IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition No.107/ND/2013
(Under Section 397-398 of Companies Act, 1956)

IN THE MATTER OF:

SHAILJA KRISHNA,
R/O OFFICER'S COLONY, YASH PAPERS LTD.
P.O. DARSHANNAGAR, DISTRICT FAIZABAD – 224 135,
UTTAR PRADESH

……PETITIONER

VERSUS

1. **SATORI GLOBAL LIMITED**
HAVING ITS REGISTERED OFFICE
AT 47/81 HATIA BAZAR, KANPUR – 208 001,

UTTAR PRADESH.

2. **VED KRISHNA, DIRECTOR,**
R/O 1/13/1B CIVIL LINES, FAIZABAD – 224 001, UTTAR PRADESH.

3. **UJJWAL AGARWAL, DIRECTOR,**
R/O 7/9/40A, GANDHI NAGAR COLONY, FAIZABAD – 224 001, U.P.

4. **NIRUPAM MISHRA, DIRECTOR,**
R/O 127 JHARKHANDI, FAIZABAD – 224 001, UTTAR PRADESH.

5. **MANJULA JHUNJHUNWALA,**
R/O 1/13/1B, CIVIL LINES, FAIZABAD – 224 001.

6. **STOCKNET INTERNATIONAL LTD.**
4F2, COURT CHAMBERS 35, NEW MARINE LINES,
MUMBAI – 400 020

……RESPONDENTS

JUDGMENT/ORDER DELIVERED ON 04.09.2018

CORAM : Sh. V.P. Singh, Hon'ble Member (Judicial)
: Ms Saroj Rajware, Hon'ble Member (Technical)

For the Petitioner : Sh. Vikram D Chauhan, Advocate
For the Respondents : Sh. Adesh Tandon, PCS.

PER SE : SH. V.P. SINGH, MEMBER (JUDICIAL)

ORDER/JUDGMENT

1. The present company petition was filed by the petitioner before the then Company Law Board, New Delhi Bench under Section

397/398 of the Companies Act, 1956 and after creation of NCLT, this petition has been received by transfer.

2. The Respondent No.1 is a registered company incorporated on 13.04.2006 under the Companies Act, 1956, having its registered office at 47/81 Hatia Bazar, Kanpur 208001 and the Corporate Identity Number of the Company is U74999UP2006PTC031610.

3. Brief facts of the present petition are as follows:

ii. Respondent No.1 Company was initially incorporated as Private Limited Company in the year 2006, as **"Sargam Exim Private Limited".** The name of the Company was later changed to **"Satori Global Pvt.Ltd." Petitioner and Respondent No.2 (Husband of the petitioner) were the original promotor and only shareholder of the said Company.**

iii. The authorised share capital of the company as in the year 2006 was 2 Cr. (**Rupees Two Crores)** divided into **20 Lakhs** equity shares of Rs.10/- each and the subscribed and paid-up capital was Rs.3 Lakhs Divided into 30,000 equity shares of Rs.10 each.

iv. That the main business of respondent no.1 is to trade in paper. The company trades mainly in the paper of Yash Papers Ltd., which has its manufacturing premises at Darshannagar, Faizabad and also having its registered office at 47/81 Hatia Bazar, Kanpur 208001, Uttar Pradesh.

v. The petitioner was one of the promoter of the Company and initially subscribed to 5000 equity shares of company, and the remaining 25,000 equity shares of company were subscribed to Respondent No.2.

vi. Petitioner further stated that despite having 5000 equity shares, number was further increased to 39,500 and company never sent physical certificate to the petitioner.

vii. It is submitted that in due course of time, Respondent No.2 resigned from the directorship of the R-1 Company which was accepted in the meeting of board held on 01.02.2007. ***(A copy of letter dated 01.02.2007 including minutes of the board meeting is annexed and marked as Annexure-A3)*** and in place of Respondent No.2, Respondent No.4 was inducted as Director of the Company with effect from 01.02.2007.

viii. Petitioner further submits that the Company was running successfully in full cooperation and coordination from the date of its incorporation till 2010 and the petitioner toiled day and night for the progress of the Company and admittedly as on 25.09.2010, as per form 20 B, the petitioner was holding more than 98% of the share-holding of the Company by way of 39500 equity share in her name remaining 500 share were being held by respondent no. 4.

ix. It is submitted that relation between petitioner and respondent no. 2 turned sour in the year 2010 on account of matrimonial dispute. As a result respondent no. 2 cleverly and

clandestinely, having obtained signatures of petitioner on blank papers under threat and coercion and further, prohibited her from participating in any activity relating to the Company.

x. Initially, the petitioner could not understand the implications of not letting her deal with the affairs of the Company, in as much, the petitioner was sure that being the holder of 98% shareholding in the Company, the respondents will not be able to mismanage or run the Company according to their whims.

xi. However, it appears that respondent no. 2 in his malafide aims, went ahead and inducted respondent no. 3 as an additional independent director in the Company by apparent appointment dated 15.12.2010. It is submitted that the petitioner never consented to the same and had no knowledge of the same until very recently. Form 32 filed by respondent no. 1 inducting respondent no. 3 as an additional director is marked as **ANNEXURE A 6.**

xii. Petitioner alleged that resolution was passed by the Company without sending any notice of meeting to the petitioner which was signed by respondent no. 4 alone. A copy of the resolution dated 15.12.2010 is marked as **Annexure A 7.**

xiii. Consequently, a resignation of the petitioner was then prepared by way of fabricating the documents and using the blank signed documents of petitioner, and the petitioner resigned from the Company on 17.12.2010. It is submitted that the petitioner had no knowledge about the same and that the

resignation has been prepared by Respondents acting in collusion with each other and with the sole object to oust the petitioner from the Company. Furthermore, there was no occasion for the petitioner to have resigned from the Company, and more particularly given the fact that the relations of the parties were not cordial at the relevant time, thereby ruling out any charity or thoughtful consideration for respondents at all.

A copy of the fabricated document being resignation of petitioner prepared by respondent dated 17.12.2010 along with Form 32 is marked as **ANNEXURE A 8.**

xiv. Petitioner brought to note that petitioner was not even available at Faizabad U.P. on 17.12.2010 when she allegedly signed her resignation, she had already left for Kolkata on 16.12.2010 itself and cameback on 01.02.2011 only. ***(Proof of petitioner having left faizabad for kolkatta is being annexed and marked as annexure-A9).***

xv. And stated that after ousting the petitioner from the affairs of Company, regarding EGM held on 20.06.2011, the name of company was changed to Satori Global Limited.

xvi. That the complaints regarding having obtained signatures on blank documents, stamp papers and share transfer certificates was made to the concerned police station by the petitioner. A copy of the complaints dated 08.02.2011 and 25.03.2011 is marked as **ANNEXURE A 10.**

xvii. Further, it is submitted by the petitioner that the list of the shareholders filed by respondent no. 1 under signatures of respondent no. 2 and respondent no. 3, as on 24.09.2011, the name of petitioner has been shown as a shareholder of Company holding about 98% of the total equity share holding. As such, it is established beyond doubt that at all relevant times, the petitioner was the majority shareholder in the company. Furthermore, the shareholding of petitioner was close to 98%. However, despite holding 98% of the shareholding, the petitioner had been ousted from the affairs of respondent no. 1 by the fraudulent act on the part of respondents. ***(Form 23 AC and Form 20B for the Financial Year ending on 31.03.2011 and the list of shareholders of R-1 as on 24.09.2011 is annexed as Annexure A-13).***

xviii. It is extremely important to note that right from December 2010 when the dispute arose and till date, including till 24.09.2011, when admittedly the petitioner was the majority shareholder, no notice of any meeting whatsoever, was given to the petitioner and on 24.09.2011, the respondents made allotment of 50,000 equity shares to one **Stocknet International Limited (respondent no. 6),** which again is without any consent of information to petitioner and is absolutely illegal and impermissible.

xix. In Form no. 20 B filed for the financial year ending 31.03.2012, shockingly, the name of petitioner was removed from the list of shareholders as well and instead, respondent no. 5 (mother-

in-law) was shown to have acquired the said shareholding of petitioner.

The date of transfer of shares has been recorded as **18.11.2011**.

(Form 23 AC and Form 20 B for the Financial Year ending on 31.03.2012 and the list of shareholders of Company are collectively marked as ANNEXURE No. A-14.)

xx. Further stated that the shares were also transferred to some other persons interse, which is apparent from the list of shareholders of respondent no. 1 as on 29.09.2012.

(A list of shareholders of respondent no. 1 as on 29.09.2012 is marked as ANNEXURE No. A-15)

xxi. However, it is extremely important to note that the respondent no. 2 and his family exercise considerable clout in the entire Faizabad and they made sure that the complaints made by petitioner never saw the light of the day. They were successful in manipulating the entire process, and the police never took any action, whatsoever, on the complaint filed by petitioner.

xxii. A subsequent complaint once again was filed by the petitioner on 13.08.2011, however, to petitioner's knowledge, the police has done nothing in the said complaint as well. A copy of complaint dated 13.08.2011 is marked as **ANNEXURE A 11.**

xxiii. According to the Articles of Association of the company, Clause 16 provided for transfer of shares by way of gift or without consideration. Clause 16 permitted any member to transfer by way of gift, for or without any pecuniary consideration, the whole or party of his holding in the company to his wife, husband, son, daughter-in-law, son-in-law, father, mother, brother, sister, uncle, nephew, niece or cousin.

xxiv. It is further submitted that the right to transfer the shares by way of gift or without consideration was limited to few defined categories of relatives as above, it is important to note that the aforesaid permissible limit does not feature mother-in-law.

xxv. It is further stated that despite having being allotted 5000 equity shares, which number was further increased to 39,500 in due course of time, the company never actually sent physical shares certificates to the petitioner, which continued in the possession of respondent no.1 & 2. In due course of time, respondent no.2 resigned from the Directorship of respondent no.1 and further ceased to hold any equity shares in the company, he never caused the company to issue physical shares certificates to the petitioner and continue to enjoy the exclusive physical possession of share certificates for the 39,500 equity shares allotted to the petitioner in due course of time.

xxvi. That the respondent no.2 is the husband of the petitioner and the parties are caught up in bitter matrimonial dispute over the period from 2010 onwards. In the year 2006, the relation

between the parties were cordial, and as such, the petitioner never realised that the respondent No 2 would be misusing the physical share certificates lying in his possession for his benefit and to oust the petitioner from the company by adopting fraudulent means and clever practices. No notice of any meeting of the Board of Directors of respondent no.1 was ever received by the petitioner.

xxvii. It is further submitted that on 30.12.2006, respondent no.2 transferred 24,500 equity shares in favour of the petitioner herein, raising the equity held by petitioner to 29,500. Later on, five hundred shares held by respondent no.3 were transferred by him to respondent no.4. Respondent no.2 continued to be a Director of the Company until February 1st, 2007 when he tendered his resignation. In place of respondent no.2, respondent no.4 was inducted as Director of the Company w.e.f 1st February 2007.

xxviii. The audited balance sheet as on 31.03.2007 reflects that the issued, subscribed and paid up share capital of the company comprising 40,000 equity shares of Rs.10 each fully paid up and 900,000 equity shares of Rs.10 each called up and bid of for Rs.2.50 each.

xxix. After that, in the meantime, since the call made on the unpaid shares amounting 900,000 in number was not paid, the said shares were forfeited by the company. No claim or dispute has been raised by the concerned shareholders holding those

900,000 equity shares, whose shares were forfeited by the company on account of non-payment of call made.

xxx. Admittedly as on 25.09.2010, as per Form 20B, the petitioner was holding more than 98% of the shareholding of company by way of holding 39,500 equity shares in her name. The remaining 500 shares were being held by respondent no.4.

xxxi. It is further submitted that the relations between the parties turned sour in the year 2010 on account of matrimonial dispute. As a result, respondent no.2 cleverly and clandestinely, having obtained signatures of petitioner on blank papers under threat and coercion and further, prohibited her form participating in any activity relating to the company.

xxxii. The petitioner was sure that being the holder of 98% shareholding in the company, the respondents will not be able to mismanage or run the company according to their whims.

xxxiii. However, respondent no.2 inducted respondent no.3 as an Independent Additional Director in the company by apparent appointment dated 15.12.2010. Form 32 filed by respondent no.1 is annexed as Annexure no.A6.

xxxiv. A resolution was passed by the Company without even sending any notice of meeting to the petitioner, which was signed by respondent no.4. It is further submitted that the resolution has been passed without obtaining any consent from the petitioner and without even bringing it to the knowledge of petitioner about the said board meeting.

xxxv. After that, a resignation of petitioner was then prepared by way of fabricating the documents and using the blank signed documents of petitioner. The petitioner is shown as resigned from the company on 17.12.2010 even without any knowledge of the petitioner and more particularly given the fact that the relations of the parties were not cordial at the relevant time, thereby ruling out any charity or sympathetic consideration for respondents at all.

xxxvi. It is further submitted that the petitioner had never agreed to transfer her shares to respondent no.5 and as a matter of fact, never transferred the same ever in favour of respondent no.5 or anyone else.

4. Hence, the petitioner has filed this petition various relief under provision of section 397/398 of the Companies Act 1956.

5. **Respondents have filed reply to the main company petition and stated herein below:** -

i. It is true that petitioner was a subscriber to the memorandum and was a Director of the Respondent No.1 Company, but as on date, she is neither a Director nor a shareholder. The petitioner tendered her resignation w.e.f 17.12.2010. She is not a shareholder by gift deed dated 17.12.2010. In fact as on date of filing of the petition she was not a shareholder of the Company.

i. The petitioner is neither a Director nor a shareholder, and she is originally subscribed to 5000 Equity shares, and Respondent No.2 subscribed to 25000 equity shares. Subsequently, 24500 equity

shares were transferred by Respondent No. 2 to Petitioner and 500 equity shares to Respondent No. 4 on 30.10.2006. Then there was an allotment of 10000 equity shares on 20.02.2007 to Petitioner. Then the shareholding on 20.02.2007 emerged as under:

1) 5000+24500+10000=39500 equity shares Shailja Krishna (Petitioner)

2) 500 equity shares Nirupama Mishra (Respondent No.1)

REGISTER OF SHAREHOLDING OF MS. SHAILJA KRISHNA AS ON 20.02.2007

S.N.	Nature of Transaction	Date Of Purchase	Date of Sale/Transfer	No. of Shares	Total Shares
1	Share Subscribed on Incorporation of Company.	13.04.2006	-	5000	5000
2	Share Received on 30.12.2006 from Mr Ved Krishna, Ex-Husband.	30.12.2006	-	24500	29500
3	Share Subscribed Through Private Placement.	20.02.2007	-	10000	39500

Subsequently, an allotment of 9,00,000 equity shares at a premium of Rs.40 was made on 31.03.2007 by the board, and necessary form 2 was filed under the signature of Petitioner.

It also pertinent to mention here that allotment of 9,00,000 shares was made and calls were due as under:

S. N	Particulars	**Name of allottee**	**Date of allotment**	**No of shares Allotted**	**Face value**	**Premium**	**Total Paid up share capital**
1	Private Placement	1. Laffan software Limited	31.3.2007	100000	7.50	40.00	750000
		2.Logic Infotech Limited	31.3.2007	100000	7.50	40.00	750000
		3. Ramkrishna Fincap Limited	31.3.2007	100000	7.50	40.00	750000
		4. Clifton Securities Private limited	31.3.2007	100000	7.50	40.00	750000
		5. Jagdishwar Pharmaceutical Limited	31.3.2007	100000	7.50	40.00	750000
		6. Stocknet International Limited	31.3.2007	100000	7.50	40.00	750000
		7. Online Information Technologies Limited	31.3.2007	100000	7.50	40.00	750000
		8. Impala Industries Enterprises Limited	31.3.2007	100000	7.50	40.00	750000
		9. Artillegence Bio-Innovations Limited	31.3.2007	100000	7.50	40.00	750000

Allottees paid application money, allotment money and 1st call money at a premium aggregating to Rs.35 but did not pay final call of Rs.15 out of which Rs.2.50 was due toward face value, and Rs.12.50 was payable towards premium. In other words on 9,00,000 shares allottees paid Rs.3,15,00,000 (Three Crores fifteen lacs). On account of non-payment of Rs.15 per share, 9,00,000 shares were forfeited on

20.03.2009 which is duly reflected in the annual return made upto 29.09.2009. The provision about forfeiture is contained in Articles of Association from Article 33 to 42. At page no 104 to 105 of the petition the Article no.37 reads as under:

***A forfeited share may be sold, re-allotted or otherwise disposed of either to the original holder thereof or to any other person on such terms and in such manners as the Board thinks fit, and at any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it t*hinks fit.**

This exhibits that Board of Directors are well within the power to re allot or otherwise dispose off the forfeited shares and allot the share to the original holder on payment of balance money and cancel the forfeiture on such terms as it thinks fit. In furtherance of the same the 50,000 equity shares were reissued to Stocknet International Limited on 10.11.2011. Therefore, it is wrong to say that petitioner holds almost equivalent to 98% of the issued share capital of the Company and it is patently false statement that petitioner is entitled to make the application under Section 399 to seek relief u/s 397 & 398 of the Companies Act, 1956.

ii. Since year 2006, i.e. incorporation the annual return of the Company till 2013 are correct. It is wrong to say that Respondent fraudulently acting in collusial with each other has transferred the shares from petitioner to Respondent No. 5. It is denied that share certificates were not handed over to the petitioner as petitioner herself was whole time Director of the Company and was responsible to hand over the share certificates to each shareholder including herself.

iii. That the petitioner was the first Director of the company till she resigned from the directorship, i.e. w.e.f. from 17.12.2010. It is not a case of petitioner that she did not sign the resignation letter. It is not a case of petitioner which she did not sign transfer deed and gift deed. Thus, three is no allegation and pleading that the signature appearing on transfer deed and gift deed as well as on the resignation letter is forced. But, use of the word fraudulently, colossal is brainchild of the petitioner.

iv. The words wrongfully and illegally are false and false to knowledge of petitioner. The fabrication of documents is denied as petitioner has not placed before the Hon'ble Board any evidence is support of this Para. The shareholding of Responding No.1 Company has not been altered in any manner as entire issued capital of 9,40,000 equity shares of Rs. 10 each is admitted by the petitioner. Therefore, the allegation of the alteration by the respondent of the shareholding is not based on any foundation and basis.

6. **After that, petitioner has filed rejoinder to reply** filed by the respondents and stated that it is wrong to allege that the criterial laid down under Section 399 of the Companies Act 1956 has not been met out. It is submitted that wrongful removal of the petitioner from the Board of Directors of the respondent company, the number of shareholders/members in the respondent company in the year 2010 were limited to 2 (two) namely petitioner holding 39500 equity shares, Nirumpam Mishra holding 500 equity shares. Furthermore, as per list of the members as on 24th September 2011 issued by respondents themselves, the number of members

have been restricted to seven only. The petitioner held 39500 equity shares out of total 40000 equity shares amounting to almost 98 percent of the subscribed and paid up of the company at the relevant time when has shares were illegally and fraudulently transferred to respondent no. 5, which is under challenge in this petition. Thus, the petitioner has duly satisfied the criterial of the requisite qualification laid down in the Section 399 of the Companies Act 1956.

7. It is further submitted that this is a peculiar case where the entire shareholding of the petitioner has been illegally and arbitrarily transferred to respondent no. 5 without any consideration and in contradiction to the provision (Clause 16) of Article of Association of the Company.

8. It is further contended that the alleged gift deed does not even contain the appropriate stamp duty in accordance to the cost of the shares allegedly transferred vide gift deed which suggest that the alleged gift deed was prepared on already purchased stamp paper for some other purpose. Given the fact above the alleged gift deed cannot be held good.

9. In reply to the company petition, respondents had not uttered a single word suggesting that the alleged gift deed agrees with the article of Association.

10. It is further submitted that the respondents have placed their whole reliance on the alleged resignation dated 17 December 2010. It is further submitted that the documents above has been created by

the respondents subsequently, using the signatures of the petitioners which were taken on blank papers under threat and coercion for which FIR was lodged in this regard.

11. It is further submitted the resolution of the respondent no. 3 on 15.12.2010 is under challenge in this petition. The notice of the alleged Board meeting was never received by the petitioner which is in contradiction to Clause 16 of the Article of Association.

12. It is further submitted that the alleged resolution dated 15.12.2010 is in contradiction to Clause 53 of the Article of Association which provides that **"**the corum necessary for transaction of the business at a board meeting shall be two**". The alleged resolution was passed by respondent no. 4 alone**, **therefore, the appointment of respondent no. 3 is void ab-initio.**

13. It is further submitted that article 38 of the Article of Association clearly states that when the shares are forfeited, the person whose shares are forfeited seizes to be member. Therefore, **after forfeiture of the shares on 20th March 2009, the membership again got limited only two members**. It is therefore clear that on the alleged dated, i.e. 17.12.2010 the petitioner membership would be 1/10th of the members of the company.

14. In para 3(c) it is stated that respondents, on one hand, are denying any shares being owned by petitioners but another, it does not explain as to why the alleged EGM dated 20th June 2011 was sent to petitioner when they considered her not be member of the company any more. It is further submitted that the alleged notice

annexed by the respondents also shows 39500 shares owned by the petitioners.

15. It is further stated that no notice was ever served by the petitioner even. Otherwise, the alleged notice was received by the guard of the petitioners who is in fact, is the employee of the respondent no. 2, hence in the circumstances above the same cannot be deemed to be served upon the petitioners. Even otherwise the mode above of service is in contravention article of Association and same cannot be held valid.

16. It is further contended that the company was allegedly converted into public company by EGM on 20th June 2011. Therefore, at the relevant time I on 17th December 2010 the respondent no. 1 still governed by the Article of Association adopted by the private company which forbids transfers of shares without any consideration vide gift deed to respondent no. 5.

17. It is further submitted that though the petitioner was the director of the respondent no. 1 company, however, respondent no. 2 had a de-fecto control over respondent no. 1 and possession of the share certificates was with the respondent no. 2.

18. In addition to the above facts, petitioner has reiterated the contention of the petition in its rejoinder affidavit.

19. Heard the argument of the learned counsel for the parties and perused the record. Following issues arises for determination of this case.

i. Whether the alleged act of respondents 2 -4 comes under the purview of oppression and mismanagement under Section 397 and 398 of the Companies Act, 1956?

ii. Whether the petitioner is not eligible to present this petition under Section 397 and 398 of the Act in view of bar provided under Section 399 of the Companies Act 1956?

iii. Whether the alleged transfer of 39500 equity shares dated 17th December 2010 by way of gift deed by the petitioner to her mother in law, is valid?

iv. Whether the alleged resignation letter dated 17.12.2010 of the petitioner from the post of Executive Director of respondent no. 1 company is valid?

v. Whether the alleged Board Resolution dated 17th December 2010 regarding acceptance of the alleged resignation of the petitioner from the post of Executive Director of the company is valid?

20. Heard the learned counsel for the petitioner and perused the record. Decision on Issue No 3 will be determinative factor for deciding the maintainability of the petition thus firstly we are taking Issue No3.

21. **ISSUE NO.3:**

Whether the alleged transfer of 39500 equity shares dated 17th December 2010 by way of gift deed by the petitioner to her mother in law, is valid?

The petitioner has alleged that:

(i) she had never signed the transfer form. It is submitted that even on 17.12.2010, the alleged date of signing of the share transfer form, the said transfer form was invalid.

(ii) On perusal of the transfer form, it appears that the said form has been revalidated by Registrar of Companies on or about 12th November 2011. It is also submitted that the Respondent No. 1 has given effect to transfer of shares in favour of Respondent No. 5 on 10th November 2011, and accordingly the Board Resolution dated 10th November 2011 has been produced.

(iii) It is further submitted that the alleged transfer of shares on the Original Share Certificates appears to have been entered sometime in November 2011, but the date has been specifically overwritten of 10th. It is submitted that the Respondent No. 1 by their admission in their balance sheet filed by the Registrar of Companies have categorically annexed a list that the shares have been transferred by the Petitioner to Respondent No. 5 on 18th November 2011.

(iv) It is further submitted that the Respondent No. 1 without complying with the provisions of the Companies Act has given effect to transfer of shares in favour of Respondent No. 5. It is submitted that it is the case of Respondent No. 1 that the Respondent No. 1 Company was converted from a Private Limited Company to a Public Limited Company in September 2011 and has also adopted new Articles of Association.

(v) On perusal of the Board Resolution dated 10th November 2011, a copy of which is produced at Page 69 of the reply, has been prepared by a Private Limited Company and not by a Public Limited Company. It is a case of the Respondents that the Respondent No. 1 Company was changed from a Private Limited Company to a Public Limited Company on or about September 2011, and therefore according to the Respondent's showing as on September 2011 there was no company in the name of Satori Global Private Limited and therefore the Resolution dated 10th November 2011 on the letterhead of Satori Global Private Limited is not reliable and has obviously been created to deprive the Petitioner of her shares without following the Articles of Association.

(vi) It is also relevant that the Articles of Association of the Public Limited Company only speaks of issue of new shares and instrument of transfer of shares would be of a Public Limited Company and not of a Private Limited Company. It is, therefore, submitted that on this ground also the Respondent No. 1 could not have transferred the shares in favour of Respondent No. 5.

(vii) The Respondent No. 1 has nowhere in their pleadings stated or which date was the transfer form and the alleged Gift Deed been produced by Respondent No. 5 to give and transfer the shares in favour of Respondent No. 5. It is interesting to know how the documents are procured and used to mislead the authorities and this conduct itself amounts to oppression and total mismanagement by the Respondents Nos. 1 to 4.

(viii) Further in the Application of maintainability filed by the Respondent No. 5 before this Hon'ble Tribunal shows a form 7C which has been filed by the Respondent No. 5 before the ROC in which the reason for delay in filing the transfer form is given as "misplaced". The Form mentions of the loss/misplaced of the transfer forms, Gift Deed and Shares Certificates to request the concerned authorities (ROC) to condone the delay and revalidate the transfer forms.

On perusal of the alleged Gift Deed dated 17th December 2010 the Petitioner submits that the said alleged Gift Deed has not been signed by her. It is further submitted that the Petitioner had already left the city of Faizabad on 16th December 2010 for Kolkata and was not present on 17th December 2010 to execute the alleged Gift Deed before the Notary Public.

On perusal of the alleged Gift deed, the recitals mention there being two donees and very conveniently the name of Respondent No. 5 has already been said, and there is no second Donee named in the alleged Gift Deed.

That the witnesses of the alleged gift deed being Mr Sachin Srivastava and Mr S. N. Sharma are both employees of Yash Papers Limited a Company of which R2 is the majority shareholder and Managing Director. Petitioner never handed over the share certificates to R5 at the time of transfer as alleged, as she never had them in her possession.

It is further submitted that the said alleged Gift Deed was never produced and filed or brought to the notice of the Petitioner before the filing of this Petition. It is respectfully submitted that the Petitioner being the Director of Respondent No. 1 Company was well aware that there is a specific bar in

the Articles of the Association of the Company for transfer of her shares in favour of Respondent No. 5 being the mother-in-law. Clause 16 at Page 80 is reproduced herein for its true and correct interpretation.

a) ***"Clause 16. A member may by way of gift, or for or without any pecuniary consideration, transfer the whole or part of his holding in the Company to member's wife, husband, son, daughter-in-law, son-in-law, father, mother, brother, sister, uncle, nephew, niece, or cousin. Shares of a deceased member may be transferred by his executor or administrator to any one or more of the aforesaid relative and the shares standing in the name of a trustee of the Will of a deceased member may upon a charge, be transferred to the new trustee***

The respondents has claimed that:

i) There is no evidence on record which can be relied upon to prove that she was not in Faizabad on 17.12.2010.

ii) Signatures neither on the gift deeds not on the transfer deeds nor the resignation letter has been denied, but rather it is admitted.

iii) The contention that the arguments on the blank paper were signed has no force since neither the transfer deeds can be called as a blank piece of paper nor the stamp paper can be called as a blank paper.

iv) The counsel has taken a plea that it was on account of force and coercion but no case of force and coercion has been proved till date before the competent court.

v) She has lodged FIR, and five times Final Report has been filed, court did not take the cognisance of any alleged force or coercion to sign the blank paper.

vi) No order by the Petitioner counsel has been produced to demonstrate that the criminal court which is a competent court has recognised or accepted or taken cognisance and found the Respondent no. 2 guilty of force and coercion to get the blank paper signed. It is again respectfully submitted that this is not a forum where in a proceeding under Section 397 and 398 a case of coercion and force or any other nature has to be proved. Once a signature appears, the document cannot be ignored, which has been held be apex Court also in Judgment of ***Grasim Industries Limited & Another Vs Agarwal Steel.*** The third last para of the said judgment is reproduced herein below:

"In our opinion, when a person signs a document, there is a presumption, unless there is a proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signature thereon. Otherwise no signature on a document can ever be accepted. In particular, businessman, being careful people (since their money is involved) would have ordinarily read and understood a document before signing it. Hence the presumption would be even stronger in their case. There is no allegation of force or fraud in this case. Hence it is difficult to accept the contention of the respondent while admitting that the document Ex. D-8 bears his signature that it was signed under some mistake. We cannot agree with the view of the High Court on this question. On this ground alone, we allow this appeal, set aside the impugned judgement of the High Court and remand the matter to the High Court for expeditious disposal in accordance with law."

The point has been raised how the meeting of the company has been called when Ved Krishna was for a particular period not in India. It is respectfully submitted that the Board of directors of the company consisted of three directors. Therefore, two directors form the quorum

and called the Annual General Meeting and Extraordinary General Meeting. The quorum is of two directors by the law, as well as in the Articles. The other argument was raised that the gift deed is contrary to the Articles which was applicable on 17th December 2010. On these count, it was submitted that:

i. The provision is not restrictive.

ii. The provision in the article was only enabling.

iii. Assuming that the article would not have existed in the Article of Association about gift then, any member by which law was prohibited to make the gift.

22. It is contended by the respondent that the gift was made by the donor to the donee, where R1 company has no role to play while the gift deed was made because it is a transaction between donor (Petitioner) and donee (Respondent No. 5). The Gift Deed, Certified copy of Gift Deed and Transfer Deed in original and share certificate were lodged with the company in November 2011. On said date, the company was a **Public Limited Company** and the law applicable on the date on which the transfer deed and other documents were placed before the Board was 10th November 2011. Therefore, the document by the company or any other authority has to be seen the law applicable on the date of lodgement of the document here application of transfer of share along with transfer deed, gift deed. Since the shares of the public limited are freely transferable and no restrictive article can be contained in the Article of Association of public limited company.

The respondent has contended that the petitioner transferred her shareholding in the company by way of gift deed dated 17.12.2010 to her mother in law . The respondent has filed the copy of the gift deed, which contains the signature of petitioner along with the signature of two witnesses of the gift deed. Petitioner has not denied her signature on the alleged gift deed but has stated that the gift deed was signed under coercion and threat.

The petitioner further claims that witnesses of the alleged gift deed are Mr Sachin Srivastava and Mr S.N. Sharma, both are employees of Yash Paper Ltd. of which R2 is the majority shareholder and Managing Director. It is further said that she never handed over the share certificate to R5 at the time of alleged transfer, as she never had them in her possession.

Petitioner has relied on the specific bar in the Article of Association of the Company for transfer of her share in favour of respondent no.5 being the mother in law.

Clause 16 provided for transfer of shares by way of gift or without consideration. "***Clause 16 permitted any member to transfer by way of gift, for or without any pecuniary consideration, the whole or part of his holding in the Company to his wife, husband, son, daughter-in-law, son-in-law, father, mother, brother, sister, uncle, nephew, niece or cousin.***" It is a settled law that a private limited company can restrict the right to transfer the shares. In the case of Company forming subject matter of the present petition, the right to transfer the shares by way of gift, without consideration was limited to few defined categories of relatives as above. It is extremely important to note that the aforesaid permissible limit of relatives does not include **mother in law to whom transfer or gift without consideration can be done.**

The petitioner has further placed reliance on the law laid down by Hon'ble Supreme Court in the case of **John Tinson & Co. Pvt. Ltd. & ors. V/s Surjeet Malhan (Mrs.) & anr. (1997) 9 Supreme Court Cases 651,** wherein Hon'ble Supreme Court has held that Article of Association of private company being a contract between the parties, a clause thereof prohibiting any transfer of shares without previous sanction of Directors would be binding. The concept of previous sanction connotes that there should be a resolution accepting the transfer and such previous sanction should be preceded by handing over of shares. This action has to be taken even if the transferor himself is the only Director, the other Directors having resigned. On the breach of the above condition, Hon'ble Supreme Court has held that the transfer of shares as invalid.

In the case of **V.B. Rangaraj v/s V.B. Gopalakrishnan & ors. (1992) 1 Supreme Court Cases 160**, Hon'ble Supreme Court has held that the provisions of the Act make it clear that the Article of Associations are the regulation of the company binding on the company and its shareholders and that the shares are a movable property and their transfer is regulated by the Article of Association of the Company. – A restriction which is not specified in the Articles is therefore not binding either on the company or the shareholders.

On perusal of Clause 16 of the Article of Association, it is clear that the restriction on transfer by way of gift is permissible to certain relations only and mother in law of the transferor is not covered under the relations specified in clause 16 of Article of Association.

Thus, it is clear that the gift of shares made to R5, i.e. mother in law of the petitioner is in contradiction with Clause 16 of the Article of Association.

It is contended by the respondent that the gift was made by the donor and donee where R1 company has no role to play while the gift deed was made because it is a transaction between donor (Petitioner) and donee (Respondent No. 5). The Gift Deed, Certified copy of Gift Deed and Transfer Deed in original and share certificate were lodged with the company in November 2011. On said date, the company was a **Public Limited Company** and the law applicable on the date on which the transfer deed and other documents were placed before the Board was 10th November 2011. Therefore, the document by the company or any other authority has to be seen the law applicable on the date of lodgement of the document. Since the shares of the public limited are freely transferable and no restrictive article can be contained in the article of association of public limited company.

Learned counsel for the R-5 has contended that Clause 16 of Article of Association is not in prohibitory terms in as much as it only illustrates that gift can be made only in favour of persons who fall in the category of close relative. It does not say that no gift can be made except those mentioned in clause 16. It does not contain an exhaustive list. Moreover, the petitioner herself being Director at that point of time being well aware of the Articles, she cannot challenge the transfer on the ground that the transfer she made was one prohibited by clause 16.

It is further contended that transfer of shares in respect of which gift deed and transfer deed was signed on 17.10.2010 was considered by the Board of Directors of the company only in the meeting which was conveyed on 10.11.2011. Thus, the relevant date for considering the applicability of Article of Association would be 10.11.2011 when the Board of Directors of the company considered whether the transfer of shares is to be accepted or not.

On the said date, it was the new Article of Association, which have come into force and thus the validity of transfer had to be considered by new Article of Association.

The above contention of the respondents is untenable in law , because the alleged gift deed has been executed on 17.12.2010. Therefore, relevant date for considering the validity of the said documents is 17.12.2010. The respondents' contention that the relevant date will be the date when the transfer was considered by the Board is without any basis. The alleged document, the validity of which is under consideration itself contains the date of execution of the document. If on 17.12.2010 a document was in contravention of the Article of Association of the company, then its validity cannot be given by subsequent event, i.e. after change of Article of Association when the company was converted from Public Ltd. Company to Private Ltd. Company.

It is pertinent to mention that respondent no.1 has filed the copy of the dispatch register along with its counter affidavit, which shows that the notice EGM dated 24.09.2011 was sent to petitioner Shailja Krishna and in the said notice, number of shares in the name of petitioner is shown as 39,500. Similarly in the dispatch register regarding the information of notice of EOGM dated 20.06.2011 name of the petitioner is at serial no.1, and some shares held by the petitioner is shown as 39,500. Respondent no.1 has also filed the list of shareholders of Satori Global Ltd. as on 24.09.2011, which contains the signature of respondent no.2 Ved Krishna and Executive Director Ujjwal Agarwal respondent no.3. In this list at serial no.1, the name of the petitioner Shailja Krishna is mentioned, and equity shares held by Shailja Krishna is shown as 39,500.

It is also important to mention that upto 24.09.2011 respondent no.2 & 3 accepted that Shailja Krishna was having 39,500 shares in her name in the R1 Company. The said R1 has filed the copy of Board Resolution dated 10.11.2011 which shows that the Board of Directors approved the transfer in its meeting held on 10.11.2011. The share transfer form has stamp of Registrar of Companies dated 01.10.2010; it also appears that its validity has also been extended by Assistant Registrar of Companies upto 12.11.2011, but it is not mentioned that when the validity of this document was extended by Assistant Registrar of Companies. If the contention of the respondent is accepted for a moment, then it is clear that upto 10.11.2011 petitioner was member/shareholder of the R1 Company having 39,500 shares.

23. It is important to point out certain documents which are attached with company application no. 14/2016 which is filed by respondent no. 3 Manjula Jhunjhunwala in this Company Application applicant has attached copy form 7 C, which is an application given to the Registrar of Companies under Section 108 (1-D) of the Companies Act, 1956 for extension of time on the share transfer form which was allegedly executed on 17.12.2010. On perusal of this form, it is clear that column 10 of this application is regarding the particulars of payment of the application fee and date. The column 10 of this Form 7 C, which was submitted for extension of time before Registrar of Companies does not contain the particulars of payment of fees for extension of the vaidity of the form.

In form 7 C ,mode of payment is prescribed, which provides that "the amount may be paid in cash at the ROC office or by

bank DD or pay order favouring ……..to be attached with application particulars of payment such as cash or DD or pay order no. and date to be furnished in column 10 of the application."

24. The above condition prescribed in the Form 7 C has not been complied with particular of payment is not stated in Form 7 C. Date of payment is also not mentioned in column no. 10. It is also not stated in column 10 that application fee for extenstion of time was paid in cash or by DD. By leaving column no. 10 blank itself creates doubt on the entire proceedings by ROC regarding the extenstion of time. It is also pertinent to mention that only one page of Form 7 C has been filed with this company application. On perusal of this application name of the person who has signed this application is not clear. It appears that Manjula Jhunjhunwala has intentionaly filed only part of the form 7 C i.e. Page 1 of the form, which is relevant document to prove the validity of the share transfer form.

25. The share transfer form which is the basis of transferring shares of the petitioners in the name of respondent no. 3 Manjula JHunjhunwal is also attached with the Company Application no. 14/2016. Share transfer Form contains the revalidation stamp of the Assistant Registrar of the Companies, Kanpur which shows that the validity of the share transfer form was extended up to 12th November, 2011. It is also relevant to mention that initially the alleged share transfer form was issued by Registrar of Companies on 1st October 2010. It's validity has been extended upto 12th

November 2011 by application submitted before Registrar of Companies, Kanpur.

26. The alleged Form 7 c which is the proper proforma of the application under the Provision 108 (1-D) of the Companies Act, 1956 does not contain that mode and particulars of the payment and date of payment of the application fees, whereas it is specifically metioned in the form that particulars of the payment with date is to be mentioned in column 10. **Why column 10 is left blank itself, creates the doubt on the activity of the then Assistant Registrar of Companies, Kanpur who has extended the validity of form**. It is also important to point out that the share transfer form which is basis of tranferrring shares of petitioners **contains particulars that distinctive numbers of the shares and corresponding share certificate numbers. There is manipulation and overwriting apparent in the photocopy itself, in the column which contains the particulars of distinctive number of shares and corresponding number of shares certificates. It is apparent from the share transfer form itself that distinttive number of shares, and corresponding shares numbers has been filled after erasing the original figures and numbers there**. This appears to be manipulation of record and needs inquiry by the Minstry of Corporate Affairs. Because the validity of share transfer form was extended, even though there is overwriting in the details of shares given in share transfer form.In this form the date of extenstion of time is also not mention by the office of the Assitant Registrar of Companies**. It is also apparent that form 7 C which was submitted before the**

Assistant Registrar of the Companies for extenstion of time was incomplete: particulars of application fees and date is not mentioned in the column no. 10 whereas it was mandatory to complete this application: **In column 6 of the application date of expiry of validity of the instrument of transfer in question is given as 1st December 2010, whereas the date of execution of share transfer form is mentioned as 17th December 2010**. **It appears that the alleged transfer deed which was executed 17th December 2010, was not a valid share transfer form, even on the date of the execution of the instrument**. **Why expired date share transfer form was utilized for execution of the share transfer deed on 17th December 2010, itself creates doubt on the execution of share transfer deed.It is pertinent to mention that Registrar of Companies has power to extend the validity of the share transfer form, if the document, validity of which is in question, was valid on the date of execution of the document and its validity expired before transfer of shares.** Since the impugned share transfer forms validity had already expeired on Ist Dec 2010, which is stated in the form 7C itself ,therefore on date of the execution of the said share transfer form document, i.e. 17th December 2010, Registrar of Companies had no power to extend the validity. Registrar of Companies ought to have examined whether the document was valid on the date of execution ? **If the document itself was invalid on the date of execution of document, then validity of such document can't be extended.** In this case, the application filed for extension of validity is incomplete. The particulars of application

fees and mode and date of payment of application fees is not metioned in column 10, whereas it was mandatory. The Registrar of Companies has extended the validity of document, **which was invalid document on the date of execution of the document**.

In the share transfer form, there is overwriting, and manupulation regarding the distinctive number of shares and corresponding share certificate numbers. Therefore, the alleged share transfer form and its extention of its validity is completely doubutful, which needs thorough inquiry by the Department of the Ministry of Corporate Affairs, regarding the conduct of the officials who has extended the validity of share transfer form.

27. The petitioner's share in the R 1 company has been transferred by way of gift deed dated 17.12.2010. It is also undisputed that on 17th Dec 2010 R-1 company was a private limited Company. This gift is by the petitioner in favour of her mother in law, without any consideration. **Clause 16 of the Article of Association of the Company specifically permits gift in favour of relation "member's wife, husband, son, daughter-in-law, son in law, father, mother, brother, sister, uncle, nephew, niece, or cousins".** Transfer in favour of mother-in-law by way of gift is not permitted under Article of Association of the Company. Hon'ble Supreme Court (1992) 1 SCC 160 has specifically laid down the law that Article of Association are regulations of the company which are binding on the company and its shareholders. In case of John Tinson & Co. Pvt Ltd and others vs Surjeet Malhan (Mrs) and Another (1997) 9 SCC 651 Hon'ble Supreme Court has

held that Article of Association of a Private Company being a contract between the parties, a Clause thereof prohibiting any transfer of shares without previous sanction of directors would be binding. The concept of previous sanction connotes that there should be written resolution accepting the transfer and such previous sanction should be preceded by handing over of shares. Given the law laid down by the Hon'ble Supreme Court, **it is clear that share transfer in a private company can only be done by the stipulation in the Article of Association of the Company. The alleged share transfer was not by the Article of Association. Therefore, such transfer cannot be held to be a valid transfer.**

28. Given the above discussion, it is clear that transfer of petitioner's shareholding, i.e. 39,500 shares in the R1 company to her mother in law R 3 Smt. Manjula Jhunjhunwala is not a valid transfer. It is also clear that there is manipulation in the alleged share transfer form .The share transfer form was not valid on the date when the share transfer form was executed. No validity can be extended of such document, which was invalid on the date of execution itself. **The position would have been different if the validity of the document would have expired after execution of the document, then Registrar of Companies was authorised to extend the validity either before the expiry of the validity or after the expiry of the validity of document under Sub Sec 1(d) of Sec 108 of the Companies Act 1956**. But in this case, proper procedure has not been adhered by the ROC Kanpur and Form 7 C was allowed even though form was incomplete. In the

circumstances, we hold that the alleged transfer of 39500 shares in favour of Manjula Jhunjhunwala is not valid. This issue is decided negative in favour of petitioner.

Issue no. II. Whether the petitioner is not eligible to present this petition under Section 397 and 398 of the Act in view of bar provided under Section 399 of the Companies Act 1956?

The learned counsel for the respondent has raised the issue of maintainability of this petition given specific provision of Section 399 of the Companies Act, 1956. Respondents have stated that Section 399 (1) (a) provides that in case of a Company having a share capital not less than 100 members of the company or not less than, one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares" .

Respondents claims that provisions contained in Section 399 of the Companies Act, 1956 regarding the maintainability is mandatory. In the present case, petitioner has stated that she has filed this petition in the capacity of director and shareholder of the company holding 39500 equity shares of Rs. 10 each which ought to amount to almost equivalent to 98 percent of the issued and paid up share capital of the company. Thus the petitioner claims that she has right to apply under Section 399 of the Act for reliefs under Section 397 and 398 of the Act.

29. Respondent further claims that in para 1 C of the petition petitioner has stated that

I. Authorised capital (Rs. 2 crore) divided in to 20 Lakhs equity shares of Rs. 10/- each.

II. Issued capital of Rs. 94,00,000 comprising 9,40,000 equity shares of Rs. 10 each.

III. The paid up capital is Rs. 7,27,5000.

30. By above averment, it is clear that paid up of the company is 7,27,5000/- and authorised capital was two crores divided into 20 lakhs equality shares of Rs. 10/- each and issued capital 94,00,000 comprising of 9, 40,000. Respondent states that without admitting that petitioner holds 39,500 equity shares as per petitioner claim, she holds 39500 equity shares out of 9,40,000 equity shares which in actual comes to 4.20 percent of the issued capital.

31. Given the above averment in the petition respondent claims petitioner holding company is below 10 percent of the paid up capital of the company. Therefore, petitioner is not qualified to file a petition under Section 397 and 398 of the Companies Act against the R 1 company.

32. It is extremely important to mention that the issued capital of the R 1 company is Rs. 94,00,000 however, the paid up capital is only Rs. 4 lakh, i.e. Only 40000 shares (rest being forfeited) and the petitioner held 39500 shares, i.e. almost 98 percent of the entire paid up capital of the company, when a shareholding was illegally and fraudulently transferred to Respondent no. 5 Manjula Jhunjhunwala.

33. The effect of the above 9 Lakh equity shares getting forfeited is that at present none of the shareholders/ members possess 1/10th of the total issued capital and going by the contention of the

respondent no. 1 and 3, none of the members/shareholders can maintain petition under Section 397 and 398 of the Act. The legislature could not have intended the interpretation of the Section 399 (1) (a) of the Act as put forth by respondent no. 1 and 3 which practically make impossible to present an application under Section 397 and 398 of the Act, and a bar would be created by those erstwhile shareholders whose shares stands forfeited due to non-fulfilment of conditions regarding their allotments of shares. The language used in Section 399 would reveal that for an applicant to be eligible to maintain an application under Section 397 and 398 of the Act, it is mandatory that such an applicant, ought to have paid all the calls on the shares held by him/her. In other words, if the applicant has not paid all the calls on the shares allotted to him/ her, and when such calls were made, he or she is not entitle to present a petition under Section 397 and 398 of the Act, and there is a bar against him. At the same time, if the literal interpretation put forth by respondent 1 and 3 is accepted, even if such person who has not paid all the calls on his shareholding, when such calls are made can still go ahead and block the chances of other shareholders to present a petition under Section 397 and 398 of the Act. The shareholders whose shares stands forfeited has no role to play in the affairs of the company and cannot be termed as associated with the company or its affairs. To examine the eligibility of the applicant for filing petition under Section 397 and 398 of the Act, number of forfeited shares can't be counted, unless the allotment has been made against the forfeited shares. The expression 1/10th of the issued share capital

ought to be interpreted purposefully to achieve the objective of the Section. The expression issued share capital should not be interpreted literally but ought to be given a meaningful interpretation. The purpose of legislature in introducing a 1/10th of the issued share capital was to make sure that minimum threshold is matched before a shareholder approaches for redressal of grievances.The obvious reason being to avoid unscrupulous litigation, unnecessary interference with the affairs of the company, by even though shareholder, who might not be holding more than one or two shares in the company. The reason for introducing the limit / minimum bench mark was to strike a balance between the rights of shareholders to seek redressal of the grievance qua those who were in charge of the management and responsible for the affairs of the company, and at the same time to make sure that running of the affairs of the company are not unnecessary affected by those who do not even hold a minimum number of shares in the company. It is clear that once the shares stands forfeited the shareholders whose shares has been forfeited has no further right to participate in the affairs of the company to the extent of shares forfeited. Such shareholders loses all his rights qua the company unless and until the forfeiture is annulled by process of law. Such shareholders whose shares haves been forfeited has no right to block the rights of legal and valid shareholders of the company.

34. We have already decided that transfer of 39500 share of the petitioner in favour of respondent no. 5 is invalid. Therefore, it is clear that out of total 40000 shares, petitioner holds 39500 shares,

which is about 98 percent of the total shares. It is undisputed that the company has power to allot fresh shares instead of the forfeited shares. Company also has power to permit the shareholders of the forfeited shares to receive the unpaid money and validate the forfeited shares, but in this case company has failed to issue fresh shares in lieu of forfeited shares, therefore forfeited shares cannot be taken into account to examine the eligibility of the petitioner to file the petition under Section 397 and 398 of the Companies Act, 1956. It is clear that out of 40000 valid shares issued by the company petitioner holds 39500 shares , which is about 98 percent. Therefore, petitioner was fully qualified to present the petition under Section 397 and 398 of the Companies Act, 1956. Therefore, this issue no. II is decided in favour of the petitioner and against the respondents.

Issue no. IV & V:

Whether the alleged resignation letter dated 17.12.2010 of the petitioner from the post of Executive Director of respondent no. 1 company is valid?

Whether the alleged Board Resolution dated 17th December 2010 regarding acceptance of the alleged resignation of the petitioner from the post of Executive Director of the company is valid?

35. It is contended by the respondent that the petitioner on 17.12.2010 resigned from the post of Executive Director of Respondent no. 1 Company. Petitioner has submitted that she has never tendered her resignation. It is submitted that no Board

meeting was held on 17.12.2010 and the notice of alleged board meeting was not given to the petitioner.

36. Petitioner has alleged the resignation letter of the petitioner was tendered by the respondents by using fabricated documents. It appears that the alleged resignation of the petitioner was accepted in the Board of Director's meeting Dt. 17.12.2010 i.e. the date on which the alleged resignation was tendered.

37. Petitioner has contended that she had never tendered her resignation as alleged or even signed the resignation letter. It is submitted that no meeting of Board of Director was held on 17.12.2010 and no notice of the alleged board meeting was given to the petitioner nor has been produced by the respondents in their reply. Respondent has even not pleaded that the notice of board meeting dated 17.12.2010 was given to the petitioner.

38. It is admitted fact that on 17.12.2010 petitioner was Executive Director of the R 1 company. The Respondents claim that on 17.12.2010 petitioner resign from the post of Executive Director and on the same day the said resignation was accepted by the Board of Directors. Undisputedly petitioner was major shareholder/ Member and Executive Director of the R 1 Company. If we accept the contention of the Respondent that the Board meeting was held on 17.12.2010, then petitioner ought to have been given notice of the Board meeting.

Sec. 286 of the Companies Act, 1956 specifically deals with the mode of service of notice which is given below for ready reference.

Sec. 286-Notice of Meetings:

(1) Notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in and at his usual address in India to every other director.

(2) Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees.

In the case of Parmeshwari Prasad Gupta vs. The Union of India it was argued before the Apex Court that the meeting of the Board of Directors was not properly convened for want of notice of the meeting to all the Directors, the Court observed thus:

"Now, it cannot be disputed that notice to all the Directors of a meeting of the Board of Directors was essential for the validity of any resolution passed at the meeting and that as, admittedly, no notice was given to Mr. Khaitan, one of the Directors of the company, the resolution passed terminating the services of the appellant was invalid."

39. Further in the matter of Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan, (2005) 1 SCC 212 at page 224, Hon'ble Supreme Court held as under:

"(*a*) The appellants have filed a photocopy of the minutes of the alleged meeting of the Board of Directors said to have taken place on 24-10-1994. As per the photocopy, the minutes appear to be signed by Ramanujam as Chairman. The presence of Suresh Babu as a Director of the company has been shown in the minutes. However, there is no evidence of the presence of Suresh Babu in the said meeting. Article 36 of the Articles of Association of the company requires that a notice convening the meetings of the Board of

Directors shall be issued by the Chairman or by one of the Directors duly authorised by the Board in this behalf. Suresh Babu filed an affidavit in the proceedings before the Company Law Board wherein he has categorically stated that at no point of time was he involved in the affairs of the company and in running the business of the company. Further, he has stated in the said affidavit that at no point of time was he informed that he had been appointed as Director of the company. He had never received any notice of any Board meetings nor had he ever attended any Board meeting. In view of this categorical denial by Suresh Babu about attending any meetings of the Board of Directors of the company, it was incumbent on the part of Ramanujam, who was the Chairman and Managing Director of the company and was in possession of all the records of the company, to place on record a copy of a notice calling a meeting of the Board of Directors in terms of Article 36. No copy of the notice intimating Suresh Babu about the meeting of the Board of Directors and asking him to attend the same, has been placed on record to show that Suresh Babu was informed about holding of the meeting in question.

40. (*a*) The appellants have filed a photocopy of the minutes of the alleged meeting of the Board of Directors said to have taken place on 24-10-1994. As per the photocopy the minutes appear to be signed by Ramanujam as Chairman. The presence of Suresh Babu as a Director of the company has been shown in the minutes. However, there is no evidence of the presence of Suresh Babu in the said meeting. Article 36 of the Articles of Association of the company requires that a notice convening the meetings of the Board of Directors shall be issued by the Chairman or by one of

the Directors duly authorised by the Board in this behalf. Suresh Babu filed an affidavit in the proceedings before the Company Law Board wherein he has categorically stated that at no point

of time was he involved in the affairs of the company and in running the business of the company. Further, he has stated in the said affidavit that at no point of time was he informed that he had been appointed as Director of the company. He had never received any notice of any Board meetings nor had he ever attended any Board meeting. In view of this categorical denial by Suresh Babu about attending any meetings of the Board of Directors of the company, it was incumbent on the part of Ramanujam, who was the Chairman and Managing Director of the company and was in possession of all the records of the company, to place on record a copy of a notice calling a meeting of the Board of Directors in terms of Article 36. No copy of the notice intimating Suresh Babu about the meeting of the Board of Directors and asking him to attend the same, has been placed on record to show that Suresh Babu was informed about holding of the meeting in question ----------.

41. Ramanujam, the Managing Director cannot take a decision on his own to allot shares to himself. If Suresh Babu was present in the meeting, as is the case of Ramanujam, he must have signed a book specially kept for recording presence of the Directors at the Board meeting in terms of Article 38. Ramanujam should have been the first person to produce such a book to show the presence of Suresh Babu at the alleged Board meeting said to have been

held on 24-10-1994 specially when Suresh Babu was denying his presence at the meeting. Nothing has been produced. Thus neither a copy of a notice convening the Board meeting nor the logbook meant to record signatures of Directors attending the meeting of the Board of Directors was produced. In the absence of these documents and any other proof to show that a meeting was held as alleged, we are unable to accept that a meeting of the Board of Directors was held on 24-10-1994. If no meeting of the Board of Directors took place on that date, the question of allotment of shares to Ramanujam does not arise. We are inclined to believe that photocopy of the minutes of the alleged meeting dated 24-10-1994 produced by the appellants, is a sham and fabricated. The alleged allotment of additional equity shares of the company in favour of Ramanujam is, therefore, wholly unauthorised and invalid and has to be set aside…….

.

42. The facts on record show that the company was being run as a one-man show and Ramanujam was maintaining the minutes book of meetings of the Board of Directors only to comply with the statutory requirement in this behalf. The minutes were being recorded by him according to his choice and at his instance. The minutes do not reflect the actual position. Article 38 mandated that a book should be maintained to record presence of Directors at meetings of the Board of Directors. If a book for recording signatures of Directors attending meetings of the Board of Directors was not maintained, it was in clear violation of Article 38 of the Articles of Association of the company. The Company Law

Board without going into these relevant aspects, proceeded on an assumption that a meeting of the Board of Directors did take place on 24-10-1994. This assumption of the Company Law Board is clearly without any basis.

(*b*) When no meeting of the Board of Directors of the company was held on 24-10-1994, the question of validity of the meeting does not arise. On the relevant date Suresh Babu was the only other Director of the company. He denies having attended any meeting of the Board of Directors of the company. There is nothing to rebut this stand of Suresh Babu. In his absence no valid meeting of the Board of Directors could be held."

43. In the light of law laid down by Hon'ble Supreme court in the above mentioned cases, it is clear that notice of Board meeting is an essential element for the validity of the resolutions passed in the alleged Board meeting. Respondent claims that Board meeting took place on 17.12.2010. But respondent has not filed any docu,ment to rebut the stand of the petitioner that no valid meeting of the Board were held on 17.12.2010. Admittedly peti,tio,ner was Exe,cutive Director and major shareholder of the company having 98 % shareholding in the company then why petitioner was not called in the alleged Board meeting dated 17.12.2010 creates doubt on the claim of the respondent that Board of Directors accepted the resignation of the petitioner from the post of Executive Direction on 17.12.2010. Respondent has not filed the minutes of the alleged Board meeting Dt. 17.12.2010 therefore, the contention of the Respondent cannot be accepted that the

petitioner's resignation was accepted by the Board of Directors in its meeting Dt. 17.12.2010. In case of Dale and Carrington Hon'ble Supreme Court has specifically held that without the proof of notice of Board meeting, no validity can be granted to the resolution passed in the said Board meeting. In the circumstances, it is clear that respondent contention that the petitioner tendered resignation from the Post of Executive Director on 17.12.2010 and the same was accepted by the Board of Directors on the same day cannot be accepted.

44. It is further submitted that even on the ground of the quorum the alleged meeting of the Board of directors allegedly held on 15.12.2010 & 17.12.2010 ought to have been discarded. No such alleged resolution and minutes of the said Board meeting has been filed by the respondents. Petitioner also claims that in clauses 32 & 53 of the Article of Association, quorum necessary for the transaction of the business at the Board meeting is provided as two. The respondent has only filed copy of resolution passed in Board meeting Dt. 17.12.2010, but minutes of the said Board meeting has not been filed. Without the minutes of the alleged Board meeting Dt. 15.12.2010 and 17.12.2010 contention of the respondent that respondent no. 3 was appointed as Additional Director on 15.12.2010 and resignation of petitioner from the post of Executive Director is untenable in law. As per law laid down by the Hon'ble Supreme Court in Dale and Corrington, it is clear that without production of the minutes of the Board meeting, question of validity of the Board meeting does not arises. It is pertinent to mention that respondent has filed the copy of the dispatch register,

notice of Board meeting dt. 24th June 2011, explanatory statement attached with the notice with their reply to the petition. For the Board meeting 16th August 2011, every document has been filed to show that the notice was given to shareholder Shailja Krishna on 17.08.2011. It is also written in the dispatch register that Shailja Krishna holds 39500 equity shares. But the respondent has failed to file any document to prove the alleged Board meeting, Dt. 15.12.2010 and 17.12.2010. It is also important to point out that on both the dates petitioner Shailja Krishna was a member shareholder and Executive Director of the company. Therefore, without any notice to the petitioner Shailja Krishna, no decision caould have been taken regarding acceptance of resignation of petitioner from the post of Executive Director and the appointment of respondent no. 3 as Additional Director. Thus, it is clear that the alleged resignation letter Dt. 17.12.2010 of the petitioner from the post of Executive Director of the Company and its acceptance by the Board of Directors in its meeting dated 17.12.2010 is not valid. Thus both these issues are decided in negative in favour of petitioner and against the respondent.

45. By above discussion, it is clear that the respondent has manipulated the resignation letter of the petitioner from the post of Executive Director of the R 1 company. Respondents has wrongly stated that the resignation letter of the petitioner from the post of Executive Director was accepted in the Board meeting Dt. 17.12.2010. The respondent has failed to file any document to show that the Board meeting took held on 15.12.2010 and 17.12.2010. Since the Board meeting was not, held on the alleged

dates, therefore the question of granting validity to the alleged resolution passed in the meeting dated 15.12.2010 and 17.12.2010 does not arises. Respondent has also failed to prove that petitioner herself gifted her entire shareholding in the company in favour of respondent no. 5 Ms Manjula Jhunjhujwala. It is also declared that petitioner is Executive Director and Member/ shareholder of R 1 company having 39500 shares of the company. The removal of petitioner from the post of Executive Director by manipulation of documents and preparation of alleged gift deed and transfer certificate of entire shareholding of the petitioner in the name of Majula Jhunjhunwal, respondent no. 5 is clear result of the oppression and mismanagement of the affairs of the R 1 company conducted by respondent no. 2 - 4. Therefore, petition deserves to be allowed.

ORDER

46. Petition filed by the petitioner under Section 397 and 398 of the Companies Act, 1956 is allowed with cost. Resolution passed in the alleged Board meeting Dt. 15.12.2010 and 17.12.2010 are set aside. Petitioner is restored as Executive Director of the R 1 company with immediate effect. It is also declared that the petitioner holds 39500 shares of the R1 company. The transfer of 39500 equity shares carried out by respondent no. 1 Dt. 18.11.2011 relying upon the instrument of transfer allegedly by petitioner in favour of Respondent no. 5 is declared as null and void and of no consequence.

47. The respondent no. 1 is further directed to delete the name of the Respondent no. 5 as owner of 39500 equity shares from the register of shares and include the name of the petitioner as the lawful and exclusive owner of 39500 equity shares issued by respondent no.1. Respondent no. 5 is further directed to handover the physical possession of the share certificates containing 39500 shares to the petitioner within 15 days from date of order.

48. We have found that there is overwriting and manipulation in the share transfer form, copy of which is attached with Company Application no. 14/2016. We have also observed that the share transfer form was issued by Registrar of Companies on 1st October 2010 which was valid only up to 1st December 2010 but, the share transfer form was allegedly executed on 17.12.2010. We have also observed that Registrar of Companies was having no power to extend the validity of share transfer form under Section 108 (1 -D) of the Companies Act, 1956, when the form was invalid on the date of execution of document itself. Under the above provision, validity could have been extended only in case where validity of the document has expired after execution of the document. It is also found that Form 7 C which was submitted before Registrar of Companies was incomplete. No particulars are given regarding the fees paid for extension of validity in column 10 of the Form 7 C, whereas it was a mandatory condition. It is also found that validity of the share transfer form was extended up to 12th November 2011, but date of passing the order is not clear from the signature and stamp of the ROC. The role of the then ROC/ AROC who has extended the validity of the share transfer form upto 12th November

2011 has been found doubtful which needs inquiry by the Ministry of Corporate Affairs.

49. Certified copy of the order may be issued to the petitioner, respondent. Designated Registrar is also directed to send the copy of the order to Secretary Ministry of Corporate Affairs for taking appropriate action in this matter. Copy of the order may also be send to the Registrar of Companies for compliance of the order.

Dated: 04.09.2018

(SAROJ RAJWARE)
MEMBER (TECHNICAL)

(V.P SINGH)
MEMBER (JUDICIAL)