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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI BIKKI RAVEENDRA BABU – MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 19.09.2018 AT 10.30
AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 102/2018 in CP No. 04/241/HDB/2018
NAME OF THE COMPANY	Sapphire Blossom Rocks Private Limited
NAME OF THE PETITIONER(S)	Sunil Kumar Pottem & (03) Others
NAME OF THE RESPONDENT(S)	Sapphire Blossom Rocks Private Limited & (03) Others Respondents
UNDER SECTION	241

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
M. Anil Kumar	Advocate	9440569156.	M.A.

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
V. Venkata Rami Reddy	Advocate Counsel for Respondent No. 1 to 3	vvr@vangaassociates.com 9542239039	V.V.

ORDER

Learned counsel Mr.M.Anil Kumar present for Petitioner.

Learned counsel Mr.V.Venkata Rami Reddy present for
Respondent No.1 to 3.

Order pronounced in open court.

Petition is disposed of.

IA 102/2018 is closed in view of disposed ^{of} of main petition.

Vide separate order.


MEMBER JUDICIAL (19.9.18)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP No.04/241/HDB/2018

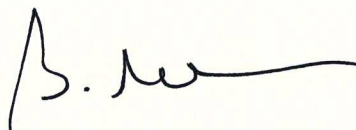
In the matter of

1. Mr.Sunil Kumar Pottem,
Residing at #2-152, 1st Floor,
Sri Lakshmi Nagar, Muthyalareddypalli,
Tirupati, Andhra Pradesh, India.
2. Mrs. Sarojamma Pottem,
Residing at #18-1-762A,
Bhavani Nagar, Tirupati-517501,
Andhra Pradesh, India.
3. Mr.Suresh Kumar Pottem,
Residing at 4421, Lobella CT,
Chester Springs, PA, 19425, U.S.A.,
Also having address in India at #18-1-762A,
Bhavani Nagar, Tirupati-517501,
Andhra Pradesh, India.
4. Mr.Ramesh Kumar Pottem,
Residing at A1, Principal's Quarters,
SITAMS Campus, Tirupati-Bangalore Bye-Pass Road,
Murukambattu, Chittoor District – 517 127,
Andhra Pradesh, India.

... Petitioners

Vs

1. Sapphire Blossom Rocks Private Limited,
Having its registered office situated at Industrial
Park (Expansion)
Renigunta Road Tirupati, Chittoor District – 517506,
Andhra Pradesh, India.
2. Mr.Satish Kumar Pottem,
R/o.Industrial Park (Expansion)
Renigunta Road Tirupati, Chittoor District-517506,
Andhra Pradesh, India.



3. Mrs. Rojarani Pottem,
R/o. Industrial Park (Expansion),
Renigunta Road Tirupati, Chittoor District- 517506
Andhra Pradesh, India.
4. The Registrar of Companies, Andhra Pradesh &
Telangana,
2nd Floor, Corporate Bhavan, Bandlaguda, Nagole,
Hyderabad, Telangana-500068.

... Respondents

Date of Order: 19.09.2018

CORAM:-

**Hon'ble Shri Bikki Raveendra Babu, Member
Judicial**

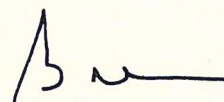
1. Learned counsel Mr.M.Anil Kumar present for the Petitioners.
2. Learned counsel Mr.V.Venkata Rami Reddy and Mr.B.Manpal Reddy present for the Respondents.

ORDER

1. The Respondent No.1 Company was incorporated as a Private Limited Company under the name and style of Sapphire Blossom Rocks Private Limited on 16.09.2005 in the State of Andhra Pradesh, under the provisions of Companies Act.
2. The Registered Office of the Company is situated at #18-1-762, Bhavani Nagar, Tirupati, Chittoor District, Andhra Pradesh.

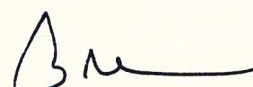


3. The 1st Respondent Company was incorporated for carrying on the business of Manufacture, process, make, trade, export, import, merchandise, distribute and deal in all kinds of granite monuments, slabs, blocks, rough block, tiles all types of decorative items and also to undertake job works in granite products etc.
4. The Authorized share Capital of the 1st Respondent Company is Rs.2,50,000/- divided into 25,000 Equity Shares of Rs.10/- each.
5. The Issued, Subscribed and Paid up share capital of the 1st Respondent Company is Rs.1,25,000/- divided into 12,500 Equity Shares of Rs.10/- each.
6. The Respondent No.2 is the brother of Petitioners 1, 3 and 4. The Petitioners 1, 3 and 4 and Respondent No.2 are the children of Petitioner No.2. The Respondent No.3 is the wife of the Respondent No.2.
7. The Petitioners 1 to 4 and the Respondent No.2 are the 1st Directors of the 1st Respondent Company. The Respondent No.2 and Petitioner No.1 are holding 10,000 Equity shares and 2,500 equity shares each constituting 80% : 20% of the paid up equity share capital of the Respondent No.1 Company respectively.
8. It is alleged by the Petitioners that Respondent No.2 has illegally transferred 2,500 equity shares of the 1st Respondent Company standing in the name of the Petitioner No.1 to his wife i.e., Respondent No.3 on 29.03.2017.
9. It is also alleged by the Petitioners that the Respondent No.2 without conducting any Board meeting on 07.10.2016 or 30.12.2016 appointed his wife, Respondent No.3 as Additional Director.
10. It is also alleged that the Respondent No.2 appointed the Respondent No.3 as Director of the 1st Respondent



Company in the purported General Meeting said to have been held on 25.08.2017.

11. It is alleged that the Respondent No.2 created record as if the Petitioners 2 to 4 resigned from the post of Directors of the 1st Respondent Company and made believe that their resignation letters were accepted in the Board Meeting held on 02.01.2017.
12. It is the case of the Petitioner that Respondent No.2 over the years has been running the Respondent No.1 Company as his personal fiefdom and has kept the other family members totally in dark regarding the affairs of the Company. The Respondent No.2 presented to the family members that they have been allotted shares in proportion to the amounts contributed by them but has never shared the details despite repeated requests by them.
13. Further, it is the case of the Petitioner that inspite of investing the huge amounts the Petitioners never received any return on their investments whether by way of dividend or otherwise. The Petitioners blindly believed the Respondent No.2 who is their family member.
14. The Petitioners got suspicious and got pressure on the Respondent No.2 to disclose the correct state of affairs of the 1st Respondent Company.
15. The Petitioners gave complaint to the ROC A.P & Telangana immediately thereafter, the Respondent No.2 filed all the Annual Returns and Financial Statements in the month of January 2017 with MCA.
16. The Respondent No.2 did not choose to conduct any meeting and file any returns since the date of incorporation in the year 2005 till January 2017.



17. The Petitioners stated that as per the provisions of the Companies Act, a Company is required to comply with the following provisions:-

Relevant Section as per Companies Act, 1956	Relevant Section as per Companies Act, 2013	Compliance in relation to
Section 166	Section 96	Annual general meeting
Section 171	Section 101	Notice of meeting
Section 209	Section 128	Books of account to be kept by the company
Section 215	Section 134	Financial statements, Board report etc.,
Section 220	Section 137	Copy of financial statements to be filed with Registrar

18. The Petitioners after filing the Annual Returns in January 2017 have gone through those Balance Sheets and Annual Returns and realised that they have been cheated by the Respondent No.2 & 3 and they have been subjected to extreme acts of oppression and mis-management and unfair dealing by Respondent No.2. The following are the acts complied by the Petitioners:-

- I. No board meetings and AGM'S have been conducted since the incorporation of the Company.
- II. Sums invested by the Petitioners towards the subscription of shares have been recorded in the books of accounts of the company and no

shares have been allotted to any of the petitioners except petitioner no.1 who was allotted a meagre number of 2500 shares against an investment of Rs.1,75,87,980/- made by him.

- III. Sums invested by the Petitioners towards share subscription were shown as unsecured loans which also do not match to the actual sums invested by the Petitioners.
- IV. It was shown in the annual return for the year 2015-16 as if four board meetings were held during the year on 05.06.2015; 02.09.2015; 18.12.2015 and 10.03.2016 and as if all the directors have attended all the board meetings. It is submitted that the Petitioner No.3 who is an American Citizen and Overseas Citizen of India never visited India during the aforesaid dates on which the purported board meetings were allegedly held. A perusal of the copy of the sheets of the passport of the Petitioner No.3 bearing the stampings of his dates of arrival and departures in India by the immigration authorities at the port of entry would unequivocally nail the blatant lies of the Respondent No.2 of his purported claims regarding the attendance at the board meetings by all the directors including the Petitioner No.3.
- V. The Petitioners No.1 to 4 are the first directors of the Respondent No.1 company named as such in article 30 of the Articles of Association of the company. Since the Respondent No.1 company is a private limited company, the provisions relating to retirement of directors by



rotation are not applicable to it. Therefore, the Petitioners No.1 to 4 shall remain and continue as directors of Respondent No.1 company until they voluntarily resign. However, in the annual returns filed by the Respondent No.2 it was shown as if the Petitioner No.2 to 4 have resigned on a single day i.e., at a Board Meeting purportedly held on 02.01.2017. There was no Board Meeting whatsoever on 02.01.2017.

- VI. Further section 168 of the Companies Act, 2013 which deals with resignation of Director read with Companies (Appointment and Qualification of Directors) Rules, 2014 imposed certain duties upon the company as well as on the resigning director in case of resignation of directors:

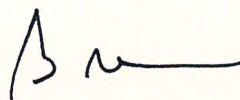
Duty of Company in case of Resignation by Director

As per section 168(1)A director may resign from his office by giving a notice in writing to the company and the Board. The company shall on receipt of such notice take note of the same by passing a board resolution to that effect and

As per Rule 15 of Companies (Appointment and Qualification of Directors) Rules, 2014 the company shall intimate the Registrar through Filing of Form Dir.12 within 30 Days from the effective Date of Resignation.

Company is also required to place the fact of Such Resignation in the report of Directors laid in the immediately following general meeting of the company.

Duty of Resigned Director in case of Resignation:



A director shall also forward a Copy of his Resignation along with detailed reasons for the resignation to the Registrar within 30 (Thirty) days of resignation through filing of Form DIR.11 under his digital signature.

Effective date of Resignation:

As per section 168(2), the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

- VII. The Respondent No.2 has fabricated and created fake Form-DIR12 to show as if the Petitioner No.2 to 4 has resigned on 02.01.2017. The said Form-DIR 12 is nothing but a false document fabricated by the Respondent No.2 since the Petitioner No.2 to 4 did not resign and they have not filed any form DIR 11 as required under rule 16 of Companies (Appointment and Qualification of Directors) Rules, 2014. Thus the petitioners legally continue to be the directors and therefore the Respondent No.2 is liable for prosecution for fraud and false statements under section 447 and 448 of the Companies Act, 2013 which mandates a punishment by way of imprisonment of not less than 2 years subject to a maximum of 7 years.
- VIII. It is reiterated that the Petitioner No.1 to 4 never tendered any resignation at any point of time to the board of the company and the alleged resignation letters attached to the Form-DIR 12 by the Respondent No.2 is a forged and fabricated document for which the Respondent No.2 shall be liable criminally.



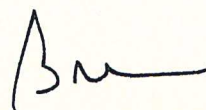
- IX. Further it was also shown as if Respondent No.2 was appointed as additional director at an alleged board meeting purportedly held on 30.12.2016. It is submitted that there was no Board Meeting on 30.12.2016 and no notice was issued for the same which is a mandatory requirement and therefore the said appointment is void and non est and any subsequent regularisation of the said appointment is also non est and void.
- X. It is further submitted that the Respondent No.2 has not only allotted to himself 10,000 equity shares of 10 each out of the total paid up share capital of Rs.1,25,000/- dividend in to 12,500 shares but also had the audacity to fabricate a purported transfer of 2,500 shares registered in the name of Petitioner No.1 to the Respondent No.3 who is the wife of Respondent No.2.
19. The Petitioner prayed for the following reliefs:-
- a. To declare that the shares transferred to the Respondent No.3 are illegal and cancel the shares transferred to the Respondent No.3 by impugned transfer on 29.03.2017.
 - b. To set aside the alleged board meeting held on 02.01.2017 as illegal and contrary to law.
 - c. To declare that the appointment of Respondent No.3 to Board of Directors is illegal.
 - d. To declare that the 2nd Respondent is unfit to function as Director of the Respondent No.1 Company.

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- e. To issue shares to the Petitioners 1, 2, 3 & 4 in the Respondent No.1 Company in proportion to the investments made by them.
 - f. To appoint the Petitioners 1, 2, 3 & 4 as Directors of the 1st Respondent Company.
20. The Respondent filed counter. The Respondents 1, 2 and 3 has taken the following pleas in the counter:-
- a. The Petitioners are not members of the 1st Respondent Company as on the date of the filing of the Petition and therefore, this petition is not maintainable.
 - b. Petition is bad for non-compliance of Rule 70(1) of NCLT Rules.
 - c. This composite petition is not maintainable by the Petitioners.
21. The directorial complaints cannot be treated as acts of oppression or mismanagement.
22. It is stated by the Respondents that the Petitioner No.1 sold his 2500 shares for a sale consideration and executed form SH4 and therefore, the transfer of shares of Petitioner No. 1 to 3rd Respondent is valid.
23. Respondents stated that the Petitioners 2 to 4 on 02.01.2017 submitted resignation letters and they were duly accepted by the Board of the Company in its meeting on 02.01.2017 and accordingly the approval was filed with the ROC and therefore, the resignation of Petitioners 2 to 4 as Directors cannot be agitated in this Petition, more so when Petitioners 2 to 4 are not members of the Company.
24. It is stated by the Respondents 1 to 3 that 3rd Respondent was appointed as Additional Director in the Board Meeting held on 07.10.2016 w.e.f 30.12.2016 and Respondent No.3 was appointed as

regular Director in the General Body Meeting held on 25.08.2017.

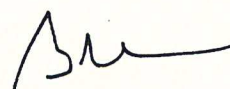
25. According to the Respondent, there is no illegality in appointing Respondent No.3 as Additional Director and continuing here as Director in the next Annual General Meeting.
26. The investments made by the Petitioner No.3 are only unsecured loan and it never represents the share application money. It is stated by the Respondents that Petitioners 2 to 4 never applied for allotment of shares.
27. The authorised share capital of the 1st Respondent Company is only Rs.2,50,000/- and out of which Rs.1,25,000/- is the Subscribed and paid up Share Capital and therefore, the case of the Petitioners 2 to 4 that they have invested huge amounts for the purpose of allotment of shares in the 1st Respondent Company is nothing but a false.
28. It is stated that in view of the Section 41 of the Companies Act 1956, in order to become a member of the Company a person who agree in writing and present a share application form, but no such instrument is produced by the Petitioners 2 to 4.
29. It is the case of the 2nd Respondent that he is solely responsible and instrumental for establishing the 1st respondent Company.
30. Out of Respect, love and affection as the Petitioners 1, 3 and 4 are brothers of 2nd Respondent and the 2nd Petitioner is the mother of the 2nd Respondent he made them as 1st Directors of the Company.
31. The subscription made by the 1st Petitioner is a meagre one and shares were allotted to the 1st Petitioner accordingly.



32. Although the Petitioners 1-4 were appointed as 1st Directors, they never participated and shown interest in the affairs of the 1st Respondent Company as they already pre-occupied with their profession.
33. According to the Respondents, Petitioners have voluntarily agreed and resigned at the time of family partition on 01.04.2013 vide registered Settlement Deed No.2092 dt.01.04.2013 registered at SRO, Tirupati.
34. As per the family Settlement Deed, the 3rd Petitioner got property worth Rs.6,03,09,000/- which is around 63% of the total property owned by the family. The 4th Petitioner got Rs.2,10,17,000/- worth of property. The 1st Petitioner got property worth of Rs.1,20,71,000/-. Sisters of the Petitioners and the 2nd Respondent received cash of Rs.10,00,000/-. The 2nd Respondent received cash of Rs.5,00,000/- only as a part of family Settlement.
35. At the time of Settlement all the Petitioners agreed not to claim any goodwill in the 1st respondent Company.
36. The claim of the 3rd Petitioner that it has invested huge amounts were some how believed and 3rd Petitioner was given 63% of the property in the family settlement. But after settlement 2nd Respondent came to know that the claim of the 3rd Petitioner is false and he misrepresented.
37. 2nd Respondent also realised the same and demanded for cancellation of family Settlement Deed dt.01.04.2013.
38. The 3rd Petitioner came to India and took back the 2nd Petitioner to USA and after the expiry of limitation to seek cancellation of Settlement Deed again brought the 2nd Petitioner to India.

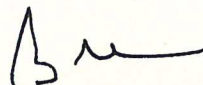


39. The 3rd Petitioner instigated the 1st Petitioner to file this Petition.
40. It is stated by the Respondents that, the 1st Petitioner has voluntarily agreed and offered to sell his 2500 shares and he received a sale consideration of Rs. 6,75,000/- vide cheque No.686835 dt.30.03.2016 drawn on Indian Overseas Bank, Tirupathi Branch and Rs.25,000/- vide cheque No.686839 dt.27.03.2017.
41. The above said amounts were duly credited to the 1st petitioners Savings Bank Account. The Petitioner No. 2 also acknowledged the above payments by signing a receipt dt.27.03.2017.
42. After receipt of the sale consideration only Petitioner No.2 executed Form SH4(Share Transfer Deed) on 29.03.2017 for transfer of 2500 shares held in 1st respondent Company in favour of 3rd Respondent.
43. The Respondents stated that the 3rd Petitioner being the elder person has provided an unsecured loan to the 1st respondent Company for Rs.11,25,000/- dt.24.05.2006 and Rs.5,70,000/- dt.17.02.2011. As on the date of the Family Settlement on 31.03.2010 as per the Balance Sheets filed by the Company Rs.8,25,000/- stood as unsecured loans to the Company and the said Balance Sheet was signed by the Petitioner No.4 and Respondent No.2.
44. On 15.10.2013, the 1st Respondent Company paid back Rs.1,00,000/- which was used by the 3rd Petitioner for white washing of his building.
45. In the year 2015, the Company paid Rs.1,00,000/- to the 3rd Petitioner which was used for his LIC Housing Finance Limited Loan dt.23.12.2015 vide cheque No.090305 for Rs.50,083/- and cheque No.090307 for



Rs.50,083/- dt.18.01.2016 as per the instructions of the 3rd Petitioner.

46. As per the Balance Sheet dated 31.03.2016, the outstanding unsecured loan payable to the 3rd Petitioner was Rs.6,25,000/- and the Balance Sheet was signed by the 4th Petitioner and the 2nd Respondent.
47. The 1st Respondent Company paid Rs.6,25,000/- to the 3rd Petitioner on 30.03.2016 by cheque No.686834 of Indian Overseas Bank, Tirupati Branch.
48. The Balance Sheet was signed by the 2nd Respondent and 4th Petitioner. The 1st respondent Company repaid the entire unsecured loan provided by the Petitioner. The Respondents denied investment of Rs.1,75,87,980/- by the Respondent No.3.
49. The following are the points that emerge for determination:-
- i) Whether this composite petition filed U/s.59 and Section 241 and 242 of the Companies Act is maintainable?
 - ii) Whether the transfer of shares of 1st Petitioner to Respondent No.3 on 29.03.2017 is valid or not?
 - iii) Whether the resignation of Petitioners 1 to 4 as Directors is valid or not?
 - iv) Whether the appointment of 3rd Respondent as Additional Director and subsequently as Director is legally valid or not?
 - v) Whether the Petitioner No.3 made any investment of amounts and if so, whether the Petitioners 2 to 4 are entitled for allotment of shares to them?
50. A perusal of the Memorandum of Association of the 1st Respondent Company clearly goes to show that the



Petitioner No.1 is holding 2500 shares and 2nd Respondent was allotted 10,000 shares as subscribers out of the paid up shares of 12,500 shares. That means, the entire paid up shares of 12,500 were allotted to Respondent No.2 and the Petitioner No.1.

51. The 1st Respondent Company was incorporated on 16.09.2005. Admittedly, from 16.09.2005 till 29.03.2017 the Petitioner No.1 was holding 2500 shares of the 1st Respondent Company.
52. This Petition is filed on 24.11.2017. In this Petition one of the main challenges is the transfer of shares of the 1st Petitioner by the 1st Respondent Company to the 3rd Respondent who is no other than the wife of the Respondent No.2 that was managing the affairs of the Company right from the date of incorporation of the Company.
53. When there is a challenge to the transfer of shares on the ground that without sufficient cause and without following the procedure laid down under the provisions of the Companies Act and Articles of Association of the Company, the remedy available to the Petitioner No.1 is rectification of the Register of Members of the 1st Respondent Company which is available U/s.59 of the Companies Act.
54. In this Petition the Petitioners are also challenging the appointment of 3rd Respondent as additional Director and thereafter as Director and the cessation of Petitioners 1 to 4 as Directors on the ground of their alleged resignation.
55. The Respondent Nos.1 to 3 raised an objection regarding the maintainability of a composite application under Sections 59, 241 to 244 of Companies Act, 2013, They have cited the two(2)

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judgements in Para 2.22 at Page No.22 and Para 2.27 at Page No.24 of Counter Affidavit in main CP. In this regard, the Hon'ble High Court of Andhra Pradesh in the matter of Manojkumar Kanunga and others-VS-Marudhar Power Pvt. Ltd and others, dated 23.04.2013 reported in (2013) 179 Comp Cas 504(AP), the relevant paragraphs at Para 21 to 26; 68, 69 71, 73, 76, 77, 78, 79, 137 & 138, the Hon'ble Court said that (para 24) "neither the "Company Law Board Regulations" nor the "Fees Rules" prohibit, either explicitly or by necessary implication, a composite petition being filed. It cannot be said, as a proposition of law, that no composite petition under section 111 and 397 of the Act is maintainable. In a large number of petitions, filed under section 397, the primary allegation of oppression is that the faction in control of the company has either intentionally reduced the rival faction to less than one-tenth of the total number of members of the company or has removed the names of rival faction from the register of members. In such cases, where the allegation of oppression is inexplicably intertwined with the issue of maintainability of the petition under section 399 of the Act, a composite petition has to be held to be maintainable. To ask a petitioner to file two separate petitions in such circumstances would be unfair (Charanjit Khanna v. Khanna Paper Mills Ltd.(2011) 164 Comp Cas 315 (Delhi)."

(Para 137) For the purpose of deciding the eligibility of a member of a company, to maintain a petition under section 397 of the Act, the qualification, in respect of the requisite shareholding in the Company, of such person, prior to the act of oppression complained of, has to be taken into consideration, and not the




qualifying shares thereafter. If the date of presentation of the petition is taken as the relevant date, it could defeat the very purpose of the legislative enactment of section 397 of the Act, as the overbearing majority shareholders can simply, by highhanded action and by oppressive methods, dismember the minority shareholders would then technically, not remedy, as the dismembered minority shareholders would then, technically, not qualify for maintaining a petition under section 399 of the Act, being not members at all. As the minority shareholders can complain only after the acts have occurred, and when they have been removed from the membership of the company, Section 399 should be so understood and interpreted so as to further the object of the relief to be given in a situation governed by Section 397 of the Act, and not to foreclose the options of an aggrieved person and deny the very relief sought to be extended to the complaining minority shareholder/s (Mr. Vijayan Rajes Vs. M.S.P. Plantations Private Limited).

56. Learned counsel appearing for the Respondent relying upon the decision of the Hon'ble High Court of Punjab and Haryana in C.C.No.15-D of 1959 decided on 11.03.1960 in Ved Prakash and Ors. Vs. Iron Traders (Private) Ltd. and Ors. Contended that the 1st Petitioner has to file in the first instance for rectification of register of members U/s.59 of the Companies Act and thereafter only he can file a Petition U/s.397 and 398 of the Companies Act 1956 corresponding to Sections 241 and 242 of the Companies Act 2013.
57. In that Judgement shareholder filed a Petition seeking relief of rectification of register before the District



Judge and the said relief was not granted. Thereafter filed a Petition before the Company Court U/s.397 and 398 of the Companies Act 1956.

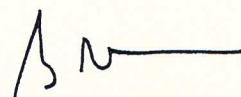
58. In those facts and circumstances the Hon'ble High Court of Punjab and Haryana held that Petition U/s.397 and 398 can only be maintained by a person or persons who are shown as members in the register of the Company, and if the persons who wish to file such a Petition are not shown as members rightly or wrongly they must first have the register rectified before they can bring a Petition.
59. But in the case on hand, as soon as the Petitioner No.1 came to know that his shares were transferred to Respondent No.3, moved this Petition both U/s.59, 241 and 242 of the Companies Act 2013.
60. In fact, it is settled law that a composite Petition is maintainable where the legality of transfer of shares or the legality of allotment of additional shares is raised in the Petition.
61. In view of the above discussion it is held that this composite Petition is maintainable.
62. Learned counsel appearing for the Respondents contended that the transfer of shares of the Petitioner to 3rd Respondent is according to the provisions of the Companies Act and Articles of Association and it is supported by the Share Transfer Form and receipt dated 27.03.2017.
63. It is contended by the learned counsel appearing for the Petitioner that the transfer of shares of the Petitioner to the 3rd Respondent who is no other than the wife of the 2nd Respondent is not according to the provisions of the Companies Act and the relevant Articles of the Articles of Association.



64. He also contended that the Share Transfer Form is a created one and it is not supported by consideration.
65. It is contended by the learned counsel appearing for the Respondent that Rule 70 of NCLT Rules has not been complied by the Petitioner by not advertising the Petition atleast 14 days before the date of hearing in accordance with Rule 35.
66. It is contended by the learned counsel appearing for the Petitioners that Rule 70 applies to both the Sections 58 and 59. In the case on hand, there are only 3 shareholders in the Company. It is a family company. It is not an appeal U/s.58 against the Order of the Company refusing to register the shares.
67. On the other hand, it is a Petition for rectification of register of member besides alleging oppression and mismanagement. It is a composite Petition. There is no other member or creditor that is going to be aggrieved because of the Order if any passed in this Petition.
68. Therefore, considering the fact that it is a composite Petition, Rule-70 need not be followed even in respect of relief of rectification of register of members.
69. The article 17 is the relevant article in the Articles of Association of the 1st Respondent Company that deals with the transfer of shares.

TRANSFER OF SHARE

- i) Save as hereby otherwise provided no shares in the Company shall be transferred to any person who is not a member of the Company so long as any member is willing to purchase the same at the fair value to be determined the manner herein after provided.
- ii) Except as hereinafter provided no share in the Company shall be transferred unless and until the



rights of presumption thereafter conferred shall have been exhausted.

- iii) In order to ascertain whether any member is willing to purchase a share, the person proposing to transfer the same (hereinafter called the retiring member) shall give a notice writing (hereinafter called the sale notice) to the Board of Directors about his desire to sell every such sale notice shall specify the distinctive number of the share which the retiring member offers for sale and the sum he fixed as fair value and shall constitute the Board of Directors as his agent for the sale to the member or person selected by the Board of Directors at the price so fixed at the option of the purchases at a fair value to be fixed in accordance with these Articles. No sale notice withdraw except with the sanction to the Board of Directors.
- iv) The Board of Directors, shall within 30 days after the service of a sale notice find a member willing to purchase (hereinafter called the purchasing member, the shares comprised) therein and shall give notice thereof to the retiring member, shall be bound upon payment of the price fixed by him or the fair value as the case may be to transfer the share to such purchasing member.
- v) In case of any difference arising between the retiring member and the purchasing member as to the fair value of the share, the same shall be fixed by the Auditors of the Company or by any Arbitrators mutually appointed by both retiring and the purchasing member and approved by the Board of Directors.
- vi) In the event of retiring member falling to carry out the sale of any shares which shall have become bound to as aforesaid, the Board of Directors may execute a

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transfer in his name and my give a receipt for the purchase price of such shares and may register the purchasing member as holder thereof and issue to him a certificate for the same. There upon the purchasing member shall become indefeasible entitled thereto. The retiring member in such case shall be bound do deliver his certificate for the said share and on such deliver shall be bound to transfer as aforesaid the Board of Directors shall issue to him a certificate.

- vii) If the Board of Directors cannot within the period of 30 days after the service of the sale notice, find a purchasing member for all or any of the shares comprised therein and give notice accordingly of if though no fault of the retiring member, the purchasing of any shares in respect of which sale notice have been given, shall not be completed within three months thereafter be of liberty subject to Article 2 thereof to sell and transfer the shares comprised in his sale notice.
- viii) The Directors may refuse to register any transfer of shares:
- a) Without assigning any reason thereof:
 - b) Where the Company has a lien on the shares.
 - c) Where the result of such registration would make the total number of members exceed the limit mentioned in Article 2. But clause (c) of this Articles shall not apply where the transferee is already a member.
- ix) No transfer shall be made to an insolvent or a person of unsound mind.
- x) A sum of Rupees one may be charged by the Company for each transfer registered.
70. In the case on hand, no material is placed on record by the Respondent No.1 and 2 that the shares of the

1st Petitioner were offered to the 2nd Respondent and he is not willing to purchase the same at the fair value to be determined in the manner provided in the Articles of Association.

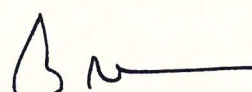
71. The Articles of Association also provides that the Transferor of the shares shall give a notice in writing to the Board of Directors about his desire to sell the shares and the sum fixed as fair value and shall constitute the Board of Directors as his agent for the sale of shares to the member or the person selected by the Board.
72. In the case on hand no material is placed on record by the 1st Respondent Company or by the 2nd Respondent that a notice is given by the Petitioner No.1 expressing his intention to sell the shares and constituting the Board of Directors as his agent.
73. A duty is also caste upon the Board of Directors to give notice within 30 days after the service of sale notice informing the retiring members that he is bound upon the payment of price fixed by him or the fair value.
74. In the case on hand, no such procedure has been followed. Petitioner is disputing the execution of Share Transfer Deed. A perusal of the Share Transfer Deed show that the sale consideration for transfer of shares is mentioned as Rs.25,000/-. But in the receipt dated 27.03.2017 the sale consideration is mentioned as Rs.7,00,000/-.
75. It is pertinent to mention here that both the cheques referred to in the receipt dated 27.03.2017 were not issued on the account of the 3rd Respondent i.e., purchaser of the shares but it was issued from the account of the 1st Respondent Company. When the 3rd Respondent is the purchaser of the shares, sale

consideration must be paid for the shares purchased from the account of the 3rd Respondent.

76. The explanation given by the Respondents is that the 1st Petitioner has offered to sell the shares to the 2nd Respondent and the 2nd Respondent accepted the purchase of the shares of the 1st Petitioner and on the request of the 2nd Respondent, the 1st Petitioner executed Share Transfer Deed in favour of the 3rd Petitioner. To substantiate this explanation there is no material placed on record.
77. Another explanation given by the 2nd Respondent is that the 3rd Respondent provided a loan of Rs.9,50,000/- to the 1st Respondent Company which was transferred to the Company in different dates by cheques and therefore 1st Respondent Company paid the sale consideration for purchase of shares by the 3rd Respondent from the 1st Petitioner.
78. In this context it is necessary to refer to Articles 45 of the Articles of Association:- "The Directors may from time to time raise or borrow any sums of money for and on behalf of the company from the members or other persons, banks or financial institutions or any of the Directors may himself advance money to the Company on such interest as may be approved by the Board of Directors".
79. No resolution is placed on record by the Respondents to show that amounts were borrowed by the 1st Respondent Company from the 3rd Respondent. Moreover, there is no request by the 3rd Respondent to the 1st Respondent Company to repay her unsecured loans by paying the same as sale consideration for transfer of shares of the 1st Petitioner to her. Above all the sale consideration amounts in the Share Transfer Deed is altogether different from the receipt.

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80. Therefore, Respondents failed to place any material on record to show that the sale consideration was paid by the 3rd Respondent to the Petitioner for the transfer of shares.
81. A perusal of the Share Transfer Form show that certain columns in the Share Transfer Form is left blank. The Share Transfer Form does not contain the seal of the 1st Respondent Company and it also does not contain the signatures of its Directors. Therefore, it is in violation of the Section 56 of the Companies Act.
82. Now coming to the jurisdiction of this Court on the issue of rectification of register of members, the learned counsel appearing for the Petitioner relied upon the decision of the Hon'ble High Court of Andhra Pradesh in Manoj Kumar Kanuga and 3 others Vs. Marudhar Power Pvt. Ltd. and 18 others reported in Company Appeal No.10 of 2012.
83. In that Judgement the Hon'ble High Court referred to compliance with Section 108 of the Companies Act 1956 and held such compliance is necessary for a valid transfer of shares.
84. The Hon'ble High Court held that payment of consideration for transfer of shares has to be proved by the transferee.
85. The Hon'ble High Court in the above said decision clearly held that there must be a resolution of the Board of Directors approving the transfer of shares from a member of the Company.
86. In that Judgement the Board Resolution was produced in the form of minutes of the Board in loose sheets and photo copies of some pages without authentication.



87. The Hon'ble High Court in that Judgement held as follows:-

“ The only way to prove that a particular resolution was passed at a meeting of the Board of Directors of a Company is if the minutes book, in which the said resolution was recorded as having been passed, is produced in Court as that alone can from evidence of the fact under Section 194 of the Act. (Escorts Limited vs. Sai Autos). The presumption arising under Section 195 is rebuttable by adducing contrary evidence. If a proper minutes book is kept, and proceedings of meetings are duly recorded, it shall be deemed that the meeting has been duly called, held and all proceedings there at to have duly taken place, If the minutes are not recorded or signed in the prescribed manner, and within the prescribed period, it is then presumed that is not properly kept and will not be receivable in evidence. (B.SvaramanVs.Egmore Benefit Society Ltd)

The first respondent failed to produce the minutes book, and it is only phot-stat copies, that too in loose sheets, of the alleged minutes of the board meeting, stated to have been held on 15.06.2006 and 31.08.2006, which were produced before the CLB as Annexures R.25 and R.26. Annexure R-25 records that the Board of Directors of the first Respondent, in their meeting dated 15.06.2006, had resolved to approve the transfer of shares by A4 to R4. Annexure R-26 records that, in the Board meeting dated 31.08.2006, the shares of A-1 to A-3 were transferred in favour of R-8, and shares of R-4 were transferred to R-8. While Annexure R.25 contains the head “minutes book”, Annexure R.26 does not. Annexure R.25, i.e., the minutes of the Board meeting dated 15.06.2006 is at variance with Annexure R-34 i.e., the Annual returns for the AGM held on 17.07.2007 which records that the aforesaid transfer of shares were registered on 31.07.2006. Annexure R-1 inspection report reveals that R-1 did not keep any minutes book, and only loose sheets called “minutes” were made available for inspection. As R-1 failed to keep a minutes book, in accordance with Section 193 of the Act, the

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presumption under Section 195, of a meeting of the Board of Directors having been validly held, would not be attracted. In the absence of a proper minutes book being maintained, wither of the general meetings of shareholders or for the meetings of the Board of Directors, reliance placed by the respondents on the loose-leaf sheets, which they claim to be the "minutes" of meetings of the Board of Directors, (Annexure R-25 and 26), in support of tier contention that A-1 to A-4 had application for rectification of the register of members, should assign valid reasons for its conclusion that the issues raised involved disputed and complicated questions of fact which require detailed investigation and examination of both oral and documentary evidence. A mere statement, that complicated question of fact arise, would not do. (Muniyamma Vs. Arathi Cine Enterprises (P) Ltd; E.V.SwaminathanVs.K.M.M.A Industries & Roadways (P) Ltd; and NupurMitra). Even in summary proceedings under Section - 111, the CLB is not disabled from exercising its power under section 10-E(4-C) of the Act to summon documents, enforce attendance of witnesses and to examine them on oath."

88. In the case on hand, the Respondent did not produce any minutes of the Board of Directors meeting wherein the transfer of shares from the Petitioner to 3rd Respondent was approved. The issues involved in this case are not at all complicated questions of facts or law.
89. The issues involved in this case is whether the procedure laid down for transfer of shares has been followed or not.
90. In the case on hand it is clear from the material on record that the procedure required to be followed for transfer of shares has not been followed and there is no sufficient evidence on record for passing of sale

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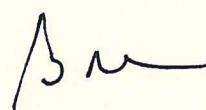
consideration for the transfer of shares from the 3rd Respondent.

91. The Board Resolution is also not placed on record. The minutes of the Board of the Directors is also not placed on record. In this context it is necessary to refer to certain facts of this case.
92. The Petitioner No.2 is the mother of the Petitioners 1, 3, 4 and Respondent No.2.
93. The Memorandum of Association of the Company show that the Petitioner No.1 and 2nd Respondent are subscribers to the Memorandum of Association and are the only shareholders in the Company.
94. The Memorandum of Association also show that the Petitioners 1 to 4 and 2nd Respondent are the Directors of the 1st Respondent Company.
95. The relevant articles in the Articles of Association show that the Directors are not liable for vacation.
96. Article 32 of the Articles of Association reads as follows:-

“The Directors appointed here by shall not retire by rotation and shall continue to be the Directors of the Company till they cease to be Directors in accordance with the Companies Act, 1956.”
97. Article 33 says “A Director shall not be required to hold any share in the Company as qualification.”
98. The business of the Company is mainly run by the 2nd Respondent. The Petitioner No.3 is residing in USA. The Petitioners Company was incorporated in the year 2005 and till 2017 the Petitioner No.1 continued to be the shareholder and there is no reason for the Petitioner No.1 to suddenly transfer all his shares to the wife of the 2nd Respondent who is managing the Company.

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99. It is said by the learned counsel appearing for the Respondent that by virtue of the Family Partition Deed dated 01.04.2013, the Petitioners 1 – 4 ceased to have interest in the Company. But a perusal of the register of Partition Deed dt.01.04.2013 show there is no whisper about the 1st Respondent Company or the interest of members in the Company.
100. There is no mention in the Family Partition Deed dated 01.04.2013 that the Petitioners agreed to surrender their interest in the 1st Respondent Company in favour of Respondent No.2 or his wife. There is no mention in the Partition Deed relating to resignation of Petitioners 1 to 4.
101. In the case on hand if we see the events, the 3rd Respondent was taken as Additional Director in the Board of Directors meeting held on 07.10.2016.
102. The 3rd Respondent was made the Director in the General Meeting dated 25.08.2017. In between on 29.03.2017, the Respondent No.2 choose to show that the shares of the Petitioner 1 were transferred to the Respondent No.3.
103. The Respondent No.2 also put forward that the Petitioners 2-4 resigned by submitting their resignation letters on 02.01.2017. Therefore, from October 2016 onwards the Respondent No.2 started to throwout Petitioner No.1 and see that Petitioners 1-4 are not in the management of the Company as Directors.
104. In these set of facts, the probability is that the transfer of shares of the Petitioners 1 to the 3rd Respondent is highly improbable.
105. In view of the above discussion it is held that without any sufficient cause, the 1st Respondent Company transferred the shares of the Petitioner No.1 to the 3rd



Respondent who is no other than the wife of the 2nd Respondent.

106. Hence, it is held that the transfer of shares of the Petitioner No.1 to the 3rd Respondent is illegal and it is liable to be set aside.
107. It is stated by the Respondents that the Petitioners 2 – 4 submitted their resignation letters on 02.01.2017 and those resignation letters were accepted by the Board of Directors in the meeting held on 02.01.2017.
108. The Respondent did not choose to file the minutes of the meeting of the Board of Directors purported to be held on 02.01.2017 wherein the resignation of Petitioners 2-4 was accepted.
109. But the extract of the minutes of the meeting of the Board of Directors held on 02.01.2017 is filed along with the Petition. A perusal of it shows that it is only signed by the 2nd Respondent as Director of the Company.
110. It is necessary to refer here that as on 02.01.2017, the Respondent No.2, Petitioner No.1 to 4 are the Directors and 3rd Respondent is the Additional Director.
111. It is held that the appointment of the 3rd Respondent as Additional Director on 07.10.2016 till the date of AGM for the year 2016 is held to be invalid.
112. Therefore, the resolution passed on 02.01.2017 by the Respondent No. 2 and Respondent No.3 must be held to be invalid. It is not even the case of the Respondents that a notice of the Board meeting dated 02.01.2017 was given to the Petitioners also.
113. It is pertinent to mention that the resignation letter of the Petitioner No.1 has not been placed on record.
114. It is pertinent to mention here that in the Board of Directors meeting held on 02.01.2017 there is no



resolution accepting the resignation of the 1st Petitioner.

115. Therefore, any meeting of the Board of Directors held on 02.01.2017 without a notice to the Petitioners is invalid.

116. Section 168 of the Companies Act deals with the resignation of the Directors:-

RESIGNATION OF DIRECTOR (Sec.168)

i) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

Provided that a [director may also forward] a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

ii) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

iii) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of



directors who shall hold office till the directors are appointed by the company in general meeting.

117. **RULE 15 & 16 OF THE COMPANIES (APPOINTMENT OF DIRECTORS) RULES, 2014**

Notice of resignation of Director

Rule 15:- The Company shall within thirty days from the date of receipt of notice of resignation from a director, intimate the Registrar of Form **DIR - 12** and post the information on its website, if any.

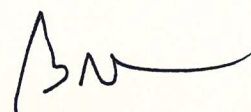
Copy of resignation of director to be forwarded by him

Rule 16:- Where a director resigns from his office, he within a period of thirty days from the date of resignation, forward to the Registrar of copy of his resignation along with reasons for the resignation in Form **DIR - 11** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014:

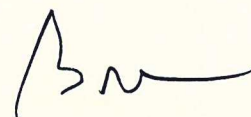
[**Provided** that in case a company has already filed Form **DIR - 12** with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form **DIR - 11** and file the same on his behalf intimating the reasons for the resignation.]

118. The rules contemplate that the resigned Directors shall file DIR-11 within a period of 30 days from the date of resignation. In the case on hand no such DIR-11 was filed by the resigned Directors i.e., Petitioners 2-4. It may be contended that it became optional.

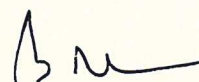
119. There is an obligation on the Company to file DIR-12 where there is cessation of Directorship on account of resignation.
120. In the case on hand Respondent no doubt filed DIR-12 in respect of the Petitioners 2 to 4 enclosing their resignation letters. But Respondent did not choose to file any acknowledgment for the filing of DIR-12.
121. As per the Instructions Kit for e-Form DIR-12 On successful submission of the e-Form DIR-12, challan will be generated depicting the details of the fees paid by the user to the Ministry. It is the acknowledgement to the user that the e-Form has been filed.
122. In DIR-12 placed on record by the Respondent the date of filing of DIR-12 is not there. The acknowledgement is also not filed. As per the rule 16 of the Rules Company shall file within 30 days from the date of receipt of notice of resignation DIR-12. Therefore, the filing of DIR-12 is also not properly done by the Company.
123. In the rejoinder filed by the Petitioners in the main C.P. it is stated on 29.12.2016 resolution was passed by the Respondent No.1 Company to make an application or request to the Registrar of Companies for making the present status of the company from dormant to active and further resolve that any member of the Company authorised to make the Application before Registrar of Companies.
124. The Petitioner No.4 has written a letter to the Registrar of Companies on 11.01.2017 requesting the Registrar of Companies to make the Company status from dormant to active in order to file the required e-Forms and Form No.GNL-1 was also filed on 13.01.2017.



125. If the Petitioners resigned on 02.01.2017, the Petitioner No.4 has directed to file a letter before the Registrar of Companies to make a request from dormant to active.
126. On this ground also it is clear that the Petitioner No.4 has not resigned as Director of the Company.
127. In view of the above discussion the resignation of the Petitioners 1 to 4 has not validly done.
128. It is contended by the learned counsel appearing for the Respondents that the Directorial complaints cannot be looked into as a ground for oppression or mismanagement.
129. First of all the 1st Respondent Company is a family company. In a family company where the articles provides that the Promoter Directors shall continue to be the Directors unless ceased as Directors as per the provisions of the Companies Act and Respondent No.2 thought of sending away the Petitioners 2-4 in one stroke as Directors of the Company. There is no remedy available to such Directors expect questioning the same before this Authority whether it amounts to act of oppression or not.
130. In the case on hand the Petitioners 2 to 4 joined the Petitioner No.1 who is eligible to file this Petition U/s.397 and 398 of the Act.
131. Therefore, on the ground that Petitioners 2 to 4 are not the members of the Company, it cannot be said that the validity of their resignation cannot be questioned in this Petition.
132. In view of the above discussion it is held that the Petitioners 2-4 are entitled to continue as the Directors. It is already stated that the resignation letter of the Petitioner No.1 is not placed on record.



133. It is stated by the Respondent that the Petitioner No.1 after the execution of Partnership Deed relinquished his interest in the company and therefore he voluntarily resigned as Director.
134. In the absence of any material on record to show that the Petitioner No.1 resigned as Director, it cannot be said that the Petitioner No.1 ceased to be a Director. Therefore, it is held that Petitioners 1-4 continued as Directors of the 1st Respondent Company.
135. It is stated by the Respondents that the 3rd Respondent was appointed as Additional Director in the Board of Directors meeting held on 07.10.2016.
136. The respondent filed only a copy of intimation of Appointment of Additional Director sent to Respondent No.3. It shows that the intimation was given by the 1st Respondent Company to the 3rd Respondent stating that she has been appointed as Additional Director of the Company at the Board meeting held on 07.10.2016.
137. The extract of the resolution is mentioned in that letter. That letter is signed by the 2nd Respondent. The minutes of the Board of Directors meeting said to have been held on 07.10.2016 are not filed.
138. No material is placed on record to show that all the Directors i.e., Petitioners 1-4 were served with notice of the Board of Directors meeting held on 07.10.2016.
139. A perusal of the Annual Return for the Financial Year 2014-15 filed before the ROC, the Board Meetings and AGMs shown to be held on 05.06.2014, 01.09.2014, 18.12.2014 and 06.03.2015. It is mentioned in the said Annual Return that the number of the Directors that attended the meeting were shown as 4.
140. In the Annual Return for the Financial Year 2015-16 filed before the ROC, the Board Meetings and AGMs



shown to be held on 05.06.2015, 02.09.2015, 18.12.2015 and 10.03.2016 and the number of Directors attended the meeting were shown as 4.

141. In the Annual Return for the Financial Year 2016-17 filed before the ROC, the Board Meetings and AGMs shown to be held on 09.06.2016, 02.09.2016, 30.12.2016, 02.01.2017, 20.02.2017, 29.03.2017 and the number of Directors attended were shown as 6 and 4.

142. It is a fact that the Petitioner No.3 is an American citizen. A perusal of the Passport of the Petitioner and the stamping dates on the Passport goes to show that the Petitioner No.3 visited India only on the following dates during the years 2005-17 on 17.06.2005, 15.06.2008, 19.12.2008, 18.06.2011, 19.11.2011, 22.03.2013, 05.09.2014, 25.11.2015, 30.04.2016, 26.12.2016, 11.08.2017.

143. Therefore, there is no scope for the Petitioner No.3 who continues to be a Director of the Company till 02.01.2017 even according to the Respondents to attend the Board Meeting said to have been held on 07.10.2016.

144. In fact, the Annual Return shows no Board meeting on 07.10.2016. Even assuming that there was a Board meeting on 07.10.2016 there was no notice of such Board Meeting to any of the Directors i.e., Petitioners 1-4. There is no scope for the Petitioner No.3 to attend such purported Board meeting on 07.10.2016.

145. Therefore, the appointment of 3rd Respondent as Additional Director in the Board Meeting held on 07.10.2016 is invalid.

146. There shall be 2 Directors in a Private Limited Company. According to the Respondents, Petitioners

2-4 resigned on 02.01.2017. Of course the resignation letter of the Petitioner No.1 is not there. That means by 02.01.2017 the 2nd Respondent is a Director and 3rd Respondent is the Additional Director.

147. A perusal of DIR-12 filed by the 1st Respondent Company relating to the appointment of the 3rd Respondent as Additional Director goes to show that the Respondent No.3 was appointed as Additional Director being authorised by the Board of Directors of the Company vide Resolution No.5 dated 30.12.2016. Whereas copy of the intimation given to the 3rd Respondent appointing her as Additional Director it is stated that the Board of Directors in its meeting held on 07.10.16 appointed 3rd Respondent as Additional Director. This clearly shows that there was no Board of Directors meeting either on 07.10.2016 or on 30.12.2016. It is also not clear on what date the 3rd Respondent is appointed as Additional Director w.e.f. 07.10.2016 or w.e.f. 30.12.2016.

148. The appointment of the 3rd Respondent as the Additional Director is held to be invalid. Therefore, there is no coram for the Board meeting said to have been held on 02.01.2017 wherein purported resignations of Petitioners 2 to 4 were accepted in the absence of the Petitioners.

149. Coming to the appointment of the Respondent No.3 as Director in the General Meeting held on 25.08.2017, by that date according to the Respondents the shareholders are Respondents 2 and 3 only. Because, according to the Respondent No.2 the shares of Petitioner No.1 were transferred to Respondent No.3 on 29.03.2017.

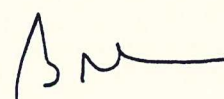
150. It is held by this Tribunal that the transfer of shares of the Petitioner No.1 to Respondent No.3 is invalid.
151. Therefore, the alleged transfer of shares that took place on 29.03.2017 is not taken into consideration, Petitioner No.1 remains to be a shareholder even on 25.08.2017.
152. Therefore, the General Body Meeting held on 25.08.2017 is not a valid General Body Meeting. Moreover, the appointment of Directors has to be made in a General Body Meeting where there is need for specific agenda item.
153. In the case on hand the notice of the AGM is not placed on record. It is only the certified true copy of the Resolution No.1 of the general meeting of the shareholders said to have been held on 25.08.2017 is filed.
154. DIR-8 signed by the Respondent No.3 is dated 07.10.2016. DIR-2 signed by the Respondent No.3 is also dated 07.10.2016. That means, no fresh DIR-2 and DIR-3 were taken before appointing 3rd Respondent as Director in the so called general meeting said to have been held on 25.08.2017.
155. In view of the above discussion it is held that the appointment of the 3rd Respondent as Director in the purported general meeting on 25.08.2017 is held to be invalid.
156. Petitioner No.1 being a shareholder is entitled to question the appointment of the 3rd Respondent as Director.
157. The sequence of events that took place from 07.10.2016 to 25.08.2017 goes to show that 2nd Respondent with an intention to take over the entire Company for himself by throwing out the Petitioners 2-4 from the Company involved in all these kinds of

acts which are certainly burdensome and oppressive to the Petitioners, atleast Petitioner No.1 is concerned who is member of the Company.

158. It is the case of the Petitioners that the Petitioner No.3 invested an amount of Rs.1,75,87,980/- on behalf of Petitioners 1 to 4 herein for allotment of shares. It is also the case of the Petitioners that the investments made by the Petitioner No.3 on his behalf and on behalf of other Petitioners were shown as unsecured loans and Petitioners are shown as unsecured creditors instead of allotting shares.
159. It is stated by the Petitioners that in the year 2016-17 Annual Returns were filed by the Respondents 1,2 and 3 which shows that the unsecured loans were paid to all the Petitioners. The Respondents did not file any proof to show that amounts were paid to the Petitioners i.e., the amount of Rs.6,75,000/- to Petitioner No.1, Rs.6,25,000/- to Petitioner No.3, Rs.6,00,000/- to petitioner No.4 and Rs.32,87,388/- to Petitioner No.2 which were shown as due as per Annual Report at Pg.114 of the counter as on 31.03.2015.
160. It is further stated by the Petitioners that having accepting Rs.11.25 lakhs and Rs.5.70 lakhs from the Petitioner No.3 herein for the purpose of allotment of shares, conveniently shown as a loan/unsecured creditor in the balance sheets. It is further submitted that the Petitioner No.3 has filed Bank Account statements showing an amount of Rs.1,75,87,980/- was transferred to the Respondent Nos.1 & 2 and to the Petitioner No.1 and these amounts were withdrawn from 2004 to 2011.



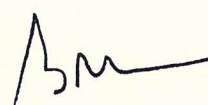
161. According to the Petitioners, whatever the amounts sent by the Petitioner No.3 herein, Petitioner No.1 and Respondent No.2 were utilized for the development of the Respondent No1 Company.
162. According to the Petitioner, the 1st Respondent Company paid Rs.6.25 lakhs to the Petitioner No.3 herein on 30.03.2016 by way of a cheque drawn on Indian Overseas Bank, Thirupathi to clear the unsecured loan amount.
163. It is stated by the Petitioners that the Balance Sheets were signed by the Respondent No.2 and the Petitioner No.4 and Respondent No.3 never signed the Balance Sheets.
164. It is stated by the Petitioner that said amount was directly deposited by the Respondent No.2 into the Bank Account of the Petitioner No.3 without his knowledge and the Petitioner No.3 gave a complaint to RBI and as well as ICICI Bank.
165. In fact the Petitioner No.3 sent a cheque for Rs.6.25L on 19.04.2016 to the Respondent No.2 but it was not encashed.
166. According to the Respondents Rs.11.25Lakhs was repaid to the Petitioner No.3 on 25.04.2006 and Rs.5.70lakhs was repaid to the Petitioner No.3 on 17.02.2011.
167. No doubt, the account Statement filed by the Petitioner No.3 and other documents show that some amounts were invested by the Petitioners. According to the Petitioners, the amounts were invested towards allotment of shares of the 1st Respondent Company. According to the Respondent whatever amounts were invested by the Petitioners are unsecured loans and they were repaid.



168. The prayer of the Petitioners is to allot shares equivalent to the amounts invested by them. First of all, the authorised share capital of the 1st Respondent Company is Rs.2,50,000 divided into 25,000 shares of Rs.10/-. The paid up share capital is Rs.1,25,000/-.
169. Unless and until further shares are issued and unless and until there is increase in the authorised share capital there is no possibility of allotting shares to the Petitioners equal to the amounts invested by them.
170. Moreover, there is no share application filed by the Petitioners 2 to 4 to allot shares to them. There is no document to show that the amounts deposited by them are towards allotment of shares.
171. The Balance Sheets that are filed by the Respondent No.1 Company in January 2017 for all the years at a time show that the amounts invested by the Petitioner No.3 are only unsecured loans.
172. In these circumstances it is not possible to give a direction to the 1st Respondent Company to allot shares equal to the amounts invested by them.
173. However, Petitioners are at liberty to recover the amounts invested by them by proceeding against the Respondent No.1 Company and other Respondents in a Civil Court if so advised.
174. Learned counsel appearing for the Petitioner contended that a party who had invested huge money in the Company can be recognised as member of the Company in support of the said contention learned counsel for the Petitioner relied upon the following decisions.
175. Gulbarga Airport Developers P. Ltd. Vs. IL and FS Transportation Network Ltd. and Others reported in (2014) 182 Comp Cas 331(AP). In that case Company treated investor as shareholder and therefore

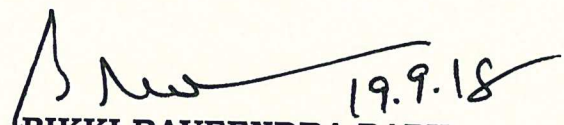
Company Law Board decision treating such investor as member is upheld by the High Court.

176. But in the case on hand there is no material on record to show that the Company recognised the investors/Petitioners No.2-4 as members.
177. In the decision relied upon by the Petitioner the books of the 1st Respondent Company show an amount of Rs.20 crores was received towards share Application money of the Petitioner.
178. In such circumstances it was held that an investor who has invested money towards share Application money is a member of the Company.
179. On fact, the above decision is not applicable to this case. On the same point learned counsel for the Petitioner also relied upon another decision-
- Umesh Kumar Baveja and Others Vs. IL and FS Transportation Network Ltd. and Others, Delhi High Court vide its order dated 30.09.2013 reported in (2014) 182 Comp Cas 309 (Delhi). In that case the Company Balance sheet show the amount as "share application money pending allotment". In those facts the investors are treated as member. The facts in this case are different.
180. In view of the above discussion it is held that shares cannot be allotted to the Petitioners for the amounts invested by them. However, Petitioners are at liberty to recover the amounts invested by them by proceeding against the Respondents in Civil Court if so advised.
181. The very fact that no statutory compliance have been made by the 1st Respondent Company since incorporation till January 2017 clearly goes to show that the affairs of the Company are not been conducted properly. It is contended by the learned



counsel appearing for the Respondent, Petitioners being the Directors they are also equally responsible. But it is the case of the Respondents themselves that it is the Respondent No.2 that is managing the affairs of the Company and Petitioners have not shown any interest. In fact the Petitioner No.3 is a citizen of USA and he is only investing amounts.

182. Material on record clearly goes to show that Respondent No.2 alone managed the affairs of the Company. Therefore, non filing of statutory returns by the 1st Respondent Company is an omission solely attributable to the 2nd Respondent.
183. In view of the findings in point No's 1 to 4 it can only be held that the acts of the Respondents namely, transferring the shares of the Petitioner No. 1 to Respondent No.3 and cessation of Petitioners 1 to 4 as Directors of the Company, appointing 3rd Respondent as Additional Director and consequently as Director are all acts of oppression.
184. Therefore, the Petitioners are entitled for following equitable reliefs from this Tribunal:-
- i) Respondent No.1 Company is directed to rectify the Register of members showing the Petitioner No.1 is holding 2500 shares.
 - ii) The Respondent No.3 is removed as Director of the Company.
 - iii) The Petitioners 1 to 4 are reinstated as Directors of the Company.
185. Petition is disposed of accordingly.


BIKKI RAVEENDRA BABU
 MEMBER JUDICIAL