakhs has been included. Your Company has also given a counter-guarantee for the loan obtained by the said Prasad Media Corporation Ltd., Hyderabad, from Industrial Development Bank of India, Andhra Bank, Indian Overseas Bank and UCO Bank, to the extent of Rs.5,450



Lakhs."

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91. It is submitted that share holders in the Company, the contesting respondents, the petitioners in C.P.No.23 of 2003 were aware of the details of investment and conversation of the aforesaid amount of Rs.20.61 Crores - 11% cumulative redeemable preference shares of Rs.10/- each fully paid up in the company and a reference was made to Sl.Nos.17 and 20 to notes annexed to and forming part of the 46th Annual Report dated 27.11.2003, which reads as follows:-

**Notes annexed to and forming part of the balance sheet as
31st March 2003**

17 The Company has given corporate "Counter Guarantee" on behalf of Prasad Media Corporation Ltd., Hyderabad (A company under the same Management) for the loans availed by the said Company from the following Banks:

- | | |
|---|---------------|
| (a) Industrial Development Bank of India- Hyderabad | Rs.1200 Lakhs |
| (b) Andhra Bank-Hyderabad | Rs.1800 Lakhs |
| (c) Indian Overseas Bank-Hyderabad | Rs.450 Lakhs |
| (d) UCO Bank-Hyderabad | Rs.2000 Lakhs |

20 (a) Other Advances includes Debts due by a Private Company in which a Director of the Company is a Director:

Prasad Film Labs (Mumbai) Pvt Ltd-Mumbai
Rs.4,72,88,383/-



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- (b) Rs.5,61,39,068/- comprising of Share Application money of Rs.5,46,01,395/- and Rs.15,37,673/- to Prasad Media Corporation Ltd. A Company under the same Management (Maximum amount due at any time during the year - same)

92. Therefore, there is absolutely no scope for impleading the appellant in C.M.A.No.4110 of 2005 to answer for the allegations made by the contesting respondents in Company Law Board.

93. Mr.A.R.L.Sundaresan, the learned Additional Solicitor General who appears for the 2nd appellant in C.M.A.No.4108 of 2005 and C.M.A.No.4109 of 2005 and the 6th respondent in C.M.A.No.4110 of 2005 has placed reliance on the following case laws:-

- i. ***Mumbai International Airport Private Limited vs. Golden Chariot Airport and Another, (2010) 10 SCC 422;***
- ii. ***M/s.Gemini Film Circuit and Others vs. M/s.Venkateswara Financiers Hyderabad Private Limited, O.S.A.No.43 of 2020;***
- iii. ***Kalyan Singh Chouhan vs. C.P.Joshi, (2011) 11 SCC 786.***

He also more or less reiterated the submission of the learned Senior Counsel for the appellant in C.M.A.Nos.4108 & 4109 of 2005.

94. Defending the Impugned Order of the Company Law Board, learned



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Senior Counsel for the contesting respondents (Petitioner in C.P.No.23 of 2003)

would submit that the Interim Order of the Tribunal is well-reasoned and does not call for any interference.

95. That apart, it is submitted that the scope of interference under Section 10F of the Companies Act, 1956 is limited only on any question of law that arise out of orders of the Company Law Board.

96. It is submitted that the proceedings before the Company Law Board and the order passed by the Company Law Board have not determined the rights of the appellant in C.M.A.No.4110 of 2005.

97. It is submitted that the powers of the Company Law Board under Section 402 of the Company Law Board is wide enough to oversee to regulation of the conduct of the Company affairs in future as well.

98. It is submitted that while exercising power under Sections 397 and



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402 of the Companies Act, 1956, Company Law Board considers not only the relief that is sought for but also considers as to what is the nature of the complaint and how the same has to be rectified.

99. It is submitted that while exercising power under these provisions the Company Law Board which precedes the interest of the Company and not the individual dispute between the parties.

100. It is submitted that merely because the Company Petition was disposed *ipso facto* would not mean that the Company Law Board has become *functus officio*.

101. The attention is drawn to the decision of the Hon'ble Division Bench of this Court in **Shoe Specialities P.Ltd and Others Vs. Standard Distilleries and Breweries P.Ltd and Others**, wherein, the Hon'ble Division Bench of this Court after referring to the decision in **Sindhri Iron Foundry P. Ltd., [1934]**



Comp Cas 510, explained the meaning of the expression *functus officio*, and concluded as follows:-

"Taking into consideration the purpose of Sections 397 and 402 of the Companies Act, until the matter complained of is fully settled, it cannot be said that the Board has become functus officio."

102. A reference was also made to a view taken by the Company Law Board and referred to a following passage from the above said decision:

***"The very same contention was taken by the appellants when Company Application No.114 of 1994 was filed by the petitioners in the very same case. The Board rejected that contention. In paragraph 7 of the order in that application, the Board said thus:
In regard to the objection of Shri Singhvi that the Company Law Board has become functus officio after the disposal of the main petition, one of the important aspects to be considered is whether after having passed the final order we have retained seisin over the matter and in case we have retained seisin, then there should not be any difficulty in entertaining the application. This proposition of dealing with the matter even after final disposal if seisin is retained has been well established in Mohini Devi Choraria v. Apsara Cinema Pvt. Ltd. [1988] Mh. Lj 1004; [1990] 69 Comp Cas 233. From the last para of our order dated June 8, 1994, it is apparent and clear that we have retained seisin over the matter that too relevantly relating to the convening of EOGM. In view of this, the objection that the Company Law Board has become functus officio is not well founded."***



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103. It is submitted that the contesting respondents (Petitioner in C.P.No.23 of 2003) were reduced to a miniscule minority of 2.88% pursuant to allotment of 1,32,594 shares in favour of the second respondent namely A.Ramesh in C.P.No.23 of 2003 (2nd appellant in C.M.A.Nos.4108 and 4109 of 2005).

104. Mr.Aravindh Pandian, learned Senior Counsel for the 3rd and the 4th respondents has placed reliance on the following case laws:-

- i. ***V.S.Krishnan and Others vs. Westfort Hi-Tech Hospital Limited and Others*, (2008) 3 SCC 363;**
- ii. ***Mahima Datla and Others vs. Dr.Renuka Datla and Others*, (2022) 234 Comp Cas 770 (SC);**
- iii. ***Fisher vs. Cadman and Others*, (2005) EWHC 377. (Ch);**
- iv. ***Brownlow vs. G.H.Marshall Limited and Others*, 2002 (2) BCLC 655;**
- v. ***Re a Company*, (1986) BCLC 362;**
- vi. ***Re a Company*, (1985) BCLC 80;**



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vii. **Re Saul D Harrison vs. Sons plc**, (1995) 1 BCLC 14;

viii. **Re London School of Electronics Limited**, (1985) BCLC 273;

ix. **Yogeswari Kumari vs. Lake Shore Palace Hotels Private Limited**, (2011) 161 Comp Cas 579 (Raj);

x. **Brownlow vs. G H Marshall Limited and Others**, 2000 (2) BCLC 655;

xi. **Fisher vs. Cadman and Others**, (2005) EWHC 377 (Ch);

xii. **Ebrahimi vs Westbourne Galleries Limited and Others**, 1973 A.C.360;

xiii. **Shoe Specialities Private Limited and Others vs. Standard Distilleries and Breweries Private Limited and Others**, 1997 (90) Comp Cas 1;

105. I have considered the arguments advanced by the respective learned Senior Counsels, who appeared on behalf of the appellants in C.M.A.Nos.4108 and 4109 of 2005 and the learned counsel for the appellant in C.M.A.No.4110 of 2005.

106. I have also considered the arguments advanced by the learned



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Senior Counsel on behalf of the contesting respondents who were the petitioners before the Company Law Board in C.P.No.23 of 2003.

107. The above Company Petition was filed by the contesting respondents on 12.05.2003 after it came to light that shares under the rights issues vide a Letter dated 13.08.2002 had allotted to the group under Mr.A.Ramesh, 2nd appellant in C.M.A.Nos.4108 and 4109 of 2005.

108. There are several disputes in the background. The second appellant in C.M.A.Nos.4108 & 4109 of 2005 namely Mr.A.Ramesh is the son of late Mr.L.V.Prasad. The first, second and the fourth respondents in C.M.A.Nos.4108 & 4109 of 2005 are the children of late M.A.Anand Rao, who predeceased his father late Mr.L.V.Prasad. Thus, the second appellant is paternal uncle of the first, second and fourth respondents in C.M.A.Nos.4108 & 4109 of 2005.

109. It is also evident that the parties have been in litigation with each other after the death of late Mr.L.V.Prasad, the founder of the Company. The family tree which was filed before this Court indicates that late Mr.L.V.Prasad had two sons and a daughter named Mr.A.Anand Rao who preceded late



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Mr.L.V.Prasad, Mr.A.Ramesh (2nd respondent in C.P.No.23 of 2003/2nd appellant in C.M.A.Nos.4108 and 4109 of 2005) & Mrs.R.V.Grahalakshmi.

110. Mr.A.Ravishankar Prasad, Mr.A.Manohar Prasad, Mrs.A.Manorama Anand are the children of late Mr.A.Anand Rao and Mrs.A.Indira Anand Rao. Mr.A.Anand Rao himself pre-deceased Mr.L.V.Prasad, founder of the Company.

111. After the death of Mr.L.V.Prasad in 1994, a dispute had arisen regarding the shares in the Company between two groups led by the children of late Mr.A.Anand Rao namely, Mr.Ravishankar Prasad, Mr.A.Manohar Prasad and Mrs.Manorama against their paternal uncle Mr.A.Ramesh, the 2nd respondent in C.P.No.23 of 2003/2nd appellant in C.M.A.Nos.4108 and 4109 of 2005.

112. Mr.L.V.Prasad died in June 1994, leaving a Will, which resulted in litigations between the petitioners and the respondents before a Single Bench and Division Bench of this Court and the Supreme Court, wherein, the genuineness of the Will in favour of Mr.A.Ramesh, the 2nd respondent in



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C.P.No.23 of 2003/2nd appellant in C.M.A.Nos.4108 and 4109 of 2005 was

upheld.

113. The dispute essentially arise out of rights issues offered by the Directors of M/s.Prasad Productions Private Limited (hereinafter referred to as the Company)/the first respondent in C.P.No.23 of 2003. On the date of aforesaid offer, the group led by Mr.A.Ramesh held 10,750 shares. It approximately accounted for 71.67% shares in the said Company. The 1st to 4th respondents (the petitioners in C.P.No.23 of 2003) together held about 4,250 shares in the said Company accounting for 28.33% of the shares in the said Company.

114. By virtue of the allotment of the shares meant for the 1st to 4th respondents (the petitioners in C.P.No.23 of 2003) by the group led by Mr.A.Ramesh, 2nd appellant in C.M.A.Nos.4108 and 4109 of 2005, the percentage of shares held by the 1st to 4th respondents (the petitioners in C.P.No.23 of 2003) was reduced to mere 2.88%.

115. Though, the Company Law Board has come to a conclusion that it



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was highly improbable that either the Consent Letter dated **19.08.2002** was handed over in person by Mr.A.Ravishankar Prasad, the 1st respondent or the Consent Letter dated 19.08.2002 would have been sent by certificate of posting on 26.08.2002, yet the Company Law Board has ordered transfer of shares. There is a finding of fact arrived at by the Company Law Board regarding Consent Letter dated 19.08.2002 that it would have been sent by certificate of posting on 26.08.2002 by placing reliance on the decision of this Court in **S.Narayanan and others Vs. Century Flour Mills Limited and others**, (1987) 1 Comp LJ 25 and that of the Hon'ble Supreme Court in **L.M.S.Ummu Saleema Vs. B.B.Gujaral and another**, AIR 1981 SC 1191. Therefore, this aspect is not justiciable in an appeal under Section 10F of the Companies Act, 1956.

116. The Company Law Board has also come to a conclusion that based on the available material, there was no oppression of the petitioners in C.P.No.23 of 2003 (1st to 4th respondents herein) or mismanagement of the Company by the majority share holders who held 71.6% shares prior to the rights issues and thereafter 97.12% shares after the contesting respondents (petitioners in C.P.No.23 of 2003) failed to pay the amount for allotment of



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share pursuant to the rights issues. At the same time, the Company Law Board has ordered allotment of 52,406 shares to the petitioners in C.P.No.23 of 2003 (1st to 4th respondents herein).

117. It is also on record that the Company was restrained by the Recovery Officer-I, Debts Recovery Tribunal-I, Chennai from making any payments to the persons named in the Communication dated 31.01.2002. It was addressed to group Companies of the said Company and to various persons which included the Companies under the control of Mr.A.Ravishankar Prasad. Mr.A.Ravishankar Prasad himself, Mr.A.Manohar Prasad, Mrs.Padma Ravishankar Prasad and Mrs.A.Manorama and owed money to Indian Bank, ARM Branch-II, Chennai – 600 008 in O.A.No.357 of 1997. It was not addressed to Mr.Sai Siva Jothi, W/o.Mr.A.Ravishankar Prasad.

118. The aforesaid Restraining Order dated 31.01.2002, restrained the Companies named therein which included the above Company namely Ms.Prasad Productions Private Limited from making any transfer of shares standing in the name of the persons named therein which included the above named persons namely Mr.A.Ravishankar Prasad, Mr.A.Manohar Prasad,



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Mrs.Padma Ravishankar Prasad and Mrs.A.Manorama Anand. It is also

restrained the Company from making any payment or dividend thereon to them.

119. Admittedly, in the Books of Accounts of the Company (appellant in C.M.A.Nos.4108 & 4109 of 2005), Mrs.A.Manorama Anand, the 4th respondent was the creditor and that the appellant Company owed Mrs.A.Manorama Anand, the 4th respondent herein, a sum of **Rs.1,25,20,931/-**. Thus, the aforesaid amount was out of the bounds of the Company to be utilized the same for allotting shares under the rights issues to the 1st to 4th respondents (petitioners in C.P.No.23 of 2003) pursuant to Letter of Offer dated 13.08.2003 of the Company even if a request was made by Mrs.A.Manorama Anand.

120. The Records also reveals that in the Books of Accounts of the appellant Company in C.M.A.Nos.4108 & 4109 of 2005, Mrs.A.Saisivajothi wife of Mr.A.Ravishankar Prasad [the 2nd petitioner in C.P.No.23 of 2003/the 1st respondent in C.M.A.Nos.4108 & 4109 of 2005] was also a creditor and the appellant Company owed her a sum of **Rs.57,05,542/-** when Letter of Offer dated 13.08.2002 was issued. There are no records to show that the appellant Company in C.M.A.Nos.1408 & 1409 of 2005 was restrained by any order of



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DRT or of any Court for transferring the amounts to Mrs.A.Saisivajothi [the 2nd petitioner in C.P.No.23 of 2003/the respondents in C.M.A.Nos.4108 & 4109 of 2005]. There are also no records to show that there were any restraining order so that prohibiting the Company, the appellant in C.M.A.Nos.4108 & 4109 of 2005 from making payment/transfer the amounts lying in the credit of Mrs.A.Saisivajothi wife of Mr.A.Ravishankar Prasad. The records also reveals that pursuant to offer dated **13.08.2002**, the group led by Mr.A.Ramesh and his family were allotted shares in proportion to the shares held by them under the rights issues from and out of the amounts lying in their credit in the Company. Thus, there was discrimination.

121. There are no materials to show that Mr.A.Ramesh [the 2nd respondent in C.P.No.23 of 2003/2nd appellant in C.M.A.Nos.4108 & 4109 of 2005] remitted the share application money in respect of **1,32,594** shares by way of cash or cheque or bank draft at the time of allotment made at the Board meeting held on **20.09.2002**, in terms of the offer letter dated **13.08.2002** sent by the Company.

122. Therefore, it appears that the rights shares viz., **1,32,594** were



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allotted to the group led by Mr.A.Ramesh [the 2nd respondent in C.P.No.23 of 2003/2nd appellant in C.M.A.Nos.4108 & 4109 of 2005] from and out of the amounts due to them from the 1st appellant Company in C.M.A.No.4108 & 4109 of 2005. At the same time, the allotment in favour of the contesting respondents (petitioners in C.P.No.23 of 2003) was deferred for not having brought further share application in money by them. This discrimination, in my view, was in no way justifiable. It is not under dispute that as on the date of allotment and thereafter, both the second respondent and fourth respondent had credit balances to their account with the Company to the tune of Rs.57,05,542/- and Rs.1,25,20,931/- respectively. Even if Rs.1,25,20,931/- could not been utilized, Rs.57,05,542/- of the second respondent was available. If the shares could be allotted to Mr.A.Ramesh [the 2nd respondent in C.P.No.23 of 2003/2nd appellant in C.M.A.Nos.4108 & 4109 of 2005] from and out of the amounts lying in his credit in the first appellant Company in C.M.A.Nos.4108 & 4109 of 2005.

123. Thus, it is in this background, the Company Law Board has directed Mr.A.Ramesh, [2nd appellant in C.M.A.Nos.4108 and 4109 of 2005/2nd respondent in C.P.No.23 of 2003], to allot the transferred shares to the



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petitioners in C.P.No.23 of 2006, the contesting respondents herein. The

Company Law Board has noted the submissions of the contesting respondents herein. It therefore does not call for an interference.

124. The Hon'ble Supreme Court in **Dale & Carrington Invt. (P) Ltd. Vs. P.K.Prathapan** – (2005) 1 SCC 212 held that when powers of the Board of Directors are used for an extraneous purpose like maintenance or acquisition of control over the affairs of the Company, the same cannot be upheld. The directors' acts should not only satisfy the test of bonafides, they should also be done with a proper motive. The Hon'ble Supreme Court in **Sangramsinh P. Gaekwad Vs. Shantadevi P.Gaekwas** – (2005) 3 Comp LJ 385 (SC) while considering the duty of Directors, came to the conclusion that their duty is to make a full and honest disclosure to the shareholders, inter-alia, as regard to issue of additional shares. If the purpose is proper and the action of the Directors are *bonafide*, there is no legal requirement of making full and honest disclosure to the shareholders relating to issue of additional shares. However, the directors in instant matter failed to act *bonafide*. They owed a duty to the contesting respondents herein, the petitioners in C.P.No.23 of 2003, in respect of the additional shares.



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125. If further shares were issued to create a new majority or to convert a majority into a minority, or, such issue is made in a closely held company to the detriment of a part of the shareholders, then such further issue of shares could be considered to be an act of oppression. This is what was held in **Deepak C.Shriram Vs. General Sales Limited** – (2001) 4 Comp LJ 450. The Company Law Board in **Stridewell Leathers (P) Ltd. Vs. Shoe Specialities (P) Ltd.** - (1996) 1 Comp LJ 426 had set aside the allotment of further shares since such allotment was found to be oppressive of the petitioners. In **S.T.Ganapathy Mudaliar Vs. S.G.Pandurangam**, (1999) 1 Comp LJ 350, the Company Law Board had cancelled the allotment of additional shares in a family company made exclusively in favour of one group, though such allotment was found to be legal and valid, but oppressive to the other group of family members.

126. The Calcutta High Court in **Tea Brokers (P) Ltd. Vs. Hemendra Prosad Barooah** – (1998) 5 Comp LJ 463 (Cal) held that any single act done on one particular action, if the effect of such an act will be of a continuing nature and the member concerned is deprived of his rights and privileges for all



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time to come in future, it would be construed that the affairs of the Company are being conducted in a manner oppressive to any member of members, as laid down in section 397.

127. The High Court of Calcutta in **Tea Brokers (P) Ltd. Vs. Hemendra Prasad Barooah** (supra) held that even a single act done on one particular occasion, if the effect will of a continuing nature and the member concerned is deprived of his rights and privileges for all time to come in future, such an act is held to be harsh and burdensome and amounts to an act of oppression to the member concerned.

128. The arguments that the existing share holders are not entitled to be given further preemptive rights based on the decision of the Hon'ble Supreme Court in **Sangramsingh P.Gaekwad Vs. Shantadevi P.Gaekwad**, (2005) 11 SCC 314 cannot be countenanced. The ratio cannot be applied to the facts of the present case. It is evident that there were pre-existing conflicts and the relationship between the group led by late Mr.A.Ravishankar Prasad, since deceased and his uncle Mr.A.Ramesh, son of late L.V.Prasad, the 2nd appellant in C.M.A.Nos.4108 & 4109 of 2005. The relationship was not cordial and the



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attempt of Mr.A.Ramesh the 2nd appellant in C.M.A.Nos.4108 and 4109 of 2005 was to outsmart his nephew and nieces and their group (the petitioners in C.P.No.23 of 2003) from the first appellant Company in C.M.A.Nos.4108 & 4109 of 2005. It is in these circumstances, the Company Law Board has ordered the shares to be transferred by Mr.A.Ramesh, the 2nd respondent in C.P.No.23 of 2003/2nd appellant in C.M.A.Nos.4108 and 4109 of 2005.

129. The allotment in favour of the group led by Mr.A.Ramesh was neither *bonafide* nor a proper. The procedure followed to make the allotment of unsubscribed shares to the respondents group is liable to be set aside as laid down in **Dale & Harrington Investment (P) Ltd., Vs. P.K.Prathapan** (cited supra).

130. In the present case, the allotment of impugned shares in exclusion of the group led by the late Mr.A.Ravishankar, though a single wrongful act is nothing but an act of oppression, especially when the impact of such non-allotment will be continuous and cascading effect there is no prospect of remedying the situation by the voluntary act of the party responsible for the wrongful act. Thus, the Company Law Board was bound to interfere by an



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appropriate order under section 397 of the Act, as held in **Stridwell Leathers**

(P) Limited Vs. Shoe Specialities (P) Limited (supra).

131. The observation that the conduct of the contesting respondents, as reflected in the proceedings before the Company Law Board would not disentitle them from enforcing their legal rights for further issue of shares in the Company, therefore does not call for any interference.

132. I don not find any irregularity in the Company Law Board in appointing an Inspector for the purposes of the investigation, in exercise of the powers under section 235 of the Act. By virtue of Clause (b) of Section 237, the Company Law Board can take an initiative for ordering an investigation suo-motu or on the application or information supplied by any share holder or other person. Though, the contesting respondent did not invoke Section 237(b) of the Companies Act, 1956, yet, if the Company Law Board is satisfied that under the circumstances of the case, suggest Clauses (i), (ii) or (iii) of Section 237(b) of the Act was attracted, then an investigation can be ordered into the affairs of the Company, as held in **Barium Chemicals Ltd. Vs. Company Law Board** (supra).



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133. The contesting respondents led by Late Mr.A.Ravishankar Prasad (the petitioners in C.P.No.23 of 2003) were not informed that the amount is lying in the credit of Mrs.A.Saisivajothi, the 2nd respondent could be utilized for allotment of shares. However, while allotting the shares to the group led by the 2nd appellant themselves, they have utilized the amounts lying in their credit in the first appellant Company. Thus, there was discrimination. The Company Law Board has also recorded that the parties have also not brought to the attention of this Court that the aforesaid amount of **Rs.57,05,542/-** has been transferred to Mrs.A.Saisivajothi or that the aforesaid amount was encashed by Mrs.A.Saisivajothi during the pendency of either the Company Petition before the Company Law Board or during the pendency of these Civil Miscellaneous Appeals.

134. It is true that the Company could not eternally wait for the allotment of additional shares and that the directors of a company are in a fiduciary position *vis-a-vis* the company and must exercise their power for the benefit of the Company, as held in **Nanalal Vs. Bombay Life Assurance Co.** (supra). However, it was obligatory on the part of the Directors of the 1st appellant



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company in C.M.A.Nos.4108 & 4109 of 2005, in the light of the special circumstances which arose on account of the resolution passed at the board meeting held on **20.09.2002** granting some more time to bring in further share application money by petitioners, send a prior intimation in favour of the petitioners, before allotting the unsubscribed shares in favour of the respondents.

135. This fiduciary duty of directors of the Company has been recognized by the Supreme Court in **Sangramsinh P.Gaekwad Vs. Shantadevi P.Gaekwad** (supra) thus: “In an appropriate case, a fiduciary relationship may come into being having regard to the responsibility undertaken by the directors towards the shareholders by way of a special contract.” The obligation becomes more onerous in the light of the fact that the allotment of 1,32,594 shares in favour of the respondents were already made not against any fresh share application money, but against the amounts lying to their credit with the Company. Furthermore, the Company had unilaterally returned the amounts due to the petitioners, without allotting the shares against the outstanding amounts due to them. Thus, the board of directors of the Company failed to treat the petitioners and the respondents alike, but acted



against the interests of the petitioners.

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136. Thus, I find no error in the impugned order of the Company Law Board which directed the petitioners in C.P.No.23 of 2002 to make payments for the proportionate shares within a period of 45 days i.e., by 14.10.2005. This order could not be complied with fully the Impugned Order dated 01.09.2005 was stayed by this Court on **21.12.2005** which was later made absolute on **08.02.2017**. In fact, the Company Law Board ought to have ordered allotment from and out of **Rs.57,05,542/-** lying in the credit of Mr.A.Sai Sivajothi, the 2nd respondent herein/2nd petitioner in C.P.No.23 of 2003.

137. The Company Law Board has observed that the founder of the Company Mr.L.V.Prasad died on 22.06.1994 leaving a will. When the second appellant had applied for the grant of probate of the will, the respondents opposed the probate proceedings and assailed the will of late Mr.L.V.Prasad, bequeathing his shares in the Company in favour of the second appellant, as a fake one on the ground, inter-alia, that “As per the wish of the testator Prasad Production (“the Company”) should be for the benefit of the entire family and none should get additional advantage or exclusive control of the said



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company”. The respondents had exhausted all their remedies, including before the apex court, unsuccessfully. The parties are litigating over the film shooting equipments leased out in favour M/s.Anand Cine Services and recovery of possession of a flat in possession of the first petitioner. Thus, the relationship between the two groups was embittered for several years beyond redemption.

138. Even though there is no material to show that the 2nd appellant remitted the share application money in respect of 1,32,594 shares by way of cash or cheque or bank draft at the time of allotment made at the board meeting held on **20.09.2002**, in terms of the offer letter dated **13.08.2002** sent by the Company. The rights shares viz., **1,32,594** were allotted to the group led by the 2nd appellant against the amounts due to them from the Company. At the same time, the allotment in favour of the contesting respondents was deferred for not having brought further share application money by them. This discrimination has been held not justifiable.

139. That apart, while exercising power under Section 402 of the



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Companies Act, 1956, the order of the Company Law Board dated 01.09.2005

has been guided by equity insofar as the direction to transfer and register the shares in favour of the contesting respondents herein (the petitioners in C.P.No.23 of 2003). On this count, C.M.A.Nos.4108 and 4109 of 2005 are liable to be dismissed and are accordingly dismissed.

140. As far as impleading of the appellant in C.M.A.No.4110 of 2005 namely M/s.Prasad Media Corporation Limited is concerned, the Company Law Board observed as under:-

“The issue as to whether (a) the incorporation of the proposed respondent no.6 by the respondent nos.2 & 3; or (b) the investment of Rs.15 crores made by the Company by way of preference shares in the proposed respondent no.6 or (c) the counter guarantee given securing the liabilities of the proposed respondent no.6 warrants any investigation is separately being considered.”

141. The contesting respondents herein (the petitioners in C.P.No.23 of 2003) had submitted that the Company's funds have been diverted by the appellants in C.M.A.Nos.4108 & 4109 of 2005 and furnished in the rejoinder



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the incidence of the huge investments made by the 1st appellant Company in C.M.A.Nos.4108 & 4109 of 2005, in the proposed respondent no.6 (the appellant in C.M.A.No.4110 of 2005), which would not strictly amount to substitution of one cause of action for another or change of the subject matter of the company petition.

142. The directors have made a categorical statement that the Company made the investment in the appellant in C.M.A.Nos.4108 & 4109 of 2005 viz., Prasad Media Corporation Ltd., Hyderabad, (a company under the same management). The plea of the appellant in the above appeals that the balance sheet of the Company for the year 2000-2001, 2001-2002 and 2002-2003 clearly speak of the investments made by the Company in Prasad Media Corporation Ltd., *prima facie*, do not justify its incorporation viz., Prasad Media Corporation Ltd., exclusively by the respondents 2 & 3. Moreover, the investment in 11% cumulative redeemable preference shares amounting to Rs.10 crores in the appellant in C.M.A.Nos.4108 & 4109 of 2005 (proposed respondent No.6 therein) is found to be approved at the board meeting held on 29.03.2003. The contesting respondents cannot be attributed any knowledge of this investment decision by the Board of Directors of the 1st appellant Company



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in C.M.A.Nos.4108 & 4109 of 2005. It was therefore necessary to ascertain (a) whether the incorporation of the appellant in C.M.A.No.4110 of 2005 (the proposed respondent No.6 in C.P.No.23 of 2003 by the respondent Nos.2 & 3 in C.M.A.Nos.4108 & 4109 of 2005), (b) whether the investment of the Company in the preference shares of the appellant in C.M.A.No.4110 of 2005 (the proposed respondent No.6 in C.P.No.23 of 2003) and (c) the counter guarantee given by the Company securing the liabilities of the appellant in C.M.A.No.4110 of 2005 (the proposed respondent No.6 in C.P.No.23 of 2003) will amount to an act of mismanagement/diversion of funds or not, before which the appellant in C.M.A.No.4110 of 2005 (the proposed respondent No.6 in C.P.No.23 of 2003) must be given an opportunity of hearing on these contentious issues. Thus, impleading of the appellant in C.M.A.No.4110 of 2005 (the proposed respondent No.6 in C.P.No.23 of 2003) does not warrant interference.

143. There are indications that several acts of mismanagement may have been committed by the 1st appellant Company in C.M.A.Nos.4108 & 4109 of 2005 by advancing loans to the appellant in C.M.A.No.4110 of 2005 (the proposed respondent No.6 in C.P.No.23 of 2003). There are indications that the



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project which was meant for the 1st appellant Company in C.M.A.Nos.1408 & 1409 of 2005 was allowed to be diverted M/s.Prasad Media Corporation Limited thereby indirectly diluting the right to receive the dividend out of the projects of the Company.

144. If the same business which was hived off to the appellant in C.M.A.No.4110 of 2005 was carried by the 1st appellant in C.M.A.Nos.4108 & 4109 of 2005, the dividend payable to the contesting respondents would have been much higher inspite the entire business being handed over to a different entity as the bulk of shares were held by Mr.A.Ramesh and his family. It is under these circumstances, the Company Law Board has called upon the appellant in C.M.A.No.4110 of 2005 to answer to the charges levelled in relation to it by 14.10.2005 for which, the respondent in C.P.No.23 of 2003 (appellants in C.M.A.Nos.4108 and 4109 of 2005) to give their answer. Therefore, I do not find any error in the impugned order of the Company Law Board impleading the appellant in C.M.A.No.4110 of 2005 as the 6th respondent in C.P.No.23 of 2003.

145. The 1st appellant Company in C.M.A.Nos.4108 & 4109 of 2005 was



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also called upon to file additional reply with respect to investments in M/s.Prasad Film Labs (Mumbai) Private Limited. The only mistake that perhaps made by the Company Law Board was that both the Company Petition and Company Application No.20 of 2005 was stated to have been disposed of. However, at the same time, Company Law Board has reserved its rights to issue appropriate direction on the charges made against the two Companies and to that end, the matter was called upon to be listed on **07.11.2005**, more than 20 years have lapsed and the grievances of the petitioners in C.P.No.23 of 2003 the contesting respondents still stands unresolved on account of the alleged acts of mismanagement and group imperialism by the Board of Directors/majority share holders in the affairs of the 1st appellant Company in C.M.A.Nos.4108 & 4109 of 2005.

146. The arguments that in the eye of law, the group represented by Late Mr.A.Ravishankar Prasad, the 1st respondent in C.M.A.Nos.4108 & 4109 of 2005 were different and merely because the amounts were lying in the credit of Mrs.A.Saisivajothi, the 2nd respondent in C.M.A.Nos.4108 & 4109 of 2005 *ipso facto* would not mean that the amounts could not be utilized for allotting shares particularly when it is an admitted position that Mr.A.Ravishankar



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Prasad represented by his wife Mrs.A.Saisivajothi, the 2nd respondent in

C.M.A.Nos.4108 & 4109 of 2005, his brother Mr.A.Manohar Prasad, the 3rd respondent in C.M.A.Nos.4108 & 4109 of 2005 and his sister Mrs.A.Manorama, the 4th respondent in C.M.A.Nos.4108 & 4109 of 2005 as a *proxi*. This is evident from the Annual General Meeting dated 03.06.2003 when Mr.A.Ravishankar Prasad, the 1st respondent in C.M.A.Nos.4108 & 4109 of 2005 demanded a poll for adoption of the Directors Report, Annual Accounts and Audit Report of the Company under Rule 4 of the Companies (Compliance Certificate) Rules, 2001. It is, in this report, for the first time, the Directors Report in the year 2001-2002 was produced giving the details of advance paid to the appellant in C.M.A.No.4110 of 2005 and the Counter-Guarantee extended on behalf of the appellant in C.M.A.No.4110 of 2005 for the loans availed from M/s.Andhra Bank, Hyderabad and the Industrial Development Bank of India (IDBI), Hyderabad to the extent of 2450 Lakhs and 1700 Lakhs respectively.

147. It is, in that report also for the first time, the details of other loans of Rs.15,51,42,540/- that was given was brought out. The appellant Company M/s.Prasad Media Corporation Limited in C.M.A.Nos.4108 & 4109 of 2005



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itself was incorporated in the year 2001 as is evident from the Report dated

31.01.2001 which was adopted in the meeting of the share holders held on **17.07.2002** which is about a year before the presentation of C.P.No.23 of 2003 on 12.05.2003 before the Company Law Board. As the Company Law Board is a quasi-judicial body it regulates its own procedures under the Companies Act, 1956. It was therefore entitled to oversee the operations of the Company, so that there was no oppression of minority share holders or mismanagement of the Company.

148. Although the Company Petition was disposed, the Company Law Board has retained its jurisdiction as it was clear that there were large scale irregularities in the conduct of the affairs of the Company, the Appellant in C.M.A.Nos.4108 & 4109 of 2005 by the majority share holders led by Mr.A.Ramesh, the 2nd Appellant in C.M.A.Nos.4108 & 4109 of 2005 with a view to isolate the minority share holders, the contesting respondents herein. The Company Law Board can not be a mere spectator and a dumb witness to the oppression of minority share holders and turn a Nelson's eye to the reality presented before it.



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149. The dispute started in the beginning of this century. The 2nd respondent has also died during the pendency of these appeals. Therefore, this Court can brook no delay any longer in rendering of justice any longer. It is not open for either of the Appellants to plea acquiescence by the contesting respondent before the Company Law Board and thus it was an exercise for hunting for informations. The powers under Sections 397 and 402 of the Companies Act, 1956 is not only for granting relief that is sought for but also how the relief is implemented and how the short falls are rectified. Since the Company Law Board has been superseded by the National Company Law Tribunal (NCLT), the case has to therefore be necessarily adjudicated by the National Company Law Tribunal and taken to its logical end.

150. In the result, all these three Civil Miscellaneous Appeals are dismissed. NCLT, which has replaced the Company Law Board is directed to renumber C.P.No.23 of 2003 and proceed to pass final order in pursuance of the impugned order. No costs.

25.07.2024

arb/jen



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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

C.SARAVANAN, J.

arb/jen

To:

- 1.The Company Law Board,
Additional Principal Bench,
Chennai.
- 2.The Section Officer,
Vernacular Section,
Madras High Court.

Pre-delivery Common Judgment
in
C.M.A.Nos.4108, 4109 and 4110 of 2005