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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 01 February , 2024**
Judgment pronounced on : 03 April, 2024

+ **CO.A(SB) 59/2015**

VANTAGE CONSTRUCTION PRIVATE LIMITED & ANR.

..... Appellants

Through: **Mr. Abhishek Kumar Rao, Mr.
Shailesh Suman, Advs.**

versus

NPS CHAWLA & ORS.

..... Respondents

Through: **Mr. Abhimanyu Mahajan, Ms.
Anubha Goel and Mr. Mayank
Joshi, Advs. for R-1 and R-2
Mr. Ajay Digpaul, CGSC with
Mr. Kamal Digpaul and Ms.
Ishita Pathak, Advs. for UOI**

+ **CO.A(SB) 60/2015**

EARL CHAWLA & CO. PVT. LTD & ANR. Appellants

Through: **Mr. Abhishek Kumar Rao, Mr.
Shailesh Suman, Advs.**

versus

NPS CHAWLA & ORS.

..... Respondents

Through: **Mr. Abhimanyu Mahajan, Ms.
Anubha Goel and Mr. Mayank
Joshi, Advs. for R-1 and R-2**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common order shall decide the instant appeals that have been preferred by the appellants under Section 10-F of the Companies



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Act, 1956¹, assailing the Impugned Order dated 24.06.2013 passed by the Company Law Board, New Delhi Bench² in Company Petition No. 8/111/2010 and 9/111/2010, whereby, while interpreting the Will dated 04.07.1986 of Late Smt. Ram Piari Chawla, the CLB in Company Petition No. 8/111/2010 directed equal division (1/3rd each) of the 100 shares of the appellant company - Vantage Construction (P) Limited, between the three children of the testator and cancelled the allotment of 9800 shares in the name of appellant No. 2 - Late Mr. HPS Chawla (respondent No. 2 before the CLB).

2. Likewise, the CLB in Company Petition No. 9/111/2010 directed equal division (1/3rd each) of the 5 shares of the appellant company - Earl Chawla & Company (P) Limited, between the three children of the testator and cancelled the allotment of 990 shares in the name of appellant No. 2 - Late Mr. HPS Chawla (respondent No. 2 before the CLB).

3. It is clarified that these appeals arise from separate judgments but emanate from a common factual matrix except to the extent of the paid up capital of each company and the appeals raise common questions of law and facts, and therefore, can be conveniently decided together. However, for the sake of convenience, the appeal bearing CO.A(SB) 59/2015 is taken to be the lead case.

FACTUAL BACKGROUND:

4. Mrs. Ram Piari Chawla, born in 1909, had five children, namely

¹ The Act

² CLB



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Raj Sahni Chawla, TPS Chawla, NPS Chawla, Nirmal Daniere and HPS Chawla. The appellant Company *viz.*, Vantage Construction Private Limited³ was incorporated on 19.02.1986 under the aegis of Mr. H.P.S. Chawla (hereinafter 'HPSC') having its registered office at No. 37, Prithviraj Road, New Delhi, and was set up for the purpose of running a real estate and construction business. It is the case of the appellants that Mr. HPSC had spent about 20 years in the U.S.A., and he returned to India to take care of his ailing mother, who at that time was 77 years of age. It is further stated on behalf of the appellants that at the time of incorporation, in order to fulfil the legal requirement of having at least 2 members/shareholders and a Director, Mr. HPSC out of love and affection, made his mother, Smt. Ram Piari Chawla a shareholder and Director of the Company. The authorised share capital of the Company was 10,000 share of Rs. 10/- each and the paid-up share capital of the Company was 200 shares of Rs. 10/- each. Thus, at the time of incorporation, Mr. HPSC and his mother, Smt. Ram Piari Chawla were the Directors and were shown to have 100 shares each.

5. Shorn of unnecessary details, Smt. Ram Piari Chawla passed away on 27.10.1990 and left behind a Will dated 04.07.1986 in favour of her surviving children *bequeathing all her movable and immovable properties* equally amongst her three children *viz.*, Mr. HPSC, Dr. N.P.S. Chawla (hereinafter 'NPSC') and Mrs. Nirmal Chawla Daniere (hereinafter 'NCD') i.e., 1/3rd share each.

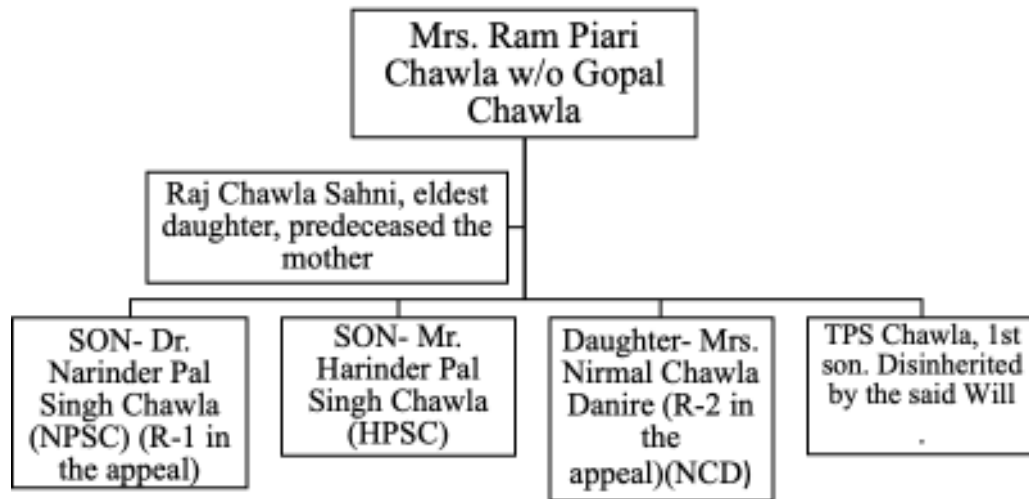
³Company



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For the sake of convenience, a flow chart has been produced hereinbelow –



6. On the demise of his mother, NPSC, being one of the Executors of the Will, along with his sister NCD, instituted a Probate before this Court being Petition No. 22 of 1991, which was allowed vide judgment/order dated 17.01.2005, thereby granting the letters of administration to NPSC as the sole executor. It is pertinent to mention that HPSC did not contest the Will as such and the probate was contested by TPS Chawla as he was irked by certain observations/comments made by his mother in the Will, which were eventually expunged. But HPSC was aggrieved since he was not made a joint executor of the Will and he filed an appeal being FAO (OS) No. 55 of 2005 before a Division Bench of this Court, which was dismissed vide judgment/order 22.09.2005. Unrelenting, HPS Chawla filed an SLP bearing No. 21740/05 against the said order. The Supreme Court passed an order on 28.09.2006 recording the



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submissions of the counsel appearing on behalf of HPSC as he submitted that HPSC would not dispute any part of the Will nor claim exclusive title to any of the properties covered by the said Will, and on that broad understanding, the Supreme Court referred the parties to mediation vide order dated 14.01.2009.

7. It is pertinent to mention that the Supreme Court, vide order dated 15.07.2010, converted the said SLP into a Civil Appeal bearing No. 5452/10. Respondents No. 1 and 2 arrived at a mutual consensus and prepared a 'Joint Memo' recording the terms and deliverables with regard to the disposal of the estate of their mother - late Ram Piari Chawla. Consequently, the Appeal was disposed of by taking on record the 'Joint Memo' recording the consent terms arrived at and agreed to by the parties.

8. However, there was no quietus to the disputes between the parties, as evidently, HPSC dilly dallied the issue of transfer of 1/3rd shares each in favour of NPSC and NCD *inter alia* asserting that the said 100 shares are not a part of the estate of late Smt. Ram Piari Chawla, which would be evident from the reading of the Will itself, wherein every movable and immovable property was enlisted apart from the shares in question, regarding which there was no disposition. A plea was canvassed that the deceased was merely holding the shares in the company in trust, for and on behalf of HPSC.

9. The matter became more complicated, when on 01.12.2008, HPSC wrote a letter to the Respondents confirming that they are entitled to 1/3rd share each, in the 100 equity shares held by their mother, stating that these 100 shares amounted to 10% shareholding



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of the company instead of 50% as held by their mother. On seeing the same, the Respondents were shocked as to how their mother's 50% shareholding was reduced to only 10% when the Appellant Company was left with only one Director by the time their mother died on 27.10.1990. Aggrieved of such an outcome, the respondents i.e., Dr. NPSC and his sister NCD preferred a petition under Section 111⁴ of

⁴ **111. [Power to refuse registration and appeal against refusal**

(1) If a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the [Tribunal] against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in sub-section (1), either to register the transfer or transmission or to send notice of its refusal to register the same.

(3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company.

(4) If-

(a) the name of any person-

(i) is without sufficient cause, entered in the register of members of a company, or

(ii) after having been entered in the register, is without sufficient cause, omitted therefrom; or

(b) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member [including a refusal under sub-section (1), the person aggrieved, or any member of the company, or the company, may apply to the [Tribunal] *[Substituted by Act 11 of 2003, Section 15, for " Company Law Board" .]* for rectification of the register.

(5) The [Tribunal] *[Substituted by Act 11 of 2003, Section 15, for " Company Law Board" .]*, while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after hearing the parties, either dismiss the appeal or reject the application, or by order-

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) The [Tribunal] *[Substituted by Act 11 of 2003, Section 15, for " Company Law Board" .]*, while acting under sub-section (5), may, at its discretion, make,-

(a) such interim orders, including any orders as to injunction or stay, as it may deem fit and just;



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the Act for rectification of the register of shareholders.

IMPUGNED ORDER BY THE CLB:

10. It would be relevant to extract the reasons that prevailed in the mind of the CLB in passing the impugned order, which read as under:

-
- (b) such orders as to costs as it thinks fit; and
(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.
- (7) On any application under this section, the [Tribunal] [*Substituted by Act 11 of 2003, Section 15, for " Company Law Board" .*]-
(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register;
(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.
- (8) The provisions of sub-sections (4) to (7) shall apply in relation to the rectification of the register of debenture holders as they apply in relation to the rectification of the register of members.
- (9) If default is made in giving effect to the orders of the [Tribunal] [*Substituted by Act 11 of 2003, Section 15, for " Company Law Board" .*] under this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to [ten thousand rupees] [*Substituted by Act 53 of 2000, Section 45, for " one thousand rupees" (w.e.f. 13.12.2000).*], and with a further fine which may extend to [one thousand rupees] [*Substituted by Act 53 of 2000, Section 45, for " one thousand rupees" (w.e.f. 13.12.2000).*] for every day after the first day after which the default continues.
- (10) Every appeal or application to the [Tribunal] [*Substituted by Act 11 of 2003, Section 15, for " Company Law Board" .*] under sub-section (2) or sub-section (4) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.
- (11) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company is transmitted by a sale thereof held by a Court or other public authority, the provisions of sub-sections (4) to (7) shall apply as if the company were a public company:
Provided that the [Tribunal] [*Substituted by Act 11 of 2003, Section 15, for " Company Law Board" .*] may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefore or such other sum as the [Tribunal] [*Substituted by Act 11 of 2003, Section 15, for " Company Law Board" .*] may determine to be a reasonable compensation for the right in all the circumstances of the case.
- (12) If default is made in complying with any of the provisions of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred rupees] [*Substituted by Act 53 of 2000, Section 45, for " fifty rupees" (w.e.f. 13.12.2000).*] for every day during which the default continues.
- (13) Nothing in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company.]
- (14) [In this section "company" means a private company and includes a private company which had become a public company by virtue of section 43-A of this Act.] [*Inserted by Act 22 of 1996 Section 30 and Schedule (w.r.e.f. 20.9.1995).*]



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“11. On hearing the submissions of the Petitioner side counsel Mr. Nagesh and R-2 in person, I have noticed R-2 admittedly stated that their mother executed a Will bequeathing all her moveable and immoveable assets lying in the name of her to her three children 1/3rd each. It is not the case of the case of the respondent-2 that the shares are not movables; it is also not the case of him their mother has no shares in the name of her. It is known law the share are categorized as goods being movables, when the will is inclusive of all movables of their mother, then shares in the name of her obviously devolve upon these Petitioners and R-2. Here it has come to notice that the Petitioners through wealth tax return filed by their mother that her mother had 100 shares amounting to 50% shareholding in R-1 company that being the fact the Petitioners and 2nd respondent are entitled to 1/3rd shares each.

12. For having R-2 continued litigation from probate proceeding till mediation centre for more than 20 years before various courts, he is estopped from saying that the Petitioners claim has become state by efflux of time. It is mandatory under Section 111 to respond to the claim made by the Petitioners, whereas it is directory on the part of the claimants to file appeal within two months from the date of refusal or within four months from the date of making claim. Here, R-2 caused delay in dragging the litigation over the probate proceedings. It is obvious that the Petitioners could not file an application for transmission of the shares unless probate proceedings are decided. The Petitioners approached this Bench within time after the mediation centre disposed it off.

13. R-2 himself admittedly stated that he has not refused transmission of shares except asking succession certificate and other proofs identifying them as legal heirs of his mother.

14. In the company, usually these conditions are to be complied with when the claimants are some strangers, here they are none other than real brother and real sister of R-2, and so the question of indentifying will not arise. More so, he has not mentioned anywhere they are not his brother and sister. He has also not mentioned his mother has not executed a Will in favor of them bequeathing all moveable and immoveable assets of her to the Petitioners and R-2. Thereby, R-2 should not take the shelter of technicalities and refuse transmission of shares to the petitioners as bequeathed by their mother.

15. In view of it, I am of the opinion that the Petitioners are entitled to 1/3rd each in the shareholding of their mother, accordingly it is hereby directed that R-1 Company to transmit 1/3rd i.e. 33% to the P-1, 24% to P-2 and 33% to R-2 in the shareholding of their mother and delete the name of R-3 holding 100 shares as her name was entered without sufficient cause.

16. It is explicit in the proceedings that R-2 has not made any specific denial or explanation making allotment of 9800 shares to him and showing 100 shares of her mother in his daughter name who was not a shareholder





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nor director when their mother was alive. R-2 alone could not have held any meeting specifically general meeting of the company and pass any resolution for the gain of themselves which is in violation of the Companies Act. Under Section 111(4) of the Companies Act, CLB is conferred with jurisdiction to rectify the register of members in a private company whenever it is felt wrong entry of any entry without holding any valid meeting as required under law, therefore such increase being the back of the petitioners is held invalid and without any sufficient cause. Even if it is considered as legal requirement to enhance paid up capital to one lac, this could be complied with by rectifying the register showing further allotment to the petitioners and second respondent in proportion of the shares transmitted to the petitioners. Hence I am of the view that 9800 shares shown in the register shall be deleted in the name of R-2 if law demands it to be shown as one lac in the company the same could be shown as allotted to three of them in proportion to their entitlement.

17. As to the reliefs in respect of their mother, shares, R-1 Company is hereby directed to delete the name of R-3 holding 100 shares from the register and rectify the register by transmitting the names of the petitioners and second respondent showing 1/3 each in the 100 shares held by their mother late Smt. Ram Piari Chawla in R-1 Company as to the allotment of 9800 shares shown in the name of R-2, R-1 company and R-2 are hereby directed to delete the entry of 9800 shares in the name of R-2 and intimate the same to the RoC concerned forthwith.

18. Accordingly, this Bench allowed this petition without costs.”

GROUND OF APPEAL:

11. The appellants have assailed the impugned order *inter alia* on the grounds that the CLB has erroneously arrived at the conclusion that the shares held by the deceased testatrix were also included within the meaning and scope of the ‘movable properties’ in the Will dated 04.07.1986, overlooking the patent fact that the “list of movable and immovable properties” contained in the Will was an exhaustive one and that the shares were not a part of the estate of late Smt. Ram Piari Chawla. Further, it is stated that the CLB did not consider the fact that late Smt. Ram Piari Chawla was 77 years of age when the appellant company was incorporated and that she had no role in its affairs whatsoever, so much so that for all practical purposes, the appellant



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company has always been run in the nature of a sole proprietorship by HPSC; and that even in the Probate Petition No. 22/1991 there was no specific mention of the 100 shares of the appellant company as property belonging to and left behind by the testatrix; and that by all means the deceased was holding the shares in her name only in trust, for and on behalf of her son HPSC.

12. Additionally, it is urged that the CLB committed a grave jurisdictional error in proceeding under Section 111 of the Act and cancelling the allotment of 9800 shares in favour of HPSC, as the same was not warranted in summary proceedings. In this regard it is urged that the 9800 shares had been allotted to HPSC as far back as 10.10.2002 whereas the Probate of the Will of late Smt. Ram Piari Chawla was granted by this Court only on 17.01.2005; and that the Company Petition No. 8/111/10 was filed much later, on 11.05.2010.

13. In the backdrop of the aforesaid challenges, it is submitted that the questions of law involved in the present matter are to the following effect:

“(i) When a person who is shown in the statutory documents of a Company to hold shares does not intend to own the same but merely held them in trust exclusively for and on behalf of another person, whether such shares can be included as part of the estate of such person?

(ii) Whether the CLB while dealing with the issue of rectification of members register under Section 111 of the Companies Act, 1956 is competent in law to cancel the allotment of shares?”

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

14. Mr. Rao, learned counsel for the appellants urged that the shares of the appellant company were never a part and parcel of the Will



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dated 04.07.1986 left behind by Smt. Ram Piari Chawla and it was after 20 long years that respondents No. 1 and 2 chose to lodge a claim seeking to get the shares transferred in their names, which application was hopelessly barred by limitation since they had knowledge of such shareholdings vide paragraph (8) of the Probate application, wherein it was indicated that the deceased was filing her wealth tax returns, which *inter alia* reflected the shareholdings too. It was vehemently urged that the claim with regard to the shares in question was never an issue raised before the Supreme Court either and that having taken advantage of the settlement arrived at before the Supreme Court, it was not open to the respondents to turn around and stake a claim over 1/3rd of the shares each, that were in the name of the deceased.

15. Lastly, it was vehemently urged that 9800 shares were allotted in the name of HPSC on 10.10.2002, who was running and taking care of the affairs of the appellant company and the CLB committed a grave error in cancelling such allotment after almost 11 years. It was strenuously urged that the company petition seeking reliefs under Section 111 of the Act was itself not maintainable. Learned counsel for the appellants relied on the decisions in **Bakshi Ram v. Brij Lal**⁵, **Shyam Telelink Ltd Now Sistema Shyam Teleservices Limited v. Union of India**⁶ and **Commissioner of Customs, New Delhi v. Caryaire Equipment India Private Limited**⁷.

16. *Per contra*, Mr. Mahajan, learned counsel for the respondents has vehemently urged that after the demise of HPSC on 03.04.2014,

⁵ 1994 Supp (3) SCC 198

⁶ (2010) 10 SCC 165

⁷ (2012) 4 SCC 645





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the appellants-legal heirs are now setting up a new case, which was never canvassed or argued by the deceased – HPSC himself. It was pointed out that respondent No.1/NPSC in Probate Case No. 22/1991 *vide* paragraph (4) had categorically made an averment that his mother had invested some amount in the two companies *viz.*, Earl Chawla & Company Private Limited and Vantage Construction Private Limited, that was being managed and run by HPSC and she had also lent some amounts to HPSC but the latter had failed to render accounts of the same, despite several reminders.

17. It was further urged that Company Petition No. 8/111/10 as well as No. 9/111/10 had been filed before the CLB on 11.05.2010, when the matter was already in mediation before the Delhi High Court Mediation Centre pursuant to the directions of the Supreme Court, and evidently, a ‘Joint Memo’ had been executed by the parties on 07.08.2010. It was pointed out that a reply had been filed by HPSC on their Company Petition under Section 111 of the Act before the CLB on 10.08.2010, wherein for the first time a plea was taken by HPSC that the Will dated 04.07.1986 had no mention of the shareholding of Smt. Ram Piari Chawla in any of the companies and that NPSC and NCD were stopped from raising any claim or objection after 20 years of the demise of late Smt. Ram Piari Chawla particularly when the same was also done without obtaining formal Succession Certificate.

18. Learned counsel for the respondents invited the attention of this Court to various letters dated 22.11.2008, 01.12.2009 and 15.12.2009 written by HPSC and the reply to said letters by respondent



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No.1/NPSC dated 25.02.2010. Lastly, it was urged that the plea by the appellants that shares were being kept in trust by late Smt. Ram Piari Chawla for and on behalf of HPSC is not tenable in law as no declaration was ever filed in this regard as provided for in Section 187⁸ of the Act.

ANALYSIS & DECISION:

19. I have given my thoughtful consideration to the submissions advanced by the learned counsels for parties at the Bar. I have also perused the relevant record of the case as also the case law relied upon by the counsels for the parties.

20. First things first, it would be expedient to refer to Section 10F of the Act, which provides as under:-

“10F. Appeals against the orders of the Company Law Board

Any person aggrieved by any decision or order of the Company Law Board [made before the commencement of the Companies (Second Amendment) Act, 2002] may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period

⁸ 187. Representation of corporations at meetings of companies and creditors :-

(1) A body corporate (whether a company within the meaning of this Act or not) may-

(a) if it is a member of a company within the meaning of this Act, by resolution of its Board of Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company:

(b) if it is a creditor (including a holder of debentures) of a company within the meaning of this Act, by resolution of its Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised by resolution as aforesaid shall be entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the body corporate which he represents as that body could exercise if it were [an individual member], creditor or holder of debentures of the company.



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not exceeding sixty days.”

21. A bare perusal of the aforesaid provision would show that if a person is aggrieved by the decision or an order of the CLB, an appeal may be preferred before this Court within 60 days from the date of communication of the decision or the order, and such appeal shall be on any ‘question of law’ arising out of such order. The period of 60 days is further extendable by the High Court by another 60 days on being satisfied that the appellant had been prevented by sufficient cause in not filing the appeal within the initial prescribed period of 60 days.

22. First things first, *ex facie*, the present appeal, which is primarily assailing the substantive order dated 24.06.2013, was instituted on 20.11.2015 and no leave of the Court has been taken for permitting condonation of delay on any sufficient grounds or otherwise; and the appeal appears to have been filed consequent to the order dated 29.09.2015 passed by the CLB in purported exercise of its powers under Section 634-A⁹ of the Act for enforcement of its order dated 24.06.2013. However, the issue as regards the present appeal having been filed beyond the prescribed period of limitation has not been raised during the course of arguments, but there is no gainsaying that

⁹ **634A. [Enforcement of orders of Company Law Board**

Any order made by the Company Law Board [* * *][may be enforced by that Board in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction,-

- (a) in the case of an order against a company, the registered office of the company is situated, or
- (b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain:]

[Provided that the provisions of this section shall not apply on and after the commencement of the Companies (Second Amendment) Act, 2002.] [Inserted by Act 11 of 2003, Section 124.]



the said issue goes to the root of the matter and impacts the jurisdiction of this Court. Needless to state that this Court can *suo motu* determine as to whether the appeal is barred by limitation, which clearly appears to be the case in the present matter. Therefore, the appeal can be thrown out at the outset.

23. Be that as it may, given that much time has elapsed since the date of institution of the present appeals, it would be expedient for this Court to make a determination on the merits of the case. At the cost of repetition, the appeal could only lie on a ‘question of law’ since the right to file such an appeal is conferred by the statute. Therefore, it is but necessary that the contours of any inquiry by this Court should be determined on the basis of whether or not there arises any ‘question of law’ in the present appeal. Reference can be invited to the decision in the case of **Purnima Manthena v. Ranuka Datla**¹⁰, wherein after referring to a catena of decisions on the issue as to what constitutes a ‘question of law’, the Supreme Court held as under:-

“49. The unequivocal legal propositions as judicially ordained, to ascertain the emergence and existence of a question of law, the scope of examination thereof by a court of appellate jurisdiction and the balancing of the competing factors in the grant of interlocutory remedy, hallowed by time, indeed are well settled. A 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. A decision however, on the issues raised, is a sine qua non for a question of law to exist. A decision logically presupposes an adjudication on the facets of the controversy involved and mere deferment thereof to a future point of time till the completion of the essential legal formalities would not ipso facto fructify into a verdict to generate a

¹⁰ (2008) 1 SCC 1





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question of law to be appealed from. However, an omission to record a finding even on a conscious scrutiny of the materials bearing on the issues involved in a given case, may be termed to be one. Be that as it may, in any view of the matter, the appellate forum though exercising a jurisdiction which otherwise may be coordinate with that of the lower forum, ought to confine its judicial audit within the layout of the adjudgment undertaken by the forum of lower tier. This is imperative, more particularly in the exercise of the appellate jurisdiction qua a decision on discretion rendered at an introductory stage of any proceeding, otherwise awaiting final adjudication on merits following a full contest. It is settled that no adjudication at the preliminary stage of a proceeding in a court of law ought to have the attributes of a final verdict so as to prejudge the issues at that stage, thereby rendering the principal determination otiose or redundant. This is more so, if the pleadings of the parties are incomplete at the threshold stage and the lower forum concerned seeks only to ensure a working arrangement vis-à-vis the dissension and postpone fuller and consummate appreciation of the rival assertions and the recorded facts and the documents at a later stage.

50. Section 10-F of the Act 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. While the language applied therein evinces that all orders, whether final or interlocutory, can be the subject-matter of appeal, if it occasions a question of law, in our comprehension, the Section per se defines the perimeters of inquisition by the appellate forum conditioned by the type of the order under scrutiny. The nature and purport of the order i.e. interlocutory or final, would thus logically present varying canvases to traverse and analyse. These too would define the flimits of adjudication qua the appellate forum. Whereas in an appeal under Section 10-F from an order granting or refusing interim relief, being essentially in the exercise of judicial discretion and based on equity is an appeal on principle and no interference is merited unless the same suffers from the vice of perversity and arbitrariness, such constrictions may not necessarily regulate and/or restrict the domain of examination in a regular appeal on facts and law. Section 10-F, thus, statutorily demarcates the contours of the jurisdictional exercise by an appellate forum depending on the nature of the order impugned i.e. interlocutory or final and both cannot be equated, lest the pending proceeding before the lower forum, if the order impugned is purely of interlocutory nature, and does not decide any issue on a consideration of the rival assertions on merits, stands aborted and is rendered superfluous for all intents and purposes.



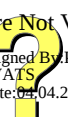
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24. In light of the aforesaid proposition of law, reverting back to the instant matter, what the CLB has done is to interpret the Will dated 04.07.1986 while proceeding under Section 111 of the Act so as to find out whether or not it encompassed the shares in the appellant No.1 company. At the outset, there arise no questions of law in the present matter but the challenge is to pure findings of facts. A careful reading of the Will would show that the testatrix categorically provided that she was bequeathing all her “movable and immovable properties” including the properties described in the Will, in equal shares in favour of NPSC, HPSC and NCD respectively.

25. Indeed if one delves into the recitals of the Will, it does appear that there is no clear mention of the shareholding of the deceased in any of the companies. However, in the petition under Section 276 of the Indian Succession Act for grant of Probate/Letters of Administration instituted by NPSC, vide paragraph (8) it was averred that the “deceased at the time of her death was an income tax and wealth tax assessee and liability to pay tax on her behalf that had been set out in the Annexure D thereto.” In the list of properties filed by NPSC in Probate Case No. 22/1991, vide Item No. 4, there was mention of the deceased having invested some amounts in the two companies i.e. Earl Chawla & Company Private Limited and Vantage Construction Private Limited, which was being managed and run by HPSC, besides having lent some money to HPSC; and it was averred that despite several reminders, HPSC failed to render accounts.

26. At the cost of repetition, there was no challenge by HPSC to the





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legality and validity of the Will left behind by his mother and even in appeal before the Division Bench and Supreme Court his grievance was that he had not been made an Executor of the Will despite a categorical dictate of the testatrix. A perusal of the order dated 20.09.2006 in the proceedings before the Supreme Court would show that the counsel for HPSC made a statement at the Bar that “*so far as Will is concerned, he does not dispute any part of the Will **nor does he claim exclusive title to any of the properties covered by the Will.** The respondents also do not dispute this position. The only concern of the parties at this stage is to dispose of the assets and share the proceeds in the proportion mended by the Will*”. A perusal of the order dated 20.09.2006 would go to suggest that learned counsel for the parties acknowledged that the entire dispute could be amicably resolved. Further, vide order dated 14.01.2009, the Supreme Court referred the matter to mediation. It is pertinent to mention that the instant company petitions under Section 111 of the Act were evidently filed by the respondents - NPSC and NCD, on 07.05.2010.

27. It would be bare repetition that a reply was filed by HPSC on 07.08.2010 wherein he raised a plea that the shareholding was not subject matter of the Will and the respondents had failed to produce a Succession Certificate. It was rightly canvassed by the learned counsel for the respondents that there is more to the story than meets the eye, as it appears that when the parties discussed the issue of shares left behind by the deceased, HPSC wrote a letter dated 22.11.2008 addressed to NPSC as ‘Dear Duke’ in which he acknowledged that their mother owned 100 shares in the company and he conceded that



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“both you and Nirmal are more than welcome to your proportionate share of the same. The company will formally be sending you a written claim to cover your shares of the cumulative losses incurred over the last 18 years by the company along with computed interest @ 24% which has been funded by me entirely. This is a liability which must be settled by you as an Executor of the estate prior to your distribution or sale of assets or the estate”.

28. HPSC then wrote another letter dated 01.12.2008 to NPSC referring to a meeting held on 24.11.2008 at Delhi Gymkhana Club in which he conveyed his displeasure to the effect that NPSC was improperly dealing with the properties left behind by the deceased and it was also brought to the fore that the deceased-mother had a share in Earl Chawla & Company Private Limited, which had not been claimed by him so far. It would be expedient to reproduce the relevant paragraph for better understanding, which goes as under:-

“Regarding your claim to be part owner of Vantage Construction (P) Ltd., vis-à-vis the equity share that were in Mother's name, let me advise you that she also had 100 shares of Earl Chawla & Co. (P) Ltd., which you have so far not claimed. As mentioned to you in my earlier correspondence, both you and Ninnal, are entitled to 1/3rd share in these 100 shares. These 100 shares comprise 10% of each of the Companies. At the same time, I will be sending you a demand of the 2/3rd share of the Losses, incurred by both these companies, for the last 18 years since Mother's demise. Interest at the rate of 24% per annum will also be liable by the Estate, and will have to be settled prior to any distribution of assets of the estate. The detailed accounts will follow shortly, as the records for the last 18 years have to be collated.”

29. HPSC then sent another letter on 15.12.2009 to NPSC but this time addressing him as ‘Sir’ instead of ‘Duke’ and it would be expedient to reproduce the entire letter, which is as under:-



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“Dr. N.P.S. Chawla,
37 Prithvi Raj Road,
New Delhi 110011

December 15, 2009

Ref: Transfer of Shares in the name of late Mrs. Ram Piari Chawla
Sir,

This is in reference to your letter dated 7th November 2009.
Regarding your request for the transfer of shares in this Company
held in the name of late Mrs. Ram Piari Chawla.

In this respect, we would like to inform you, that you are under the
mis-conception that the late Mrs. Ram Piari Chawla was the owner
of 50% of equity in this company. She was the owner of 100
shares on October 27,1990.

For this company to process your request for the transfer of these
shares to your name, we will require that you provide us with the
following documents.

1. Certified copy of the Will. .
2. Certified copy of the Probate Petition, along with annexures, or
Letter of Administration issued by a Court of Law.
3. Certified copy of your Photo identification, along with a recent
photograph, self attested.
- 4.. Certified copy of the Succession Certificate issued by a
Competent Court of Law.
5. Original Share Certificate in the name of Mrs. Ram Piari Chawla
Subsequent to the receipt of these documents, as enumerated
above, we will begin the process to transfer your proportionate
quantum of shares to your name.

Awaiting your reply,

Yours Sincerely,
Vanatage Construction (P) Ltd.
Director”

30. It appears that in response to the said letter, a reply dated
25.03.2010 was sent by NPSC stating as under:-

“Dated:- 25th March, 2010

To,
M/s Vantage Constructions Pvt. Ltd.
N-258, Greater Kailash-1

**Sub:- Transmission of shares held in the name of Mrs. Ram
Piari Chawla**

Please refer to your letter dated 15.12.09 seeking some documents
in relation to the transmission of 33 shares out of 100 shares held



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by late Mrs. Ram Piari Chawla in your company. At the time of her death on 27.10.90 late Mrs. Piari Chawla was the owner of 50% shares in the company.

Even though the probate proceedings are to your knowledge you have with a malafide motive and intention to delay the transmission of the said shares are seeking very same documents which are already in your possession and custody.

Without prejudice to the above I am forwarding the following document to enable you to transmit the said 33 shares in my name.

- a. Notarized true copy of the will
- b. Notarized true copy of the probate petition No. 22 of 91.
- c. Notarized true copy of the photo identification along with original photographs self attested.

The copy of the succession certificate and original certificates are not required for the transmission of the shares.

I therefore request you to transmit the said 33 shares in my favour immediately.

Thanking you,
Yours faithfully
Dr. NPS Chawla”

31. Likewise, a reply dated 25.03.2010 was also sent by NCD as well to HPSC. The aforesaid correspondences evidently show that the claim of the respondents with regard to shares or shareholding of the deceased was very much the bone of contention, that led to the decision of the respondents to institute a Company Petition under Section 111 of the Act and the matter was then settled before the Supreme Court on the basis of a Joint Memo executed by the parties as reflected in the order of the Supreme Court dated 15.07.2010. It would be expedient to reproduce the entire order of the Supreme Court, which goes as under:-

“Leave granted.

2. Respondent No.2, respondent No.1 and appellant are the sons and respondent No.3 is the daughter of late Smt. Ram Piari Chawla. She died on 27.10.1990 leaving a registered Will dated 4.7.1986. By the said Will, she disinherited her first son T.P.S. Chawla, by bequeathing only Rupee one to him and bequeathed all



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her assets in favour of the remaining three children - appellant and respondents 1 and 3, in equal shares. She appointed the first respondent and the appellant as the joint executors of the Will.

3. The first respondent filed an application for grant of probate before the Delhi High Court. The appellant, did not contest the said petition as he was not disputing the Will or the bequests therein. The proceedings for probate were contested by the second respondent-T.P.S. Chawla, though he also did not challenge the execution of the Will. He was aggrieved by certain recitals made in para 4 of the Will about his conduct. He wanted deletion of those in the probate. The learned single Judge of the High Court, by order dated 17.1.2005, granted probate in favour of the first respondent. The learned single Judge directed paragraph 4 of the Will would stand deleted while granting probate or granting certified copies. Thus, the issue with reference to the second respondent was sorted out and he was no longer interested in the matter.

4. The said order granting probate to first respondent was challenged by the appellant herein by filing an appeal, on the ground that he ought to have been made a joint executor. The said appeal was dismissed by a Division Bench of the High Court, by the impugned order dated 22.9.2005 which is challenged in this appeal by special leave.

5. After arguing the matter for some time, the learned counsel for appellant and respondents 1 and 3 submitted that they have settled their differences relating to the estate of late Smt. Ram Piari Chawla which is covered by the Will and in view of it, there is no need for appointing the appellant as joint executor along with the first respondent.

6. The appellant and the first respondent are present with their respective counsel. The third respondent is represented by the first respondent as her attorney holder. Counsel for the third respondent is also present. The second respondent, as noticed above, was not being interested in the subject matter of the appeal. The parties have submitted a joint memo containing the terms agreed and they admit execution of the joint memo. Having examined the said terms, we find that this is a fit case where the appeal should be disposed of by recording the terms of the joint memo.

7. We, accordingly, record the agreed terms by extracting the joint memo:

"It is agreed between the parties that the case above noted be disposed of on the following terms and conditions:

(1) The subject matter of the dispute is all properties as per the Will of late Ram Piari Chawla namely: (1) E-23, Defence Colony, New Delhi, (2) Farm House at village Jaunapur, New Delhi, as also UTI



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and the National Saving Certificates mentioned in the Will. The amount lying in the said Account shall be distributed immediately.

(2) It is agreed between the parties that the above said properties shall be disposed of on the following terms and conditions:

(a) As regard the Units and National Saving Certificate which have been encashed the proceeds of which are deposited in the account of the Estate of Smt. Ram Piari Chawla with Standard Chartered Bank, Malcha Marg, Chanakya Puri, New Delhi. These amounts shall be divided equally amongst the three legatees.

(b) The two properties namely (1) E-23, Defence Colony, New Delhi and (2) Jaunapur Farm at village Jaunapur, New Delhi are valued at Rs.40.00 crores (Rupees forty crores only) and Rs.8.00 crores (Rupees eight crores only) respectively.

(3) It is agreed that Shri HPS Chawla shall pay Rs.16.00 crores each to Dr. NPS Chawla and Ms. Nirmal Daniere Chawla on or before 31.10.2010 for the purchase of properties namely E-23, Defence Colony and Jaunapur Farm.

(4) After the payment of Rs.16 crores each to Dr. NPS Chawla and Smt. Nirmal Chawla, Harinder Pal Chawla or its nominees will be exclusive owner of both properties.

(5) Dr. NPS Chawla and Mrs. Nirmal Chawla will execute all necessary papers, documents for the purposes of sale/transfer/assignment and for the purpose of taking all necessary permission from any authorities in connection with the sale of E-23, Defence Colony and Jaunapur Farm after H.P.S. Chawla has paid the amount of Rs.16 crores each to Dr. N.P.S. Chawla and Mrs. Nirmal Daniere.

(6) That Dr. N.P.S. Chawla shall handover all the original title deeds/documents/correspondence and other necessary papers regarding the mutation and transfer of E-23, Defence Colony with the Land and Development Office, (Ministry of Urban Affairs) to Shri H.P.S. Chawla on payment of the entire amount mentioned above i.e. 16 crores each.

(7) All expenses for obtaining permission/mutation shall be borne by H.P.S. Chawla.

(8) The time hereinabove agreed shall not be extended on any account what-so-ever.

(9) On the failure of H.P.S. Chawla to pay the amount mentioned in para 4 above then the judgment of the High Court shall prevail and Dr. N.P.S. Chawla take possession of the two properties mentioned above. H.P.S. Chawla shall vacate the Jaunapur Farm and hand over the possession of the said Farm to Dr. N.P.S. Chawla. He will sell the properties as executor and distribute the sale proceeds between the three legatees."

8. We dispose of the appeal, by consent, as follows:



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(i) The parties (appellant and respondents 1 and 3) shall act in accordance with the terms of the said joint memo (extracted in paragraph 7 above) with mutual understanding without giving room for any further litigation. The said joint memo shall be a part of the record.

(ii) As the settlement contemplates payment of Rupees Sixteen Crores each to two of the co-owners (respondents 1 and 3) by the third co-owner (appellant), the transfer of the shares/interest of respondents 1 and 3 shall be either by a sale/transfer/release in favour of appellant or a sale/transfer in favour of the nominee of the appellant, with appellant as a consenting witness.

(iii) Parties to bear their own costs.”

32. In view of the foregoing discussion, what is apparent is that the issue with regard to the shareholding of the deceased was very much alive and in the knowledge of the parties. The whole tone and tenor of the correspondence between the parties referred hereinabove would show that HPSC was always ready and willing to transfer 1/3rd shareholding in the two companies, provided both NPSC and NCD were to agree to compensate him for so called cumulative losses, which incidentally were never spelled out. Therefore, there is merit in the submission by the learned counsel for the respondents that after the death of HPSC on 03.04.2014, the legal heirs/successors of deceased HPSC are attempting to set up a new case, which was never espoused by the deceased - late HPSC. HPSC never challenged the entitlement of the respondents as regards 1/3rd shareholding in the company with regard to the shares left behind by the deceased – Smt. Ram Piari Chawla.

33. That being the case, the finding given by the CLB that the shareholding to the extent of 100 shares in Vantage Construction Private Limited and 5 shares in Earl Chawla & Company Private



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Limited were in the nature of movable properties encompassed in the Will dated 04.07.1986, appears to be without any blemish and the same cannot be faulted on any ground whatsoever. It is a finding based purely on the prevailing facts and on a fair and reasonable interpretation of the Will.

34. As regards the decision of the CLB to cancel the allotment of 9800 shares in the appellant No.1 company in favour of appellant No.2/HPSC represented through legal heirs, it is pertinent to mention that the aspect of allotment of 9800 shares in the name of HPSC from 10.10.2002 was not indicated in the letter dated 22.11.2008 and it only came to be revealed in the subsequent letter dated 01.12.2008. There was a clear attempt on the part of late HPSC in dragging his feet on the matter by calling upon the respondents to submit certain documents vide letter dated 15.12.2009, despite being the real brother of the respondents and having common knowledge of the entire factual background.

35. It is also borne out from the record that the register of shareholding was fabricated so as to show 100 shares of his deceased mother in the name of his own daughter and as his mother had died on 27.10.1990. There is brought not an *iota* of evidence that any other person was brought in as the second director for mandatory compliance with the provisions of the Act and in the said circumstances the decision by the CLB thereby raising an inference that HPSC allotted 9800 shares to himself without holding any valid meeting as required by law and thereby making such increase behind the back of NPSC and NCD, required to be invalidated. What HPSC



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and now his legal heirs have attempted to do is to blow hot and cold in the same breath and they have been shifting their stand suited to their convenience, through the course of these long proceedings.

36. As regards the case law cited by the learned counsel for the appellants, in the case of **Bakshi Ram (supra)** it was held that when a compromise decree becomes final, it is binding between the parties. In equity, a person drawing benefit from a transaction is not permitted to escape from the disadvantage, if any, flowing from it. The cited decision in **Shyam Telelink Limited (supra)**, the Supreme Court referred to the maxim *qui approbat non reprobat* (one who approbates cannot reprobate) embodied in English Common Law, which is the doctrine of benefits and burdens, and at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. This Court fails to understand how the cited case law provides any sustenance to the case of the appellants.

37. In view of the foregoing discussion this Court finds that the impugned judgment dated 24.06.2013 passed by the CLB does not suffer from any patent illegality, perversity or incorrect approach in law. Accordingly, the present appeal is dismissed.

38. The appellant No.1 company is hereby directed to comply with the directions passed by the CLB vide paragraph (17) and immediately comply with the directions contained in the order dated 29.09.2015, purportedly in exercise of powers under Section 634A of the Act. Before parting with this appeal, this is a fit case where the appellants



be burdened with exemplary costs for racking up frivolous and unsubstantiated contradictory pleas before the Court and thereby prolong this trial resulting in wastage of precious time of this Court and efforts. The appellants are accordingly burdened with costs of Rs. 1,00,000/- (Rupees One Lac only).

CO.A(SB) 60/2015:

39. The decision in the present appeal should not take long. It would be expedient to refer to the observations made by the CLB while deciding the Company Petition, which read as under:-

“20. On hearing the submissions of either side, the following points are to be determined.

1. Whether the recital of late Smt. Ram Piarı Chawla bequeathing of her moveable property include the shares held by her in R-1 company or not, whether the petitioners are entitled to 1/3 shares each in the five shares lying in the name of their mother.

2. Whether R-2 could hold any board meeting making allotment to himself without any quorum.

21. As to first point, it is said in Sale of Goods Act the shares are considered as moveable property. When it is mentioned in the will all movables of her bequeathed to the claimants, then it shall be, though the recitals in the will not mentioned about shares of this company, considered these shares as included in the movables mentioned in the recital of will. Therefore, I hold that the shares held by their mother, which is being admitted by R - 2 in the correspondence as well as in the reply filed by him, shall go to all the legatees 1/3 each as bequeathed by their mother. No matter whether they knew it or not when they moved probate proceedings before the Probate Court.

22. R - 2 being the full blood brother of the Petitioners and being entitled to 1/3rd shares in the shareholding of their mother, he could transmit the shares without seeking the copy of the Will, copy of probate petition, copy of the photo identification, copy of succession certificate, it is no doubt mandatory in situations other than the present one. After all the object of asking all these particulars is to see that shares not be registered in wrong person name. Here, R-2 is full blood brother of the petitioners. In fact, he himself gets 1/3rd share by the said will, and he himself carried this



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litigation from High Court to Apex Court keeping the petitioners out of the company for more than 10 years, as that litigation came to an end, now R-2 saying he will not transfer these shares until all those documents filed is not justifying once he knows no other claimant is there.

23. It is known that procedural Justice is supplemental to render substantial justice, the care that is to be taken is that the shares should not go to wrong person, if one knows to whom the shares will go, then there is no need to cling to procedural compliance. Since it will not bring in anything new or additional to the knowledge of the R-2 to transmit shares to the petitioners, R-2 should not refuse transmission of shares in the name of them on the technicalities above mentioned.

24. As to second point, R-2 held board meetings and general meetings after the demise of their mother and made allotment to himself and made his daughter as a director as stated by the Petitioner counsel. it is evident under the Companies Act that a single shareholder could not hold any general meeting or make allotment to himself without taking prior permission from the Company Law Board as stated u/s 186 of the Companies Act. Here R-2 unilaterally raised his shareholding to 990 by increasing share capital from Rs 20,000 to one-lakh rupees thereafter splitting share value Rs 100 into Rs 10 each and making allotment of 9900 shares to himself is in violation of the provisions of the Companies Act. For that reason, I hold that the allotment made to R-2 and transfer of mother shares to his daughter is void under law therefore allotments made to himself and share transfer to his daughter after 1990 has been declared as null and void by this Bench.

25. The Respondent raised an objection for having filed the application for rectification 20 years after their mother died; thereby he says it is hit by limitation under section 111 of the Act. I have already said it is second respondent dragged on this matter for about 20 years before various courts; therefore, the delay in filing this petition has taken place because of the litigation raised by R-2, not at the instance of the petitioners. Indeed this delay happened because R-2 assailed probate order before Division Bench thereafter before the Supreme Court; therefore, he is estopped from saying that the Petitioners claim has become stale by efflux of time. Interestingly R-2 has not refused the request made by the Petitioners but he asked for the succession certificate and other things as required u/s 108 and 110 of the Companies Act R-2 himself admittedly stated that he has not refused transmission of shares except asking succession certificate and other proofs identifying them as legal heirs of his mother.



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26. In view of it, I am of the opinion that the Petitioners are entitled to 1/3rd each in the shareholding of their mother, accordingly it is hereby directed that R - 1 Company to transmit 1/3rd shares i.e. 33% to the P-1, 34% to P - 2 and 33% to R-2 in the shareholding of their mother and delete the name of R-3 holding 5 shares of Late Smt. Ram Piari Chawla as his daughter name was entered without sufficient cause.

27. It is explicit in the proceedings that R-2 has not made any specific denial or explanation making allotment of 990 shares to him and showing 5 shares of his mother in his daughter name who was not a shareholder nor director when their mother was alive. R - 2 alone could not have held any meeting specifically general meeting of the company and pass any resolution for the gain of themselves which is in violation of the Companies Act. Under section 111 (4) of Companies Act, CLB is conferred with jurisdiction to rectify the register of members in a private company whenever it is felt wrong entry or an entry without sufficient cause is shown, this subsection confers jurisdiction to deal with entry of allotment apart from transfer and transmission. It is apparent that R-2 allotted 990 shares to himself without holding any meeting as required under law, therefore such increase behind the back of the petitioners is held invalid and without any sufficient cause. Even if it is considered as legal requirement to enhance paid up capital to one lac rupees, this could be complied with by rectifying the register showing further allotment to the petitioners and second respondent in proportion to the shares transmitted to the petitioners. Hence I am of the view that 990 shares shown in the register shall be deleted in the name of R - 2 if law demands it to be shown as one lac rupees in the company, the same could be shown as allotted to three of them in proportion to their entitlement.

28. As to the reliefs in respect of their mother shares, R-1 Company is hereby directed to delete the name of R-3 holding 5 original shares from the register and rectify the register by transmitting the names of the petitioners and second respondent showing 1/3 each in the 5 shares held by their mother late Smt. Ram Piari Chawla in R-1 Company, as to the allotment of 990 shares shown in the name of R-2, R-1 company and R-2 are hereby directed to delete the entry of 990 shares in the name of R-2, and intimate the same to the ROC concerned forthwith.

29. Accordingly, this Bench allowed this petition without costs.”

40. Without further ado, the CLB rightly construed the recitals of the Will dated 04.07.1986 left behind by late Smt. Ram Piari Chawla





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and there is no infirmity or perversity in the conclusion arrived at by the CLB in holding that the shareholding of the deceased in Earl Chawla & Company Private Limited, was part and parcel of the 'movable properties' left behind by her. At the cost of repetition, late HSPC acknowledged the entitlement of the respondents to such shareholding subject to seeking their contribution towards cumulative losses suffered by the company. The allotment of 990 shares in the appellant No.1 company was also done in a clandestine manner and to the detriment of the interest of the respondents.

41. Therefore, unhesitatingly this Court decides to dismiss the present appeal as well. The appellant is directed to comply with the directions contained in paragraph (28) of the impugned judgment dated 24.06.2013 as also subsequent directions dated 29.09.2015 in purported exercise of directions under Section 634A of the Act.

42. In the both the appeals, interim orders staying the operation of the impugned judgment dated 24.06.2013 are hereby vacated.

DHARMESH SHARMA, J.

APRIL 03, 2024

Sadiq